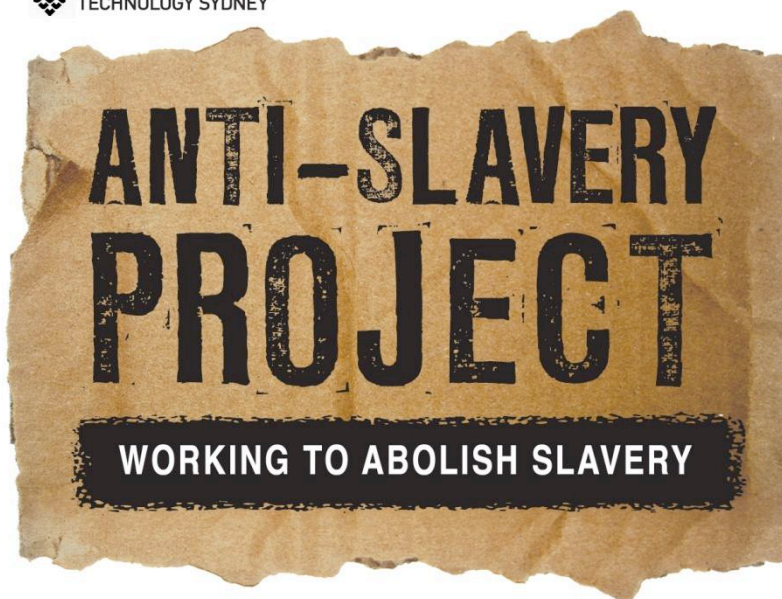


STRENGTHENING AUSTRALIA'S RESPONSE TO HUMAN TRAFFICKING

REPORT TO THE AUSTRALIAN WOMEN'S COALITION
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1. ACKNOWLEDGEMENTS

The purpose of this report to provide the Australian Women's Coalition with an overview of the evolution of the Australian Government's response to trafficking since 2004. The report makes recommendations about how to strengthen Australia's response to the emerging issues of labour trafficking, trafficking for forced marriage and the broader issue of criminal exploitation.

This report has been written by Frances Simmons,¹ in consultation with the Director of the Anti-Slavery Project, Associate Professor Jennifer Burn. The Anti-Slavery Project at the University of Technology Sydney provides legal services to trafficked people and engages in legal research and policy review and development. Currently, the Anti-Slavery Project has over eighty trafficked people as clients.

2. EXECUTIVE SUMMARY

In the last five years Australia's response to human trafficking has evolved rapidly. Initially, the Australian Government's response to trafficking focused on sex trafficking. Now more attention is being paid to labour trafficking outside of the sex industry. The issues of trafficking for forced labour, forced marriage, organ removal and the broader issue of criminal exploitation are beginning to attract attention.

The Anti-Slavery Project makes five recommendations to strengthen Australia's response to all forms of trafficking.

- **Recommendation 1:** Review Australia's legal response to human trafficking. This review should consider amending division 270 and 271 of the Commonwealth Criminal Code to:
 - introduce new offences of servile marriage, forced marriage, forced labour, and deceptive recruiting for labour services.
 - amend the definition of "exploitation" in the trafficking in persons offences to include forced marriage and practices similar to

slavery.

- clarify the meaning of coercion.

- **Recommendation 2.** Conduct a consultative review of the government funded Support Program for Victims of Trafficking. This review should seek feedback from people who have accessed the support program, government, the service provider, NGOs providing services to trafficked people and other stakeholders.
- **Recommendation 3.** Improve the access of trafficked people to opportunities to seek financial compensation and civil remedies.
- **Recommendation 4.** Develop an enhanced community awareness campaign to raise awareness of all forms of labour trafficking in consultation with stakeholders.
- **Recommendation 5.** Provide trafficked people and people who are vulnerable to trafficking with information about their legal rights under Australian immigration and labour law.

3. DEFINING TRAFFICKING AND EXPLOITATION

A. *What is trafficking?*

In the last ten years the international response to human trafficking has evolved rapidly as countries around the world introduced specific anti-trafficking laws that prohibit trafficking, forced labour, slavery and servitude, or turned to pre-existing offences to prosecute those who exploit the labour and services of trafficking victims.²

The development of national anti-trafficking laws has been shaped by the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention on Transnational Crime 2000* (the *Trafficking Protocol*), which provides the first international definition of trafficking.³ Article 3 defines trafficking in persons as

(a) ...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used...

Under the *Trafficking Protocol* the consent of adult victims of trafficking is irrelevant if it was obtained by using force, threats, coercion or abusing a position of power or vulnerability.⁴ The *Trafficking Protocol* recognizes that traffickers can control their victims through physical or psychological coercion.

The phrase “an abuse of position of power or a position of vulnerability” encompasses the concept of nonviolent coercion where the person involved has “no real and acceptable alternative but to submit to the abuse involved”.⁵ Instead of requiring evidence of physical force or threats to annul consent, coercion may take very subtle forms: traffickers may employ psychological coercion to maintain control in circumstances where the victim is isolated, vulnerable to legal threats, fearful of deportation or economic destitution, and dependent upon their trafficker for food and housing.⁶

Migrant workers can be especially vulnerable to trafficking because of a variety of situational factors including lack of knowledge about local laws, cultural barriers, isolation and fears about deportation. As the ILO has observed sex discrimination can leave ‘women migrant workers in particular at risk of being trafficked, as they find it more difficult to migrate legally’.⁷ However, while most reported cases of trafficking involve the movement of people from developing countries to developed countries, trafficking can occur across and *within* state borders.⁸ The *Trafficking Protocol* acknowledges the particular vulnerability of women and children to trafficking, while recognizing that both men and women can be trafficked.⁹

B. What is exploitation?

The *Trafficking Protocol* introduced the concept of ‘exploitation’ into the international legal vocabulary. However, while the *Trafficking Protocol* defines trafficking in persons, it only provides examples of practices that constitute exploitation. As a result the scope of the term exploitation can create confusion. The United Nations Working Group on Trafficking in Persons observed that not all the terms and concepts in the *Trafficking Protocol* are fully defined and encouraged States to ensure that the different forms of exploitation mentioned in the *Trafficking Protocol* are clearly defined and criminalized by national laws.¹⁰

Article 3(a) of the *Trafficking Protocol* states that ‘exploitation’ includes, at a *minimum*, ‘the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.¹¹ While the International Labor Organisation (ILO) has observed there is almost no legal precedent for the concept of exploitation¹², most of the types of exploitation (forced labour, slavery or practices similar to slavery, servitude) identified in Article 3(a) are defined by international instruments that predate the *Trafficking Protocol*.

The list of different types of exploitation in the *Trafficking Protocol* is not exhaustive and can “be adapted taking into account the national experience with specific forms of exploitation and existing legislation”.¹³ The United Nations Office on Drugs and Crime (UNODC) has suggested that other forms of exploitation that could be criminalized include forced or servile marriage¹⁴, forced or coerced begging, the use in illicit or criminal activities, the use in armed conflict, ritual or customary servitude, the use of women as surrogate mothers, forced pregnancy and the illicit conduct of biomedical research on a person.¹⁵

Trafficking describes a process through which people can find themselves in situation of exploitation, while forced labour and slavery describe the condition of exploitation itself. Exploitation does not always occur as a result of trafficking.¹⁶ Forced labour is believed to be a much larger problem than trafficking - the ILO estimates that only 20 per cent of forced labour cases result from trafficking.¹⁷ While trafficking occurs for the *purpose* of exploitation, in

practice authorities often only identify suspected trafficking victims at the end of the trafficking process *after* the victim has been exploited. The suspected perpetrator may be charged with an offence of slavery or sexual servitude, rather than a trafficking offence.¹⁸ Consequently, anti-trafficking investigations by law enforcement agencies have presented courts with new opportunities to consider the legal meaning of forced labour, slavery and the other practices similar to slavery.¹⁹

The *Trafficking Protocol* does not explicitly require that States introduce laws prohibiting exploitation but States do have complementary obligations under other international instruments to criminalize forced labour, slavery and practices similar to slavery.²⁰ Moreover, an effective legislative response to trafficking requires national anti-trafficking laws to precisely define what constitutes exploitation.²¹ Consequently, the UNODC *International Framework for Action to Implement the Trafficking in Persons Protocol* advises that effective anti-trafficking laws should “address all the forms of exploitation with reference to international human rights standards including fundamental principles and rights at work such as the abolition of forced labour and child labour”.²²

a. What is slavery?

The internationally accepted definition of slavery is still found in the *International Convention to Suppress the Slave Trade and Slavery* 1926 (the 1926 Slavery Convention),²³ which defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.²⁴ The 1926 Slavery Convention was supplemented by the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* 1956 (the 1956 Supplementary Convention)²⁵, which prohibits “practices similar to slavery” – namely, debt bondage, serfdom, servile marriage and child labour – “whether or not they are covered by the definition of slavery”.²⁶ The *Universal Declaration of Human Rights*²⁷ and the *International Covenant on Civil and Political Rights*²⁸ both prohibit slavery and servitude.

b. What is forced labor?

Article 2 of the *ILO Convention No. 29 on Forced or Compulsory Labour*²⁹ requires States to introduce criminal sanctions for “forced labour”, which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. The ILO has identified six indicators of a forced labor situation: (1) physical or sexual violence (including “emotional torture like blackmail, condemnation, using abusive language”) or threats of such violence; (2) restricted movement and/or confinement to the workplace; (3) debt bondage; (4) withholding or refusing to pay wages; (5) the retention of passport and identity papers so that the worker cannot leave or prove his or her identity and status; and (6) threats of denunciation to the authorities.³⁰

C. How is trafficking different from smuggling?

People trafficking and people smuggling are defined by the two separate protocols to the *United Nations Convention on Transnational Organized Crime*: the *Trafficking Protocol* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*. The *Protocol against Smuggling of Migrants* defines ‘smuggling of migrants’ as ‘the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident’. People smuggling is an offence under the Criminal Code.

Like trafficking, people smuggling involves the illegal movement of people. Unlike trafficking, people smuggling does not involve moving people for the purpose of exploitation after arriving in the destination country.³¹ The relationship between the smuggler and the smuggled migrant typically ends after the migrant arrives in the country of destination. One of the major differences between trafficking and people smuggling is that smuggled migrants consent to the smuggling, while trafficking victims “have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers”.³²

In reality the line between people smuggling and people trafficking can sometimes be hard to find. The United States 2009 *Trafficking in Persons Report* (the US TIP Report) emphasizes that a person can consent to travel to a country only to be exploited on arrival.³³ As Dr Anne Gallagher has observed, “no legal definition of trafficking, no matter how carefully crafted, can ever be expected to respond fully to the shades and complexities of the real world... an individual can be smuggled one day and trafficked the next”.³⁴ Avoiding the risk of incorrect identification is, as Gallagher observes, a continual challenge.³⁵

4. GLOBAL AND LOCAL TRAFFICKING TRENDS

A. Global trafficking trends

Human trafficking is a clandestine crime. Reliable statistics about the number of victims remain elusive. The United States State Department, which originally reported that approximately 700 000 people were trafficked worldwide each year, is now more cautious about estimating the size of the problem. In 2009, the US Attorney-General reported to Congress that “due to the lengths that perpetrators go to keep their crimes hidden, it is difficult to accurately estimate the extent of victimization”,³⁶ and the most recent US TIP Report simply acknowledged ‘a wide range of estimates exist on the scope and magnitude of modern day slavery’.³⁷

The ILO estimates that at any one time there are at least 12.3 million victims of forced labour in the world, of whom more than 2.4 million have been trafficked into forced labour.³⁸ Of these 2.4 million victims of trafficking, about 40 per cent were trafficked for forced commercial sexual exploitation; one third for other forms of forced economic exploitation; and about 25 per cent for a mixture of these forms of exploitation or for undetermined reasons.³⁹ The 2009 US TIP Report predicts the Global Financial Crisis will increase the supply and demand for all forms of human trafficking, including labour trafficking.⁴⁰ The term ‘labour trafficking’ is not defined in the *Trafficking Protocol* or any other international instrument. It is used to describe trafficking that can result in different types of labour exploitation including ‘forced labour on fishing vessels, the enslavement

of migrant domestic workers, bonded labour in agricultural settings, and sweatshop labour'.⁴¹

Worldwide, the overwhelming majority of trafficked people have been identified in the sex industry.⁴² Labor trafficking prosecutions and convictions make up less than ten per cent of the total number of trafficking cases.⁴³ It would, however, be foolish to leap to the conclusion that trafficking is more prevalent than labour trafficking. The UNODC suggests under-reporting of labour trafficking is the product of 'visibility bias': incidents of labour trafficking are less visible and less reported than sex trafficking.⁴⁴ Media coverage of trafficking has maintained a myopic focus on sex trafficking and, as the UNODC observes, the concepts of trafficking in persons and sexual exploitation 'have been almost concomitant'. As a result, 'an episode of trafficking for forced labour, when detected, could still be treated and recorded under another charge even when a specific offence of trafficking for forced labour exists in a country's criminal code'.⁴⁵

There is now a growing focus on the issue of labour trafficking: in a recent speech the head of the ILO's forced labor division said it is now "common wisdom in policy circles that labor trafficking is as serious a problem as trafficking for sexual exploitation".⁴⁶ The ILO describes the practice of forced labour and labour trafficking as existing on a *spectrum* of exploitation.⁴⁷ At one end of this spectrum are extreme forms of exploitation that breach fundamental human rights such as slavery and forced labour. At the other is freely chosen employment. In between these extremes, 'there are a variety of employment relationships in which the element of free choice by the worker begins at least to be mitigated or constrained, and can eventually be cast into doubt'.⁴⁸ The challenge for legislators and judges is to draw the line between substandard working conditions and extreme forms of exploitation such as forced labour and slavery.

Although entrenched gender discrimination makes women especially vulnerable to trafficking, comparatively little attention has been paid to the trafficking of women outside the sex industry.⁴⁹ Women are believed to be especially

vulnerable to labour trafficking; the ILO estimates that 56 per cent of all people in forced labour are women and girls and 44 per cent are men and boys.⁵⁰ Gender-specific cultural practices can also make women particularly vulnerable to trafficking – for example, the ILO observes that ‘certain traditions in central Asian republics, such as arranged marriages or forced marriages of young women and girls, have contributed to the rise in trafficking for sexual exploitation’.⁵¹

B. Trafficking trends in Australia

The number of people trafficked to Australia each year is not known and nor is the number of people who are subjected to exploitative practices such as slavery and forced labour. A 2004 parliamentary inquiry into sexual servitude reported that between 300 and 1000 women are trafficked to Australia for sexual servitude each year.⁵² However, that estimate was not based on reliable research data and the inquiry did not hear evidence about the incidence of trafficking of men and women into other industries. There is now a growing focus on trafficking for labour exploitation outside the commercial sex industry. The Australian Institute of Criminology is conducting research into trafficking into Australia, and it is hoped more reliable data will become available over time.

To date the overwhelming majority of reported cases of trafficking in Australia are cases of trafficking for exploitation in the commercial sex industry. This reflects global trends. In 2009, the UNODC reported:

Sexual exploitation is by far the most commonly identified form of human trafficking (79%), followed by forced labour (18%). This may be the result of statistical bias... Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking, in aggregate statistics. In comparison, other forms of exploitation are under-reported: forced or bonded labour; domestic servitude and forced marriage; organ removal; and the exploitation of children in begging, the sex trade and warfare.⁵³

The limited statistical information that is available about trafficking in Australia only accounts for victims of trafficking who have come into contact with law enforcement authorities. Between 2004 and 2009, 131 suspected victims of trafficking have accessed the Commonwealth government funded Support Program for Victims of Trafficking.⁵⁴

Support for Victims of People Trafficking Program	
Country of Origin/Citizenship	Total numbers
Brazil/Portugal	1
China	3
Czech Republic	1
Hong Kong SRA/China	2
India	3
Indonesia	5
Macedonia	1
Malaysia/China	1
Singapore	1
South Korea	23
Thailand	73
Uzbekistan	1
Malaysia	14
Philippines	2
Total	131
SOURCE: Australian Government Interdepartmental Report on People Trafficking 2009	

Between 2004 and 2009 the Australian Federal Police (AFP) investigated 270 allegations of trafficking and related offences of slavery and sexual servitude.⁵⁵ Fifty eight per cent of investigations concerned trafficking for sexual exploitation; the rest related to other forms of trafficking for labour exploitation.⁵⁶ Since 2004, there have been no credible allegations of child trafficking.⁵⁷ So far, there have been no reported cases of domestic trafficking of Australian citizens or residents.

So far, most of the known cases of trafficking to Australia have involved the trafficking of women from South-East Asia for sexual exploitation in the sex industry.⁵⁸ An Australian Government report observed that generally these women “have been recruited from countries with a poor socio-economic environment and are attracted by the perception of improved economic opportunities in Australia”.⁵⁹ However, Australia’s initial response to trafficking focused on sex trafficking and very little is known about the nature and extent of other forms of trafficking in Australia.

What is apparent is that very few of the suspected cases of trafficking and slavery investigated by Australian police have reflected the traditional stereotype of slavery or trafficking, where the victim is physically coerced into a state of absolute subordination.⁶⁰ Suspected victims of trafficking and slavery have not been kept under lock and key, “kidnapped from their home villages, held at gunpoint or chained to beds”.⁶¹ While a few cases have involved “the alleged victim being literally locked inside a room, or physically restrained”, in most “the alleged victim has also had an apparent degree of freedom”, such as access to a mobile telephone.⁶² Instead, in most Australian cases it has been the more subtle forms control such as debt, withholding personal identity documents, threats of harm, social and cultural isolation and other forms of psychological coercion and control that have been central to establishing the existence of slavery or trafficking.⁶³

The fact that cases of trafficking and slavery in Australia do not resemble the stereotypical images of a shackled and beaten slave heightens the risk of missing opportunities to identify people who have been trafficked or enslaved. Trained government officials may know what to look for but without adequate awareness raising campaigns health workers, union officials and other members of the community who may come into contact with trafficked people may not.

5. AUSTRALIA'S RESPONSE TO TRAFFICKING

A. *International and domestic benchmarks*

There are a number of different ways to assess the effectiveness of Australia's response to trafficking. First, Australia's response to trafficking should fully reflect Australia's international obligations. Australia's international obligations to address human trafficking are contained in the *Trafficking Protocol* and a range of international human rights and labour rights treaties. Along with the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic Social and Cultural Rights*⁶⁴ and international treaties specifically prohibiting forced labour⁶⁵, and torture⁶⁶, and protecting the rights of women⁶⁷, children⁶⁸, and prohibiting discrimination on the grounds of race⁶⁹ and disability⁷⁰ provide the international benchmarks against which Australia's response to trafficking must be assessed.⁷¹

The United Nations Special Rapporteur on Trafficking in Persons observed that while the issue of trafficking 'can be considered from a number of different perspectives, including human rights, crime control, criminal justice, migration and labour... [a]n integrated approach that places human rights at the core of all efforts is most desirable'.⁷² Although the *Trafficking Protocol* has been criticised for imposing inadequate obligations upon State Parties to protect the rights of trafficked people,⁷³ these gaps can be filled by giving trafficked people the full protection to which they are entitled under international human rights instruments and labour treaties.⁷⁴

Second, the United States State Department issues an annual report assessing the anti-trafficking efforts of foreign countries.⁷⁵ Australia has consistently been ranked as Tier One. The US TIP Report, which provides a unilateral assessment of the efforts of foreign countries to address trafficking, has been influential in shaping the global response to human trafficking. If the US decides that foreign states have failed to meet the US State Department's minimum standards for addressing human trafficking, the US can withhold non-humanitarian, non-trade related foreign assistance.⁷⁶

Third, the UNODC and the ILO have developed useful toolkits and resources designed to promote effective responses to human trafficking. The UNODC has published a model anti-trafficking law,⁷⁷ a legislative guide to the implementation of the *Trafficking Protocol*⁷⁸ and, most recently, an *International Framework for Action to Implement the Trafficking in Persons Protocol*.⁷⁹ The ILO has produced a casebook on forced labour to help common law and civil law judges who face the frequently novel task of applying offences of trafficking, slavery, forced labour and debt bondage.⁸⁰ The UNODC has also published best practice guides for protecting victims and a handbook for parliamentarians.⁸¹

Finally, Australia must learn from its own experience prosecuting traffickers and protecting trafficked people. In addition to the experience of law enforcement agencies, trafficked people and NGOs who work with trafficked people can be an important source of information about the factors that make people vulnerable to trafficking in the first place and the challenges of ensuring trafficked people feel safe and supported.

B. Australia's anti-trafficking strategy

Australia's anti-trafficking strategy was published in the 2004 following the federal Government's announcement of \$20 million funding for anti-trafficking measures. *The Australian Government Action Plan to Eradicate Trafficking in Persons* has four elements: prevention, detection, prosecution and protection. To date, *prevention* has involved employing immigration compliance officers to detect potential trafficking victims in countries of origin, funding of international assistance programs, and efforts to raise community awareness of trafficking. *Detection* was initially a by-product of immigration raids on brothels although there is an increasing awareness of the importance of labour inspectors, NGOs, and unions in identifying cases of labour trafficking. *Prosecutions* have been pursued vigorously, although sometimes unsuccessfully: so far there have only been a relatively small number of convictions and a number of mistrials.⁸² A government funded victim support program, special visa arrangements for trafficked people, and reintegration assistance for trafficked people who return home provide *protection* for trafficked people.⁸³

The implementation of the *Australian Government Action Plan to Eradicate Trafficking in Persons* and the introduction of new anti-trafficking laws paved the way for the Australian Government to ratify the *Trafficking Protocol* on 15 September 2005. To date the Australian Government has allocated \$58.3 million to anti-trafficking measures in Australia and the Asia Pacific region. This funding has been used to establish a support program for victims of trafficking, migration compliance officers in Thailand, and a special law enforcement taskforce to investigate trafficking in sexual servitude. In 2003 an interdepartmental people trafficking committee was established to enable a multi-agency response to trafficking.⁸⁴

C. The criminal response to trafficking and slavery

In 1999, in response to emerging concern about the trafficking of women to Australia for sexual servitude, the Australian Parliament introduced new offences of slavery,⁸⁵ sexual servitude,⁸⁶ and deceptive recruiting for sexual services⁸⁷ into the federal *Criminal Code Act 1995* (Cth) (the Criminal Code).⁸⁸ These laws were supplemented in 2005 by the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*, which introduced new criminal offences of trafficking in persons,⁸⁹ trafficking in children,⁹⁰ domestic trafficking in persons⁹¹ and debt bondage arrangements.⁹²

The people trafficking offences prohibit trafficking in persons too and from Australia by means of force or use of threats⁹³ or deception⁹⁴, or in circumstances where a person is reckless as to whether another person will be exploited regardless of the means used.⁹⁵ An offence will occur where the trafficker deceives their victim about the fact that this or entry or exit will involve the provision of sexual services, exploitation, debt bondage or the confiscation of the other person's travel identity documents.⁹⁶ It is also an offence to be reckless to the fact that a person who is trafficked to Australia may be exploited. The definition of exploitation in the Criminal Code includes forced labour, slavery, sexual servitude, and organ removal. However, other internationally recognised forms of exploitation such as servile or forced marriage and other practices similar to slavery have been left out. The trafficking

offences also specifically cover situations where a person who is trafficked to Australia is deceived about the fact that they will be required to provide sexual services, or deceived about her freedom to cease providing sexual services or to leave her place of residence. There are separate offences of trafficking in children and domestic trafficking within Australia.

The Australian Institute of Criminology has identified the need to examine Australia's criminal law framework to make sure victims and witnesses receive protection inside and outside of the courtroom.⁹⁷ In 2008, the National Roundtable on People Trafficking discussed proposals to introduce a National Charter of Victims' Rights, and in 2009 the Minister for Home Affairs announced that he intended to introduce a new package of protection for federal victims of crime including a Charter of Victims' Rights, and special protection for vulnerable witnesses.⁹⁸ This package has not yet been introduced.

WHAT DID THE HIGH COURT SAY ABOUT SLAVERY?

In 2008 the High Court handed down its judgment in Australia's first slavery case, *The Queen v Tang*.⁹⁹ In 2003, Ms Wei Tang, the owner of a licensed brothel in Melbourne, was charged with possessing and using five Thai women as slaves contrary to s 270.3(1)(a) of the Criminal Code. Commercial sex work is legal in Victoria and the five Thai women came to Australia to work in the sex industry. Each woman acknowledged a debt to a 'syndicate' of around \$45 000. At Ms Tang's brothel, customers were charged \$110 for the services of each woman. The profits were divided between Ms Tang and the other members of syndicate. The women received nothing. Each woman was told her 'debt' of \$45 000 was reduced by fifty dollars every time she serviced a customer. The women were called "contract girls" to distinguish them from other sex workers who worked at the brothel and were paid for their services. The five women worked six days a week, serving up to 900 customers to pay off their debt. If a woman worked a seventh day, she could keep fifty dollars per customer. The women had little money and limited English, and their passports were retained. Their visas had been obtained illegally and they feared detection by immigration authorities. Everyday an escort drove the women to and from the brothel and the apartments where they lived. They were not physically abused or threatened. All the women worked long hours, serving up to 900 customers in a period of four to six months. Two women paid off their debts in six months and decided to remain working in the sex industry. They were paid and chose their hours of work.

Ms Tang's case raised important questions about the meaning of slavery. The Criminal

Code defines slavery as “... the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person”. The High Court unanimously held that the definition of slavery (which was modelled on, but not identical to, the definition of 'slavery' in article 1(1) of the 1926 Slavery Convention)¹⁰⁰ and the offences of slavery were appropriate and adapted to implement Australia's international obligations. The High Court identified four powers attaching to the right of ownership:

- the power to use a person's labour in a substantially unrestricted manner;
- the entitlement to the fruits of the person's labour without compensation commensurate to the value of the labour;
- the power to control and restrict a person's movements; and
- the power to buy and sell a person.¹⁰¹

On the evidence it was open to the jury to conclude that Ms Tang had exercised all these powers.

To draw a line between slavery and harsh and exploitative working conditions and avoid “banalis[ing] crimes against humanity”, Chief Justice Gleeson distinguished between “powers of control”, which “would attach to a right of ownership if such a right were legally possible”, and powers that were simply incidents of harsh employment. In borderline cases drawing these distinctions involves examining “questions of degree”. The capacity to deal with a person as an object of sale and purchase, “may be a powerful indication that a case falls on one side of the line [between harsh employment and slavery]” and in *Tang* it was “this commodification” that explained the conditions of control and exploitation under which the five women were living and working”.¹⁰² Another indicator could be “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”.

The High Court rejected a suggestion that that the offences of debt bondage and slavery were mutually exclusive. The High Court said the question was whether the facts fell within the offence of using or possessing a slave – the question of whether they might also have fallen within the lesser offence of debt bondage was immaterial.¹⁰³

D. The growing focus on labour trafficking

In July 2009 the Australian Government foreshadowed that “over the next year, there will be an increased focus on issues related to trafficking for labour exploitation outside the commercial sex industry, including enhanced engagement with peak employer and industry organizations and unions’.¹⁰⁴ In the last two years the Fair Work Ombudsman, and the Department of Education, Employment and Workplace Relations have become more involved in the

implementation of Australia's anti-trafficking strategy.¹⁰⁵ In 2007-2008, 42 per cent of trafficking investigations concerned labour trafficking.¹⁰⁶

While the Criminal Code prohibits both sex trafficking and labour trafficking, until recently the issue of sex trafficking has monopolised the attention of legislators, media, and courts.¹⁰⁷ The title of the new federal police team established in 2003 to combat trafficking, the Transnational Sexual Exploitation and Trafficking Team, reflected the focus of initial law enforcement efforts. Although this focus is now changing, so far the majority of people who have been identified by law enforcement have been women trafficked for exploitation in the sex industry.¹⁰⁸ Since 2004, just over one in ten of the people on the victim support program were trafficked for exploitation outside the sex industry.¹⁰⁹

Australia does not have a forced labour offence, but following the broad interpretation of the meaning of slavery by the High Court in *Tang*, factual situations that fall within the international definition of forced labour may be successfully prosecuted as slavery offences.¹¹⁰ However, so far cases of labour exploitation outside the sex industry have generally been addressed as violations of labour laws leaving commentators to question why exploitation in the sex industry leads to criminal charges and exploitation in other industries leads to civil penalties.¹¹¹ To date, there have only been two prosecutions of slavery outside the sex industry: the first, an attempt to prosecute the owner of an Indian restaurant for slavery and trafficking, failed; the second, which involved allegations a woman was enslaved as a domestic servant, ultimately resulted in a conviction.¹¹²

In the first case, Mr Rasalingam, the owner of several Indian restaurants, was accused of recruiting Mr Rajendran to travel from India to Australia to work fourteen hours a day, seven days a week for forty consecutive days. Mr Rasalingam was also accused of not providing Mr Rajendran with any wages or workplace entitlements, and confiscating his passport. A jury acquitted Mr Rasalingam of the offence of trafficking a person¹¹³ as well as a second charge of intentionally exercising control over a slave.¹¹⁴ After the criminal trial was over, the federal Workplace Ombudsman (now rebadged as the Fair Work

Ombudsman) successfully brought proceedings against the company owned by Mr Rasalingam for failing to meet minimum standards of pay and workplace entitlements.¹¹⁵ Although the prosecution of Mr Rasalingam for slavery failed, his wages were recovered and he received unpaid wages of \$ 11 560. The case highlights how effective referral pathways between police and workplace agencies can open the door to labour law remedies in cases where the evidence of exploitation does not support a conviction for trafficking or slavery.

While labour trafficking can occur as a result of both regular and irregular migration or occur internally within a country, migrant workers whose immigration status is uncertain or tied to their employer may be especially vulnerable to labour exploitation. In 2009, the US TIP Report reported that as well as being a destination country for women trafficked for sexual exploitation from Southeast Asia, South Korea, Taiwan, the People's Republic of China (PRC),

some men and women from several Pacific islands, India, the PRC, South Korea, the Philippines, and Ireland are fraudulently recruited to work temporarily in Australia, but subsequently are subjected to conditions of forced labour, including confiscation of travel documents, confinement, and threats of serious harm.¹¹⁶

Although there is a lack of research about labour trafficking and exploitation within Australia, media reports have exposed the problem of labour exploitation of migrant workers. In particular, reports of the exploitation of migrant workers¹¹⁷ who were working temporarily in Australia led to an investigation into whether the Subclass 457 – Business (Long Stay) visa program was vulnerable to abuse by employers. More recently, concerns about the exploitation of international students have captured public attention.¹¹⁸ However, so far most of these reports of labour exploitation have been addressed as breaches of labour law, not as trafficking or slavery offences. Recommendations to strengthen Australia's response to labour trafficking are set out below.

E. Improvements to the Visa Framework for Trafficked People

A trafficked person may be eligible for a visa under the People Trafficking Visa Framework and for victim support under the program administered by the Australian Government Office for Women. Under the original framework, access

to the Victim Support Program was only available to people who held a valid visa under the people trafficking visa framework.¹¹⁹ However, since July 2009 changes to the Australia's anti-trafficking strategy mean that access to victim support is no longer conditional on holding a valid visa under the People Trafficking Visa Framework.¹²⁰ If a trafficked person decides to assist police and prosecutors, there is no longer a requirement that the trafficked person moves to a specific trafficking visa. Instead, a trafficked person who holds a substantive visa (for example, a working holiday visa or a student visa) can continue to hold that visa and receive the benefit of the victim support program as needed. These reforms simplify the visa framework and ensure that every trafficked person who is identified by the police will be eligible for the first stage of the victim support program, irrespective of whether they are willing or able to assist police.

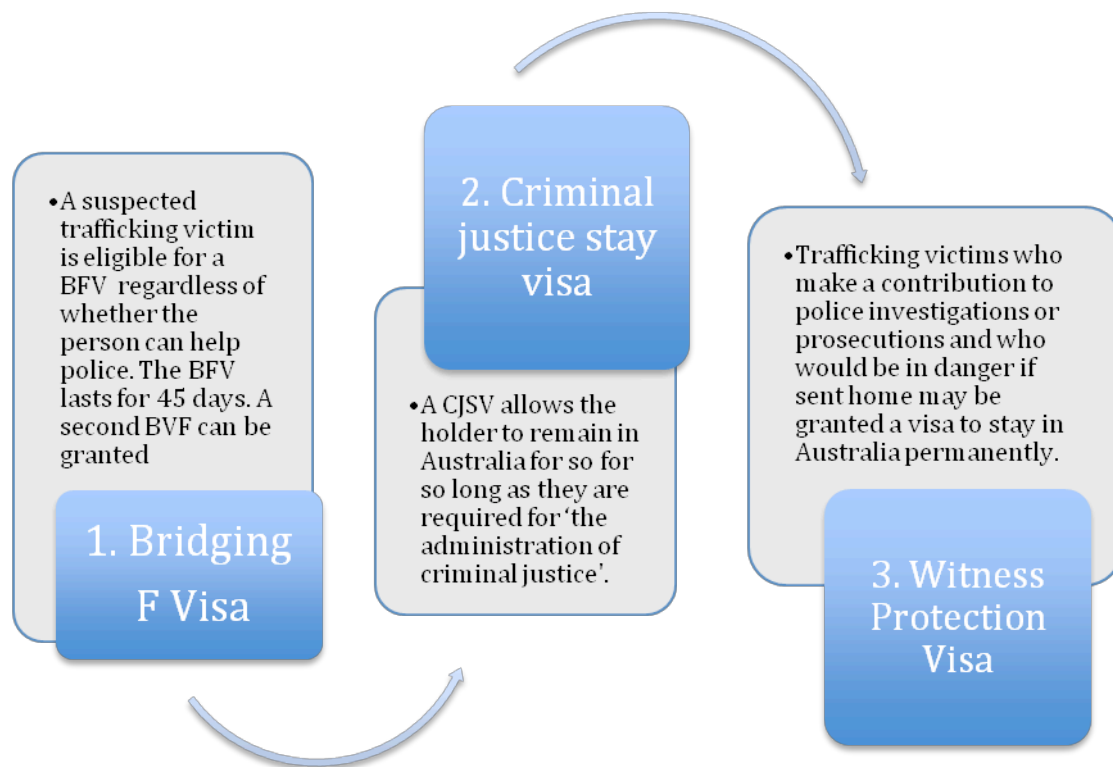
The new visa framework has three stages. A person identified by police as a suspected victim of human trafficking is eligible for a Bridging F Visa for up to 45 days, irrespective of whether the person is willing or able to assist police.¹²¹ BFV holders have automatic access to the intensive 'assessment' stage of the Victim Support Program for 45 days. There is also an option to grant a second BFV for a further 45 days if a person is unable to assist the police, (for example due to trauma) during this time the person will continue to receive intensive victim support.¹²² This reform ensures that every trafficked person who is identified by the police will be eligible for the first stage of the victim support program, irrespective of whether they are willing or able to assist police.¹²³

After the expiry of a BFV, a Criminal Justice Stay Visa (CJSV) may be issued to a trafficked person at the request of the police. A CJSV allows the holder to remain in Australia for so long as they are required for 'the administration of justice'. CJSV holders are entitled to work and have access to certain welfare entitlements and social support services. A Permanent Witness Protection (Trafficking) Visa, which enables a trafficked person to stay permanently in Australia, may be granted if:

- the Attorney General certifies that a person has made a contribution to, and cooperated closely with, police or prosecutors in a suspected case of trafficking or exploitation *and*
- the Minister for Immigration considers the person would be in danger if returned home.

Under the old visa framework a person was only eligible for a permanent visa framework if the person has held a temporary Witness Protection (Trafficking) Visa for two years.¹²⁴

The new visa process



The Australian Government has reported that so far more than 70 per cent of suspected victims of trafficking have been willing to assist police.¹²⁵ From 1 January 2004 to 30 April 2009, 119 Bridging F Visas, 73 Criminal Justice Stay Visas and 17 Witness Protection (Trafficking) (Temporary) Visas have been granted. While no Witness Protection (Trafficking) (Permanent) Visas had been granted at the time the new visa framework was announced on 17 June 2009, the

first five permanent visas granted under the 2004 scheme were issued on 23 June 2009. Since 1 July 2009, 13 permanent protection visas have been granted to victims of trafficking with an additional 3 permanent visas granted to dependent children.

It is unclear at what stage in the criminal justice process people who have been trafficked will be deemed eligible for a permanent witness protection visa. One of the problems with the old visa framework is that trafficked people waited years before being granted a permanent witness protection visa. The uncertainty about their immigration status often caused trafficked people who were fearful of returning home great anxiety and distress.¹²⁶ The Australian Government has indicated that under the new visa framework an 'independent trigger' will be identified to initiate the process leading to the grant of a permanent witness protection trafficking visa.¹²⁷ So far it is unclear what the trigger will be. The Anti-Slavery Project recommends that:

- Three months after a person has been identified as a suspected victim of trafficking the Immigration minister should give formal consideration to whether a person satisfies the eligibility requirements for a permanent witness protection visa where a victim has been *willing* to assist the police with an investigation;
- The Immigration minister should have the discretion to grant a permanent visa at any stage of the justice support stream, upon recommendation by the AFP and/or a request by the trafficked person where there are compassionate circumstances.

The experience of the Anti-Slavery Project is that trafficked people often have complicated immigration histories. For this reason, it is vital that every suspected trafficking victim receives advice about whether he or she is eligible for visas under the people trafficking visa framework and if other visas are applicable. For example, a trafficked person who would be in danger if he or she had to return home may be able to apply for a protection visa to stay in Australia permanently as a refugee.¹²⁸ People who have been trafficked and who believe

they would be at risk of serious harm if they were returned to their country of origin should talk to a migration agent about their eligibility for a protection visa.

F. Strengthening the community response to trafficking

The reforms to visa framework reflected close consultation between government agencies and NGOs.¹²⁹ In the last three years there has been greater acknowledgement by the Australian Government of the vital role NGOs play in identifying and supporting trafficked people. In 2008, the Minister for Home Affairs convened the first annual National Roundtable on People Trafficking (NRPT) to bring government agencies and NGOs together to share knowledge and ideas about effective anti-trafficking measures. After the 2008 NRPT, four community organizations (the Anti-Slavery Project, Scarlet Alliance, Australian Catholic Religious Against Trafficking, and Project Respect) each received \$250 000 funding to raise awareness of all forms of trafficking in Australia.

Working with trafficked people can present difficult ethical questions and inexperienced workers can inadvertently endanger the safety of trafficked people. At the 2008 NRPT a working group was formed to produce guidelines for NGOs working with trafficked people. The *NGO Guidelines for Working with Trafficked People* was published in March 2009 and will be reissued in 2010. The Guidelines were accompanied by the publication of the first multi-lingual fact sheets for trafficked people. The one page 'Know Your Rights' fact sheet gives trafficked people basic information about how they can get advice about their visa status, contact police and get support from NGOs and government agencies.¹³⁰ The fact sheet has been translated into Thai, Vietnamese, Korean, Chinese and Tagalog.

While the development of the multilingual fact sheets was an important step towards remedying the lack of culturally appropriate legal information provided to potential or actual trafficking victims, more work needs to be done to make sure people who are trafficked or vulnerable to trafficking receive information about their legal rights under workplace relations laws, immigration law and the Criminal Code. These resources should continue to be developed in consultation

with NGOs working with trafficked people and, importantly, trafficked people themselves.

NGOs can play an important role in raising community awareness and understanding of all forms of trafficking. Although to date community awareness campaigns have targeted the sex industry, participants at the 2009 NRPT recognized the need to develop communication strategies that promote awareness of trafficking outside the sex industry and develop multilingual resources to inform groups who are vulnerable to trafficking of their legal rights.

6. A REVIEW OF THE VICTIM PROTECTION PROGRAM

The Support Program for Victims of Trafficking provides accommodation, financial assistance and access to legal advice for trafficked people. The Australian Red Cross is currently contracted to manage the victim support program in partnership with the Office of Women. The Victim Support Program assists trafficked people who are referred to the Red Cross by the AFP or state and territory police. Each trafficked person has his or her own individual case manager.

The recent changes to Australia's anti-trafficking strategy mean that access to the Victim Support Program is no longer conditional on holding a valid visa under the People Trafficking Visa Framework. Any person identified by the police as a suspected victim of human trafficking will be eligible for support for 45 days (with a possibility of that the support will be extended for another 45 days). During this time they can expect to receive intensive support by a Red Cross Caseworker, financial support, accommodation, legal advice and medical assistance. If a person does not have a visa, they may be offered a BFV. At the end of this time, ongoing support becomes conditional upon continuing to assist police investigations or prosecutions.

In 2009, the Australian National Audit Office (ANAO) recommended monitoring the percentage of victims willing to assist police, the percentage of people receiving victim support and the time victims remain in Australia on trafficking

visas.¹³¹ This type of monitoring is valuable to measure how effective Australia's anti-trafficking strategy is, and how many people are receiving the help they need. However, any evaluation of the effectiveness of Australia's response to trafficking must seek the views of service providers and, where possible, people who have been trafficked. This is vital to assess the effectiveness of prevention strategies, victim protection measures, and efforts to rehabilitate and reintegrate trafficked people.

The Anti-Slavery Project recommends conducting a consultative review of the victim support program [**Recommendation 2**]. This review should seek feedback from people who have accessed the support program, government, the service provider, NGOs providing services to trafficked people, and other stakeholders. Special consideration should be given to the question of whether the current level of funding is sufficient to meet the legal, social, and medical and mental health needs of people who are trafficked in Australia.

7. GAPS IN THE IDENTIFICATION OF TRAFFICKED AND ENSLAVED PEOPLE

After initially focusing on the issue of sex trafficking, the Australian Government is now paying more attention to other forms of trafficking.¹³² Identifying the victims of labour trafficking can be difficult because of the involvement of third parties in the recruitment process and the lack of awareness of labour trafficking within civil society. The line between substandard working conditions and labour trafficking can be grey and the very subtle methods of control used by traffickers may not match popular perceptions about human trafficking and slavery.

Women and men who are trafficked to Australia sometimes arrive on valid visas (for example, working visas, student visas or tourist visas) but end up working in exploitative conditions. Particular concerns have been expressed about the abuse of the 457 visa program for temporary workers. While it is unclear whether particular instances of the abuse of the 457 visa regime were severe enough to constitute trafficking, there is a need to raise awareness of labour

trafficking among union officials, employer organizations and temporary migrant workers.

So far the only efforts to raise community awareness of trafficking have been targeted at the sex industry. The popular image of a trafficking victim is of a foreign woman trafficked from abroad into the sex industry. The Anti-Slavery Project recommends developing targeted campaigns to raise awareness of other forms of trafficking including labour trafficking, trafficking for forced marriage and trafficking for organ removal and domestic trafficking and exploitation **[Recommendation no. 4]**.

More research is needed to identify the sectors of the Australian workforce that are especially vulnerable to trafficking and exploitation. The particular vulnerability of women to exploitation in the informal sectors of the Australian economy is an issue that would benefit from further research. The ILO has highlighted that domestic workers – who are predominantly women, are at ‘particular risk of forced labor because of their isolated circumstances within private homes, and also because in many cases they are not protected by national labor law’.¹³³

Identifying sectors of the workforce that are prone to exploitation is vital so that victim identification procedures can be improved and clear referral pathways can be established between unions, anti-trafficking NGOs, and government and other organizations that are likely to come into contact with trafficked people. The development of guidelines for identifying trafficked people in sectors that are prone to exploitation would be helpful. These guidelines could help raise awareness of both the subtle and overt methods traffickers can use to control their victims. Awareness-raising campaigns and identification guidelines could also provide clear information about what people should do if they believe they know someone who may have been trafficked.¹³⁴

Many migrant workers may be unaware of their legal rights and this can increase their vulnerability to exploitation in Australia. The Anti-Slavery Projects recommends developing multilingual information sheets and a strategy for

distributing this information to groups that are identified as at risk trafficking

[Recommendation no. 5]. This pamphlet should explain:

- The rights of migrant workers under Australian immigration and employment law;
- The illegality of slavery, sexual servitude, trafficking for forced labour, and debt bondage;
- The right of migrant workers to retain possession of their immigration documents and passports;
- Information about non-government organizations that provide services to people who may have been trafficked or exploited at work;
- Information about Australia's anti-trafficking strategy and how to contact police about a suspected case of trafficking.

These types of measures have recently been adopted by the United States. The *Trafficking Victims Protection Reauthorization Act 2008* mandated the provision of multi-lingual information pamphlets on legal rights for migrants applying for employment or education-based visas.

8. COMPENSATION FOR TRAFFICKED PEOPLE

Trafficked people have a right to an effective remedy to ensure that they are compensated for the harms they have experienced.¹³⁵ The *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* states victims of crime have the right to prompt redress for the harm that they have suffered.¹³⁶ While the *Trafficking Protocol* 'does not specify any potential source of compensation', the UNODC has suggested that 'any or all' of the following options might meet the requirements of the Protocol:

- allowing victims to sue offenders under statutory or common law torts for civil damages;

- allowing criminal courts to award damages or to make orders for restitution; and
- establishing dedicated victim compensation schemes whereby the victim can claim compensation from the State.¹³⁷

To date, there have been no reported cases of trafficked people successfully seeking damages for common law tort claims and only one case of a trafficking victim successfully claiming as a victim of crime under a statutory compensation scheme in New South Wales.¹³⁸

The Australian Government should look for ways to expand the opportunities for trafficked people to seek compensation as victims of crime **[Recommendation 3]**. Unlike the United States, Australia has not enacted a specific civil remedy for trafficked people. There is no federal compensation scheme for victims of crime. Although in the last decade new federal offences have targeted trafficking and online sexual exploitation of children, neither the Criminal Code nor the *Crimes Act 1914* (Cth) contain adequate provisions for protecting vulnerable victim-witnesses¹³⁹ and, unlike the situation in the States and Territories, there is no federal Charter of Victims' Rights.

The Minister for Home Affairs has said that the Australian Government will introduce a package of measures to improve support for victims of crime including a Charter of Victims' rights, protections for vulnerable witnesses and provision for the use of victim impact statements in sentencing federal offenders.¹⁴⁰ To date, there has been no public consultation about the proposed changes. This report recommends that organizations and agencies that work with trafficked people be formally consulted about new measures to support victims of crime. As well as strengthening protection for vulnerable witness, consideration should be given to how to improve the ability of trafficked people to seek compensation. In particular, consideration should be given to:

- Implementing the former Minister for Home Affairs' suggestion to establish a statutory compensation scheme for federal victims of crime.¹⁴¹

- Making sure trafficked people receive legal advice about the opportunity to seek compensation under existing state and territory victims of crime compensation schemes, as well as advice about the possibility of recovering unpaid wages, and tortious claims (for example false imprisonment).
- Strengthening referral pathways between law enforcement, legal services for trafficked people, and the Fair Work Ombudsman to help ensure suspected trafficking victims receive advice about whether they can recover unpaid wages.
- When a Court sentences a trafficking offender the prosecution should consider whether it is appropriate to seek an order of reparations under the *Crimes Act 1914* (Cth).¹⁴² While this provision has traditionally been used in cases involving economic loss, not non-economic loss such as pain and suffering, there is no barrier to making a reparations order about non-economic loss.¹⁴³
- Exploring how the proceeds of crime or the confiscated property of traffickers can be used to compensate the victims of trafficking. This could include considering amending the *Proceeds of Crime Act 2002* (Cth) to enable the civil-based forfeiture of an offender's assets to provide compensation.¹⁴⁴

Ultimately unless trafficked people receive counseling and information about their legal rights in a language that they can understand they may not be able to exercise these rights.¹⁴⁵ Adequate funding of legal services for trafficked people is critical to ensure each trafficked person receives independent legal advice about his or her immigration status, prospects of seeking compensation, recovering unpaid wages, or pursuing civil claims.

9. ACTION TO ADDRESS EXPLOITATION

Trafficking describes a process through which people can find themselves in a situation of exploitation, while forced labour and slavery describe the condition of exploitation itself. According to the UNODC *International Framework for Action to Implement the Trafficking in Persons Protocol*, a key indicator of the effective

implementation of the *Protocol* is the introduction of national laws that “address all the forms of exploitation with reference to international human rights standards including fundamental principles and rights at work such as the abolition of forced labour and child labour”.¹⁴⁶

Forced labour is believed to be a much larger problem than trafficking.¹⁴⁷ Moreover, while exploitative practices such as forced labour, slavery and practices similar to slavery often occur as a result of trafficking, this is not always the case.¹⁴⁸ Anti-trafficking measures have attracted criticism for only protecting “a small subset of the persons subjected to contemporary forms of slavery”.¹⁴⁹ However, as the ILO has observed, the growing awareness of human trafficking has given States “the impetus to take legislative and judicial action against those abusive practices covered by the ILO’s forced labour convention”¹⁵⁰ as well as the practice of trafficking.

It is now timely for Australia’s response to trafficking to focus on the broader issue of exploitation. What Australia needs to do now is make sure the criminal prohibition of exploitation is both comprehensive and precise. This will involve amending the Criminal Code to ensure that it prohibits both trafficking for the purpose of all the types of exploitation listed in article 3 of the *Trafficking Protocol* as well as introducing stand-alone offences of forced labour and forced marriage.

While courts must decide whether the facts in a specific case amount to a criminal violation, even where a suspected case of trafficking does not result in a successful prosecution, it may involve violations of workplace relations law. Empowering migrant workers to exercise their labour rights helps prevent the conditions in which traffickers can exploit their victims. This is why it is important that workers whose treatment is located in the grey territory between criminal exploitation and substandard working conditions receive legal advice about criminal remedies and the possibility of pursuing labor law remedies and civil claims.

Migrant workers who have been exploited in Australia can seek redress under

the *Fair Work Act 2009* (Cth) or federal anti-discrimination laws irrespective of their immigration status. The Fair Work Ombudsman has the power to investigate complaints in the work place, search premises, make orders about paying workers the minimum wage, and commence court proceedings against employers who contravene the civil penalty provisions of the *Fair Work Act 2009* (Cth).¹⁵¹ Migrant workers may also be able to seek legal remedies for discrimination in the workplace on the grounds of sex, race, disability and age under federal or state anti-discrimination laws.¹⁵²

The *Migration Legislation Amendment (Worker Protection) Act 2008* introduced new legal obligations for employers who want to sponsor temporary workers under the 457 visa program. These obligations, which came into effect in September 2009, require the employer who sponsors the worker to ensure the terms and conditions of employment are no less favorable than the terms and conditions of employment that would be provided to an Australian worker performing the same work; cooperate with inspectors appointed under the Migration Act; and ensure the sponsored person works in the nominated occupation.¹⁵³ The Fair Work Ombudsman can bring proceedings to impose civil penalties upon employers who breach their legal obligations to 457 visa holders.

So far labour law has proved a more fruitful avenue for redress for exploited migrant workers than compensation claims based on their status as trafficking victims. While it is unclear whether any of the cases of exploitation investigated by the Fair Work Ombudsman have been severe enough to fall within the criminal offences of slavery or trafficking, it is clear that the Fair Work Ombudsman has an important role to play in identifying potential trafficking victims. Workplace officials and union officials should have training about how to identify the potential victims of labour trafficking and exploitation.

The director of Aprint (Aust) Pty Ltd, Mr Yu Tu Chuan, travelled to China in 2005 to recruit four men to work for Aprint. The men were granted subclass 457 visas that allowed them to work temporarily in Australia. On arrival in Australia the men were underpaid a total of \$93 667. After the Workplace Ombudsman (now rebadged as the Fair Work Ombudsman) investigated the matter the workers were fully repaid and, as the company had been liquidated, the Court imposed a \$9 000 financial penalty upon the director.¹⁵⁴ Academic commentators have questioned why the case of Aprint was not investigated as a possible case of labour trafficking.¹⁵⁵

An effective response to human trafficking must address the broader issue of exploitation. Particular attention should be paid to:

- ensuring the Criminal Code precisely defines and criminalizes all the different forms of exploitation that are mentioned in the *Trafficking Protocol*.
- raising awareness of the fact that criminal exploitation and trafficking can be a domestic or transnational crime;
- identifying the industries and conditions in which workers are especially vulnerable to exploitation;
- training employee and employer representatives in vulnerable industries to identify suspected cases of trafficking;
- developing accessible and culturally appropriate information for migrant workers in Australia about their legal rights to work free from exploitation.
- working with unions, academic and community agencies to enhance its understanding of how to reduce the vulnerability of migrant workers to trafficking and exploitation.

10. IMPROVING AUSTRALIA'S RESPONSE TO LABOUR TRAFFICKING

While Australian law prohibits trafficking for forced labour, the trafficking and slavery offences in the division 270 and 271 of the Criminal Code reflect the drafters' preoccupation with sex trafficking. The lack of specific offences of forced labour or deceptive recruiting for forced labour in the Criminal Code is a gap in the legal protection of trafficked and exploited people in Australia. There

is no specific offence of ‘forced labour’ or servitude but there is an offence of sexual servitude. Similarly, there is an offence of deceptive recruiting for sexual services but no offence of deceptive recruiting for labour services. While it is possible the conduct that would be prohibited by a forced labour offence would already be captured by the offence of slavery (particularly where there is evidence of an arrangement to buy and sell the alleged victim) this may not always be the case and international law clearly requires Australia to introduce a stand alone offence of forced labor.¹⁵⁶

The trafficking offences prohibit organising or facilitating the movement of a victim into, out of, or within Australia, where this movement occurs because of force, threats, or deception for the purpose of ‘exploitation’.¹⁵⁷ The definition of exploitation includes *forced labour* which is defined as ‘the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats’, is either ‘not free to cease providing labour or services’ or ‘is not free to leave the place or area where the person provides labour or services’.¹⁵⁸ Although the sex industry is legal or decriminalized in Australia, the Criminal Code distinguishes between trafficking for forced labour and trafficking for exploitation in the sex industry.¹⁵⁹ In contrast, the ILO has recognized that coercive sexual exploitation is one aspect of the broader problem of forced labor.¹⁶⁰

As discussed above, even where a suspected case of labour trafficking does not result in a successful prosecution, it may involve violations of Australia’s workplace relations law. Effective referral pathways between the AFP, the Fair Work Ombudsman and anti-trafficking NGOs are crucial to ensure that workers whose treatment is located in the grey territory between criminal exploitation and substandard working conditions receive legal advice about criminal remedies and the possibility of enforcing their rights in the workplace.

PREVENTING LABOUR TRAFFICKING – WHAT MEASURES HAS THE UNITED STATES TAKEN?

The *Trafficking Victims Protection Reauthorization Act of 2008* (the TVPRA of 2008) created a new offence of fraudulently recruiting foreign workers to travel to the US for employment¹⁶¹ and expanded the prohibition against profiting from sex trafficking to cover those who benefit financially from a venture engaged in peonage, forced labour, or document servitude.¹⁶² The TVPRA 2008 contains the first significant legislative effort to reduce the vulnerability of migrant workers in the US to labour trafficking by requiring the Secretary of State to develop a multilingual information pamphlet on legal rights and resources for aliens applying for employment or education-based non-immigrant visas.¹⁶³ The pamphlet was translated into language groups with the greatest concentration of employment-based non-immigrant visas.¹⁶⁴

11. IMPROVING AUSTRALIA’S RESPONSE TO TRAFFICKING FOR FORCED MARRIAGE

Forced marriage is not included in the definition of exploitation in the Criminal Code and the Criminal Code does not contain a stand-alone offence of forced or servile marriage. Forced or servile marriage is “a practice similar slavery”. The Supplementary Convention on the Abolition of Slavery 1956 states “practices similar to slavery” include:

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person.

The definition of forced marriage in the Supplementary Convention only covers the practice of forced or servile marriage in relation to women. Although women are more likely to be the victim of forced marriage, the UNODC suggests “updating this definition [in the supplementary convention] to include practices in which both women/girls and men/boys can be the subject of forced or servile marriage. This may cover trafficking for marriage and certain forms of ‘mail order bride packages’”.¹⁶⁵

Although there is a lack of data about the practice of forced marriage in Australia or the abuse of Australian immigration laws through sham marriages, some

cases of forced marriage have been discovered.¹⁶⁶ In the case of *R v FAS*¹⁶⁷, the defendant, an Australian citizen, brought his new wife to Australia from Egypt and told her she would have to repay him for her Australian visa. He forced her to work in a brothel for two years during which time he controlled her movement, withheld her passport, and physically abused her. He was charged with offences under the *Crimes Act 1900* (NSW) related to sexual servitude and procuring for prostitution.¹⁶⁸

The possibility of women being exploited through sham marriages is illustrated by the case of *R v Kovacs*.¹⁶⁹ In that case, the defendants, a married couple, arranged a sham marriage in order to bring a woman to Australia from the Philippines to work as a domestic servant. The victim was exploited and repeatedly raped but did not seek assistance from police because of her immigration status. The Kovacs were convicted of offences relating to fraudulent marriage and slavery. This conviction was overturned on technical grounds. On retrial in the Queensland Supreme Court in February 2010, the defendants were found guilty of the slavery offences.

The Australian Government has indicated it is considering introducing a specific offence in relation to forced marriage.¹⁷⁰ The Anti-Slavery Project recommends introducing a specific offence of forced or servile marriage into the Criminal Code and amending the definition of exploitation to include practices similar to slavery, including forced marriage or servile marriage.

12. WHAT SHOULD HAPPEN NOW?

A decade after the drafting of the *Trafficking Protocol* it is now time to review the legal response of trafficking to Australia. To date parliamentary inquiries into trafficking into Australia have focused on trafficking into the sex industry. The views of unions and employers have been missing. It is now time to review Australia's anti-trafficking strategy with an eye to the broader issue of labor trafficking and exploitation.

This review would provide an opportunity to identify how to clarify and strengthen Australia's anti-trafficking laws in light of Australia's international

obligations *and* domestic and international experience implementing anti-trafficking laws. This review should pay particular attention to the operation of division 270 and 271 of the Criminal Code and consider the recommendations of the Anti-Slavery Project to:

- Introduce an offence of forced labour;
- Introduce an offence of deceptive recruiting for labour services;
- Introduce a specific offence of engaging in conduct causing another person to enter into servile or forced marriage and a specific offence of child labour;¹⁷¹
- Introduce specific offences of servile marriage and forced marriage.

In light of the difficulty of drawing the line between substandard working conditions and trafficking and criminal exploitation, consideration might also be given to providing greater legislative guidance about what constitutes coercion and the abuse of a position of power and vulnerability.¹⁷² Guidance could be sought from the UNODC model trafficking law and the experience in comparative jurisdictions, such as the United States, which has recently clarified its legislative definition of non-violent coercion in light of the evolving case law.¹⁷³

Special attention should also be paid to the legal protection of trafficked children and how to improve protection for vulnerable witnesses. The Australian Government should act on its promise to introduce a Charter of Victims' rights and enhance protections for vulnerable witnesses. **[Recommendation 1]**

Conducting a public review of Australia's legal response to trafficking will also provide an opportunity to raise awareness of trafficking outside the sex industry. Special attention should be paid to the emerging issues of forced labour and forced marriage and submissions should be sought from a wide range of stakeholders including employer organizations, unions, the Fair Work Ombudsman and victim support services. Guidance could be sought from the UNODC *Model Law Against Trafficking in Persons* and the legal response to trafficking in comparative jurisdictions.¹⁷⁴

Australia needs to look beyond the criminal justice system and improve the access of trafficked people to seek compensation as victims of rights and exercise their rights under Australian workplace relations laws. The potential and actual victims of trafficking should receive culturally appropriate information about their rights under Australian immigration, labour and criminal law. Greater efforts should be made to raise awareness of all forms of trafficking – including labour trafficking and forced marriage – within the broader community. Community awareness campaigns should educate the public about how traffickers use psychological coercion to maintain control over their victims.

13. RECOMMENDATIONS

Recommendation 1: Review Australia's legal response to human trafficking

In 2005 the Parliamentary Joint Committee on the Australian Crime Commission recommended a review of the operation of the trafficking and slavery offences in divisions 270 and 271 of the Commonwealth Criminal Code.¹⁷⁵ The Anti-Slavery Project recommends that a Senate and Legal Constitutional Committee review of Australia's response to human trafficking specifically consider:

- Introducing new offences of forced marriage, forced labour, and deceptive recruiting for labour services.
- Amending the definition of "exploitation" in the trafficking in persons offences to include servile marriage and other practices similar to slavery.
- Clarifying the meaning of coercion and the abuse of a position of vulnerability.

Recommendation 2: Conduct a consultative review of the government funded, victim of trafficking funded support program

This review should be consultative in operation and seek feedback from government, the service provider, NGOs providing services to trafficked people, other stakeholders, and people who have accessed the support program.

Recommendation 3: Improve the access of trafficked people to opportunities to seek compensation and civil remedies

There are a variety of ways in which the Australian Government could improve the ability of people who have been trafficked with effective access to compensation.¹⁷⁶ The Anti-Slavery Project recommends:

- Establishing a federal compensation scheme for victims of crime that will enable trafficked people to apply for compensation regardless of whether a successful prosecution is brought against the perpetrators.
- Providing dedicated funding for legal services for trafficked people as part of the Victim Support Program for Trafficked People.
- Introducing a Charter of Victims' Rights that reflects, at a minimum, the principles articulated in the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

Recommendation 4: Develop an enhanced community awareness campaign to raise awareness of all forms of labour trafficking

To date community awareness campaigns have resulted in targeted information aimed at sex industry workers and their clients. Lack of awareness of trafficking outside the sex industry may result in under-reporting of labour trafficking. Information-raising campaigns that target employer organizations and unions are vital to raise awareness of labour trafficking and help ensure that suspected cases of labour trafficking are recognized and reported. The Commonwealth Government should support the development of a national targeted awareness-raising campaign about trafficking for labour exploitation. This campaign should target the Liquor, Hospitality and Miscellaneous Union (LHMWU), hospital workers, council workers and migrant workers and organizations that provide services and support to migrant workers.

Recommendation 5: Provide trafficked people and people who are vulnerable to trafficking with information about their legal rights under Australian law

Many migrant workers may be unaware of their legal rights. The Anti-Slavery Project recommends developing culturally appropriate resources that can be

distributed to groups that are identified as being vulnerable to trafficking. This pamphlet should contain information about:

- The rights of migrant workers under Australian immigration and employment law;
- The illegality of slavery, sexual servitude, trafficking for forced labour, and debt bondage;
- The right of migrant workers to retain possession of their immigration documents and passports;
- How to contact non-government organizations that provide services to people may have been trafficked or exploited at work;
- Information about Australia's anti-trafficking strategy and how to contact police about a suspected case of trafficking.

APPENDIX - SUMMARY OF SIGNIFICANT TRAFFICKING CASES*

* This table is a summary of selected trafficking cases. It is not a summary of every reported trafficking case in Australia.

CITATION	SUMMARY
<p><i>R v Tang</i> 2008) 249 ALR 200; [2008] HCA 39</p>	<p>Wei Tang, the owner of a licensed brothel in Melbourne, was arrested and charged with possessing and using five Thai women as slaves contrary to s 270.3(1)(a) of the Criminal Code. Each of the five Thai woman acknowledged a debt to a 'syndicate' of around \$45 000. Ms Tang had a seventy per cent share in a syndicate which 'purchased' four of the women for \$20 000 each. At Ms Tang's brothel, customers were charged \$110 for the services of each woman. The profits were divided between Ms Tang and the other members of syndicate. The women received nothing. Each woman was told her 'debt' of \$45 000 was reduced by fifty dollars every time she serviced a customer. The five women worked six days a week, serving up to 900 customers to pay off their debt. The women had little money, limited English, and feared detection by immigration authorities. All the women worked long hours, serving up to 900 customers in a period of four to six months. On appeal, the High Court found there was sufficient evidence for a jury to convict Ms Tang of the slavery offences. Challenges to the constitutional validity of the slavery offences dismissed. <i>R v Wei Tang (2007)</i> 16 VR 454 overruled.</p>
<p><i>R v Wei Tang</i> [2009] VSCA 182 (17 August 2009).</p>	<p>Appeal by Ms Tang against her original sentence of a total of ten years imprisonment with a non-parole period of six years. Ms Tang appealed against her sentence on a number of different grounds. The Court upheld the appeal on the grounds that the sentence for each of the 'possession' offences contained a portion to punish Ms Tang for having 'used' the victim. Another ground of appeal – that the sentencing judge incorrectly assessed the seriousness of the offending because Ms Tang's exercise of the powers of use and possession was minimal – was rejected.</p>
<p><i>R v Kovacs</i> [2008] QCA 417.</p>	<p>Melita and Zolton Kovacs were alleged to have brought a young woman from the Philippines to the Australia after arranging a sham marriage. When the young woman arrived, the prosecution contended she was effectively enslaved and used to provide slave labour in the Kovacs' home and their shop. The Kovacs were charged with the offences of possessing and using a slave contrary to s 270.3(1)(a) organising a sham marriage. However, in December 2008 the Kovacs' convictions for slavery offences were quashed on technical grounds (1) admission of inadmissible evidence; (2) trial judge gave inadequate directions under Queensland legislation in relation to a witness who gave evidence from behind a screen). A retrial was ordered but has not yet been heard. On retrial in the Queensland Supreme Court in February 2010, the defendants were found guilty of the slavery offences and sentenced to imprisonment (unreported).</p>

<p><i>Fryer v Yoga Tandoori House</i> [2008] FMCA 288.</p>	<p>The owner of an Indian restaurant, Mr Rasalingam, was accused of forcing Mr Rajendran to work fourteen hours a day, seven days a week for forty consecutive days. Mr Rasalingam was also accused of not providing Mr Rajendran with any wages or workplace entitlements for the time Mr Rajendran worked and withholding his passport from him. The defendant was acquitted of slavery and trafficking offences but convicted of the less serious offence of misleading a Commonwealth official in the immigration process. After the criminal trial had finished, the Workplace Ombudsman successfully brought separate proceedings against the company owned by Mr Rasalingam for failing to meet minimum standards of pay and entitlements.</p>
<p><i>Sieders v R; Somsri v R</i> [2008] NSWCCA 187.</p>	<p>In 2006 Johan Sieders and Somsri Yotchomchin were convicted of the offence of conducting a business involving the sexual servitude of four Thai women. Sieders was sentenced to four years imprisonment and Yotchomchin was sentenced to five years imprisonment. The four Thai women traveled to Australia with an escort and provided sexual services at the brothels owned by Sieders and Yochomchin. The women were not paid but told that they were required to pay back ‘debts’ of around \$45,000 each. Sieders and Somsri unsuccessfully appealed against their convictions. The defence argued that the women had knowingly entered into a commercial agreement with the defendants and were willing to pay off the debts for the opportunity to work in Australia. On appeal, the Court said while it was possible that all but one of the women made a deliberate choice in Thailand to undertake the debt of \$45 000, the evidence did not establish that the women were told about the ‘the precise physical limitations that they would be under’ or any other matters that were identified as possible contributors to their lack of freedom’. The Court concluded: “the definition of sexual servitude [in the Criminal Code] ... is concerned only with a very specific respect in which there is a limitation on the freedom of action of the person in question. A person can be free to do a multitude of different things, but if she is not free to cease providing sexual services, or not free to leave the place or area where she provides sexual services, she will, if the other condition of the section is met, be in sexual servitude”.</p>
<p><i>Mclvor v R; Tanuchit v R</i> [2009] NSWCCA 264.</p>	<p>The defendants, Mclvor and Tanuchit (M & T), owned and co-managed a brothel. M & T charged with using and possessing six Thai women as slaves. With respect to five of the complainants, the defendants were convicted by jury of possessing a slave and exercising over a slave powers attaching to the right of ownership contrary to s 270.3(1)(a) of the Criminal Code. With respect to the sixth complaint, the jury acquitted both M & T. Five victims recruited in Thailand. Four of the five victims knew that they would be providing sexual services and one of the victims was given the false impression that she was coming to work as a masseuse. When the victims arrived, the defendants enforced ‘debt contract’ to repay an amount between A\$35 000 and A\$45 000 by providing sexual services. An appeal that the trial judge misdirected the jury raised two issues (1) that the jury was misdirected on the fault element of slavery and (2) that the jury was misdirected about the indicia of slavery.</p> <p>On appeal the Court held the trial judge gave the jury incorrect and confusing directions on the fault element of the offence of slavery. This was because all parties agreed he had to follow the subsequently overruled judgment in <i>R v Wei Tang</i> [2007] VSCA 134. This constituted a significant miscarriage of justice and a retrial was ordered.</p> <p>The Court noted the prosecution argued that there were nine indicia of slavery and stated (at [8], [41], [44]) that, with the possible exception of one indicia (7) these indicia are not capable of constituting slavery on their own – instead they provide the circumstances which are relevant to determine if the physical elements of the slavery offences can be established. Although the trial judge could have confused the jury by suggesting one indicia was sufficient, in view of a question by the jury it was clear the jury did not act on the basis that only one indicia would be sufficient. Therefore there was no error in jury instruction about the indicia of slavery.</p>

ENDNOTES

- 1 Frances Simmons authored this paper in her capacity as a consultant for the Anti-Slavery Project.
- 2 The UNODC reported that by 2008, 80 per cent of countries surveyed had introduced specific anti-trafficking legislation. UNODC, *Global Trafficking in Persons Report*, (2009) at 22.
- 3 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force 9 September 2003. At October 2009, the Trafficking Protocol had 117 signatories and 133 parties. See <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>
- 44 Article 3(b) provides that the recruitment, transportation, harbouring or receipt of children by any means for the purpose of exploitation will constitute trafficking, regardless of whether consent is present.
- 5 United Nations General Assembly, Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, (UN Doc. A/55/383/Add.1, 3) November 2000, Interpretative Note, 63.
- 6 UNODC *Model Law Against Trafficking in Persons* recommends that laws criminalizing trafficking should specifically define an abuse of a position of vulnerability as “referring to any situation in which the person involved believes he or she has no real or acceptable alternative but to submit or taking advantage of the vulnerable position a person is placed in by virtue of a range of factors including (but not limited to) having entered a country illegally or without proper documentation, reduced capacity to form judgments by virtue of being a child, illness, infirmity or a physical disability, pregnancy, promises or giving of sums of money or other advantages to those having authority over a person, or being in a precarious position from the standpoint of social survival”. UNODC, *Model Law Against Trafficking in Persons* (2009), 22 available online at <http://www.unodc.org/unodc/en/frontpage/2009/July/model-law-on-trafficking-in-persons.html>.
- 7 ILO, ‘Human trafficking and forced labour exploitation, Guidelines for legislation and law enforcement,’ (2005), 4 (also observing that “[i]n addition, due to restrictive migration laws and policies on entry, residence and employment, trafficked workers often find themselves in an irregular situation, which makes them even more vulnerable to multiple forms of discrimination. ...Discrimination plays into the hands of traffickers and employers and it weakens the position of migrant workers).
- 8 UNODC, ‘Legislative Guide to the Implementation of the Trafficking Protocol’, (2004).
- 9 This is reflected in article 2, subparagraph (a) of The Trafficking Protocol, which requires that “particular attention” be paid to combating, and prevent trafficking in women and children. It is noted that UNODC observes the profile of trafficking victims is “highly influenced by local laws and priorities, which often focus on child victims and victims of sexual exploitation. With this caveat [in 2006] Two-thirds of trafficking victims were women”. See UNODC, *Global Report on Trafficking in Persons*, (2009), 10-11.
- 10 United Nations Working Group on Trafficking in Persons, “Analysis of key concepts of the Trafficking Protocol”, CTOC/COP/WG.4/2010/2.
- 11 The terms “sexual exploitation” and “exploitation of prostitution of others” are not defined in the Trafficking Protocol or by other international laws – a deliberate state of ambiguity that reflects the irreconcilable differences between those who consider all prostitution is

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- inherently exploitative and those who distinguish between exploitation and voluntary sex work. The travaux préparatoires state the Protocol is “without prejudice” to how individual states address prostitution. United Nations General Assembly, Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, (UN Doc. A/55/383/Add.1, 3) November 2000, Interpretative Note, 64.
- 12 International Labour Organisation, *The Cost of Coercion* (2009), at [29] (hereafter *The Cost of Coercion*).
- 13 UNODC Model Trafficking Law, 36.
- 14 Although note this would appear to be prohibited by the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956, opened for signature 7 September 1956, 266 UNTS 3 (entered into force 6 January 1958).
- 15 UNODC Model Trafficking Law, 36.
- 16 James C. Hathaway, *The Human Rights Quagmire of ‘Human Trafficking*, 49 *Va. J. Int’l. L.*, 1 (2008-2009), 6.
- 17 International Labour Organisation, ‘A global alliance against forced labour: a global report under the follow up to the ILO declaration on fundamental principles and rights at work, 2005’, 15-16. *The Cost of Coercion* notes that there are still significant gaps in understanding the quantitative dimensions of forced labour.
- 18 Anne Gallagher and Paul Holmes, ‘Developing an effective criminal justice response to human trafficking: lessons from the front line’, (2008), 18 (3) *ICJR REVIEW* 318-343. Australia and includes prosecutions for trafficking offences and related offences of exploitative conduct in annual statistics on the number of trafficking prosecutions. See ‘Trafficking in Persons: The Australian Government Response January 2004 –April 2009’, Inaugural Report of the Anti-People Trafficking Interdepartmental Committee, (2009) (hereinafter ‘The 2009 Australian Government Trafficking Report’).
- 19 See further International Labour Office, ‘Forced Labour and Human Trafficking: Casebook of Court Decisions’ (2009) Geneva, International Labour Organisation, iii (hereafter *ILO Forced Labour Casebook*).
- 20 United Nations Office on Drugs and Crime *Law Against Trafficking in Persons* (2009), available online at <http://www.unodc.org/unodc/en/frontpage/2009/July/model-law-on-trafficking-in-persons-.html>. (hereafter UNODC Model Trafficking Law), 35-36.
- 21 UNODC Model Trafficking Law., 35-36.
- 22 UNODC, *International Framework for Action to Implement the Trafficking Protocol*, (2009), 18.
- 23 Opened for signature 25 September 1926, 212 UNTS 17 (entered into force 18 June 1927).
- 24 Art 1(1).The language of article 1(1) has ‘proved to be abiding’ and is now accepted to define slavery at international customary law: United Nations, Security Council, International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Kunarac, Kovac and Vukovic* (IT-96-23 & it-96-23/I-T) Judgment, 22 February 2001, [519].
- 25 Opened for signature 30 April 1956, 226 UNTS 3 (entered into force 30 April 1957).
- 26 Art 1.
- 27 GA Res 217A (III), UN Doc A/810, 71, Article 4.
- 28 Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Art 8(1) prohibits slavery and Art 8(2) prohibits servitude.
- 29 Opened for signature 29 July 1929, 39 UNTS 55, (entered into force 1 May 1932).
- 30 ILO, *Human trafficking and forced labour exploitation, Guidelines for legislation and law enforcement, Special Action Program to combat forced labour*, (2005), 20-21.

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- 31 Australian Institute of Criminology, 'People Smuggling versus trafficking in persons: what is the difference', Transnational crime brief no. 2(, 2008) available online at <http://www.aic.gov.au/publications/current%20series/tcb/1-20/tcb002.aspxef>.
- 32 Australian Institute of Criminology, 'People Smuggling versus trafficking in persons: what is the difference', Transnational crime brief no. 2(, 2008) available online at <http://www.aic.gov.au/publications/current%20series/tcb/1-20/tcb002.aspxef>.
- 33 US TIP Report (2009), 13.
- 34 Anne T Gallagher, 'Human Rights and Human Trafficking: a Quagmire?', (2009) 49 Virginia Journal of International Law 4 at 817.
- 35 Ibid.
- 36 The United States Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2008, (2009)
- 37 US TIP Report (2009), 7-8.
- 38 International Labour Organisation, 'A global alliance against forced labour: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005', 15-16. Note that the ILO includes coercive sexual exploitation within its definition of forced labor.
- 39 Ibid.
- 40 United States State Department, 'Trafficking in Persons Report '(2009), [67-68].
- 41 See Australian Institute of Criminology, 'Labour Trafficking: key concepts and issues', Transnational Crime Brief, No. 3, 2009.
- 42 UNODC, Global Report on Trafficking in Persons, (2009).
- 43 The 2009 US TIP Report reports that outside the US in 2008 there were 5,212 trafficking prosecutions, 312 of which were for labor trafficking, and 2983 convictions, only 104 of which were for labor trafficking. UNITED STATES DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT (2009) at 14 (hereafter US TIP REPORT 2009). See also 2008 US TIP Report, 3.
- 44 See UNODC, Global Report on Trafficking in Persons, 51(2009) (also observing that "prostitution (whether forced or voluntary) involves the general public because it must be visible – taking place in streets, bars or public spaces in urban areas – to attract potential clients. Conversely, most of the victims of forced labour often work in hidden locations, such as agricultural fields in rural areas, mining camps and garment factories or within the closed environment of a house in the case of domestic servitude").
- 45 UNODC, Global Report on Trafficking in Persons, (2009).
- 46 Roger Plant (*Head, Special Action Programme to Combat Forced Labour*), Trafficking for Labour Exploitation: challenges for criminal Law Enforcement, Cambridge, September 2009, available online at http://www.ilo.org/sapfl/Informationresources/Speeches/lang-en/WCM_041995/index.htm. The growing focus on labor trafficking can – in part – be attributed to the ILO's efforts to highlight the relationship between human trafficking and the broader problem of forced labor and promote the importance of enforcing minimum labor standards for all workers, irrespective of their legal status
- 47 ILO, Human trafficking and forced labour exploitation, Guidelines for legislation and law enforcement, Special Action Program to combat forced labour, (2005), 39; The Cost of Coercion, (2009), 9.
- 48 The Cost of Coercion' (2009), 9 .
- 49 The Cost of Coercion, (2009)1 1.
- 50 ILO, The Cost of Coercion, (2009), [270]. See also Gender equality at the heart of decent work, Report VI, International Labour Conference, 98th Session, 2009. International Labour Office, Geneva, 99.

51 Cost of Coercion, [270].

52 Parliamentary Joint Committee on the Australian Crime Commission, 'Inquiry into the trafficking of women for sexual servitude', (2004).

53 UNODC, Global Report on Trafficking in Persons, (2009).

54 'Trafficking in Persons: The Australian Government Response January 2004 –April 2009', Inaugural Report of the Anti-People Trafficking Interdepartmental Committee', (2009), 30.

55 'Trafficking in Persons: The Australian Government Response January 2004 –April 2009', Inaugural Report of the Anti-People Trafficking Interdepartmental Committee', (2009), .

56 'The 2009 Australian Government Trafficking Report', 19.

57 Ibid. at 26. However, there are earlier examples of children being trafficked to Australia. For instance, the only successful compensation claim for trafficking was made by a woman who was trafficked to Australia in 1995 aged fourteen. Natalie Craig, 'Sex slave victim wins abuse claim', The Age, 29 May 2007.

58 Ibid.

59 'The 2009 Australian Government Trafficking Report', 26.

60 Fiona David, 'Trafficking for Sexual Purposes', Australian Institute of Criminology, Research and Public Policy Series, no 95, 39; see also Fiona David, 'Prosecuting trafficking in persons: known issues, emerging response', Australian Institute for Criminology, Trends and Issues in Criminal Justice, no.358, June 2008.

61 Ibid, 39.

62 Ibid, 54.

63 Ibid. In the international context see David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, Office of the United Nations High Commissioner for Human Rights, 2002, 7 [22].

64 Opened for signature 16 December 1966, 993 UNTS 3, art 1 (entered into force 3 January 1976)

65 See *ILO Convention No.29 on Forced and Compulsory Labour; ILO Convention No.105 on the Abolition of Forced Labour; ILO Convention No. 182 on the Worst Forms of Child Labour.*

66 *The United Nations Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment .*

67 *The United Nations Convention on the Elimination of Discrimination Against Women.*

68 *The United Nations Convention on the Rights of the Child.*

69 *The International Convention on the Elimination of All Forms of Racial Discrimination.*

70 *United Nations Convention on the Rights of Persons with Disabilities.*

71 Another international instrument relevant to the rights of trafficked people is the *International Convention on the Protection of the Rights of Migrant Workers and their Families* . However, this Convention has not been ratified by Australia.

72 Report submitted by the United Nations Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo ([A/HRC/10/16](#)),(2009), [15]

73 Anne T Gallagher, 'Human Rights and Human Trafficking: a Quagmire?', (2009) 49 Virginia Journal of International Law 4.

74 Ibid, 793. Specific guidance on using human rights principles to protect the rights of trafficked people can be found in the UN Principles and Guidelines on Human Rights and Human Trafficking (the UN Principles and Guidelines).

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- 75 US TIP REPORT 2009. The publication of the US TIP report is required by the *Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. No. 106-386, § 106, 114 Stat. 1464 (2000).
- 76 The US State Department ranks foreign states response to human trafficking in three tiers. Countries in the third tier will suffer sanctions. The standards against which country rankings are determined are set out in US TIP REPORT 2009, 314.
- 77 United Nations Office on Drugs and Crime Law Against Trafficking in Persons (2009), available online at <http://www.unodc.org/unodc/en/frontpage/2009/July/model-law-on-trafficking-in-persons-.html>. (hereafter UNODC Model Trafficking Law).
- 78 UNODC, Legislative Guide to the Implementation of the Trafficking Protocol, (2004).
- 79 UNODC, International Framework for Action to Implement the Trafficking Protocol, (2009), 18.
- 80 ILO Forced Labour Casebook.
- 81 UNODC, *Toolkit to Combat Trafficking in Persons*, 2006; see also IPU-UNODC *United Nations Combating Trafficking in Persons – A Handbook for Parliamentarians* (2009) 56.
- 82 Australian Government Anti-People Trafficking Report 2009. For discussion see Andreas Schloenhardt, Genevieve Beirne, & Toby Corsbie, 'Human Trafficking and Sexual Servitude in Australia' (2009), 32(1) *UNSW Law Journal*, 27, 41-44.
- 83 These reforms were followed by Australia's ratification of the Trafficking Protocol in September 2005. A detailed description of Australia's response to trafficking can be found in the Australian Government Anti-People Trafficking Report 2009.
- 84 The government departments that are represented on the Committee include the Attorney-General's Department, the AFP, the Commonwealth Director of Public Prosecutions, the Department of Education, Employment and Workplace Relations, the Office for Women, the Department of Immigration and Citizenship and the Australian Institute of Criminology.
- 85 Criminal Code Act 1995 (Cth), s 270.3.
- 86 *Ibid.* at 270. 6.
- 87 *Ibid.* at s 270.7.
- 88 The slavery offences are the most serious in a hierarchy of offences in the Criminal Code and carry a maximum penalty of 25 years' imprisonment.
- 89 Criminal Code Act 1995 (Cth) at s 271.2.
- 90 *Ibid.* at s 271.4.
- 91 *Ibid.* at s 271.5.
- 92 *Ibid.* s 271.8.
- 93 *Ibid.* s 271.2(1).
- 94 *Ibid.* s 271.2(2) and s 271.2(2B).
- 95 *Ibid.* s 271(1B).
- 96 *Ibid.* s 271.2 (2A).
- 97 Fiona David, 'Trafficking for Sexual Purposes', Australian Institute of Criminology, Research and Public Policy Series, no 95, 39; see also Fiona David, 'Prosecuting trafficking in persons: known issues, emerging response', Australian Institute for Criminology, Trends and Issues in Criminal Justice, no.358, June 2008.
- 98 The 2009 Australian Government Trafficking in Persons Report, 47.
- 99 [2008] HCA 30.

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- ¹⁰⁰ Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999, Second Reading Speech, Hansard, 3075. It differs by removing the reference to ‘status’ and adding the words ‘including where such a condition results from a debt or contract made by the person’. These words were added by the legislature to ‘to make it clear that slavery can also arise from a debt or contract’.
- ¹⁰¹ Ibid. at [27]-[35]. The report was United Nations, Economic and Social Council, Slavery, the Slave Trade, and other forms of Servitude (Report of the Secretary-General), UN Doc E/2357, 27 January 1953.
- ¹⁰² Ibid. at [50].
- ¹⁰³ Ibid. at [4] contra Kirby J [118-119].
- ¹⁰⁴ The 2009 Australian Government Trafficking in Persons Report, 43.
- ¹⁰⁵ In 2009 the Australian Institute of Criminology and the Anti-Slavery Project held forums focusing on the issue of labour trafficking.
- ¹⁰⁶ The Australian Government Trafficking in Persons Report, 47.
- ¹⁰⁷ Parliamentary inquiries into trafficking in Australia have focused on trafficking for sexual servitude: see, for example, Senate Legal and Constitutional Legislation Committee, Inquiry into Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 (2004); Parliamentary Joint Committee on the Australian Crime Commission, Inquiry into the trafficking of women for sexual servitude (2004).
- ¹⁰⁸ Australian Government Report on Trafficking in Persons 2009, 7.
- ¹⁰⁹ Australian Government Report on Trafficking in Persons 2009, 30.
- ¹¹⁰ See generally Miriam Cullen and Bernadette McSherry, ‘Without Sex: Slavery, trafficking in persons and the exploitation of labour in Australia, (2009) 34(1) *Alternative Law Journal* 4, 5. The article compares the fact situations in Tang with that in Inspector Robert Hortle v Aprint (Aust) Pty Ltd & Anor (Aprint) [2007] FMCA 1547 (10 September 2007).
- ¹¹¹ Ibid.
- ¹¹² A retrial was ordered in *R v Kovacs* [2008] QCA 417. Melita and Zolton Kovacs were alleged to have brought a young woman from the Philippines to the Australia after arranging a sham marriage. When the young woman arrived, the prosecution contended she was effectively enslaved and used to provide slave labour in the Kovacs’ home and their shop. The Kovacs were charged with the offences of possessing and using a slave contrary to s 270.3(1)(a) of the Criminal Code, as well as organizing a sham marriage. In 2007, a jury found both Kovacs guilty of possessing and using a slave and organising a sham marriage. In 2008 the Kovacs’ convictions for slavery offences were quashed for technical reasons and a retrial was ordered. In February 2010 the retrial resulted in a conviction for the slavery offences (unreported).
- ¹¹³ Criminal Code 1995 (Cth), s 271.2(1B).
- ¹¹⁴ Ibid. Section 270.3(1)(d). Rasalingham was convicted of the less serious offence of misleading a Commonwealth official in the immigration process: s 135.1 of the Criminal Code 1995 (Cth).
- ¹¹⁵ *Fryer v Yoga Tandoori House* [2008] FMCA 288.
- ¹¹⁶ United States State Department, Trafficking in Persons Report, 67.
- ¹¹⁷ See, for example, Michael Moore, Malcom Knox, ‘Foreign Workers Enslaved, *The Age*, 28 August 2007.
- ¹¹⁸ See, for example, Nick O’ Malley, Health Gilmore, Erik Jenson, ‘Foreign students ‘slave trade’, *The Age*, 14 July 2009.
- ¹¹⁹ See further Jennifer Burn and Frances Simmons, ‘Trafficking and Slavery in Australia: An evaluation of victim support strategies’, in *Asian and Pacific Migration Journal* 15 (2006),

553.

- 120 Minister for Immigration, Media Release, 'Improved Support for Trafficking Victims', 17 June 2009. <http://www.chrisevans.alp.org.au/news/0609/immimediarelease17-02.php>. For a critical description of the original visa framework see Dorevitch and Foster, *Obstacles on the Road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law*, (2008) 9 *MJIL* 1.
- 121 This includes people who are identified as suspected victims of slavery, debt bondage, and sexual servitude.
- 122 The second BFV is designed to provide support for people suffering from medical conditions or whose capacity to assist police is limited, for example, due to trauma or because 'their information is insufficient to sustain an investigation'. MR Sch 1 item 1306(3)(c), PAM3: Act – Compliance – National strategies – People trafficking, [18], 1 July 2009.
- 123 For further discussion see Jennifer Burn and Frances Simmons, 'Prioritising protection – A new visa framework for trafficked people', in *Immigration Review* 41 (2009), 7.
- 124 The certification threshold for a witness protection permanent visa may be met regardless of whether or not the alleged trafficker was convicted or in circumstances where the Director of Public Prosecutions has decided not to prosecute the alleged offender. MR reg 2.07AK(2)(c)(i) and (ii). If a trafficking victim is eligible for a permanent witness protection visa then their immediate family members will also be invited to apply for a visa regardless of whether they are inside or outside of Australia. MR Sch 2 cl 852.411.
- 125 *Trafficking in Persons: The Australian Government Response January 2004 –April 2009*, Inaugural report of the Anti-People Trafficking interdepartmental committee', (2009), 20.
- 126 See further Jennifer Burn and Frances Simmons, 'Prioritising protection – A new visa framework for trafficked people', in *Immigration Review* 41 (2009), 7.
- 127 Australian Government Fact Sheet, *Changes to Australian Government People Trafficking Strategy*, available online <http://www.ag.gov.au/peopletrafficking> .
- 128 A refugee is a person who is outside of his/her country of nationality and who has a well-founded fear of persecution as a result of his/her race, religion, nationality, membership of a particular social group or political opinion; and for fear of this persecution, is unable or unwilling to avail himself/herself of the protection of that country or to return to it. Claims for refugee status are commonly brought on the basis that trafficked people fear persecution because of their membership of a particular social group.
- 129 The first NRPT provided a forum for NGOs to identify areas for priority action, including the reform of the visa framework, and the provision of culturally appropriate information and support services to trafficked people. The National Roundtable on People Trafficking (NRPT) – Human Rights and Equal Opportunity Commission and NGO Recommendations for changes to the trafficking visa framework (23 June 2008).The NRPT, 'Statement of Outcomes', October 2008, available at http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_PeopleTrafficking.
- 130 This fact sheet is available online at http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_PeopleTrafficking.
- 131 Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Report No 30 (2008-2009) [2.24].
- 132 Parliamentary inquiries into trafficking in Australia have focused on trafficking for sexual servitude: see, for example, Senate Legal and Constitutional Legislation Committee, *Inquiry into Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004* (2004); Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude* (2004).
- 133 *Cost of Coercion*, (2009), 29 [139].

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- 134 The issue of what to do and who to contact if you suspect someone you know has been trafficked is discussed in detail in the NGO Guidelines for working with Trafficked People.
- 135 This principle is embedded in article 2(3) of the ICCPR which provides that if a person's rights have been violated that person has a right to an 'effective remedy', including, where appropriate, compensation: UNHRC, *The nature of legal obligations imposed on state parties to the covenant, General Comment no. 31*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) [15].
- 136 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/Res/40/34 (1985), [4].
- 137 UNODC, Toolkit to Combat Trafficking in Persons, 2006; see also IPU-UNODC United Nations Combating Trafficking in Persons – A Handbook for Parliamentarians (2009) 56.
- 138 In May 2007, *The Age* reported that a 'former child sex slave has become the first person in Australia to be compensated as a victim of sex trafficking'. Natalie Craig, 'Sex slave victim wins abuse claim', *The Age*, 29 May 2007. However, the award of compensation in this case was not made on the basis of her status as a victim of trafficking, but her status as a victim of sexual assault with a minor.
- 139 The Crimes Act 1914 (Cth) only contains provisions protecting child victims providing evidence for sex and sex-related offences. See Fiona David, 'Prosecuting trafficking in persons: known issues, emerging response', AIC, Trends and Issues in Criminal Justice, no.358, June 2008.
- 140 The Australian Government Trafficking in Persons Report, (2009), 47. It is noted that currently, federal sentencing laws do not provide for the use of victim impact statements but may be considered where criminal trials are held in State and Territory courts. The ALRC recommended that, subject to safeguards, victim impact statements should be allowed in the sentencing of federal offenders. ALRC, Same Crime, Same Time : The Sentencing of Federal offenders, Report No 103 (2006).
- 141 See Jonathan Pearlman, 'Rights Charter to Vindicate Victims', Sydney Morning Herald, 7 February 2008 p.4.
- 142 Crimes Act 1914 (Cth) s 21(1) (c).
- 143 The Australia Law Reform Commission has recommend that while 'there is no reason in principle to distinguish between economic and non-economic loss suffered as a result of a federal offence' federal sentencing legislation be amended to 'clarify that judicial officers are authorised to order federal offenders to make reparation for any loss suffered by reason of an offence, whether the loss is economic or non-economic'. ALRC, Same Crime, Same Time: Sentencing of Federal Offenders, Report 103 (2006), [8.41]-[8.46]. A victim's right to commence civil proceedings is not affected by a federal reparation order: Crimes Act 1914 (Cth), s 15F.
- 144 Proceeds of Crime Act 2002 (Cth) has been used to restrain the alleged proceeds of trafficking in persons in at least one Australian prosecution (see, for eg, Commonwealth DPP v Xu [2005] NSWSC 191: Fiona David, 'Prosecuting trafficking in persons: known issues, emerging response', AIC, Trends and Issues in Criminal Justice, no.358, June 2008.
- 145 Trafficking Protocol, 6(3).
- 146 UNODC, International Framework for Action to Implement the Trafficking Protocol, (2009), 18.
- 147 International Labour Organisation, A global alliance against forced labour: a global report under the follow up to the ILO declaration on fundamental principles and rights at work, 2005, 15-16. The Cost of Coercion notes that there are still significant gaps in understanding the quantitative dimensions of forced labour".
- 148 James C. Hathaway, The Human Rights Quagmire of 'Human Trafficking, 49*Va. J. Int'l. L.*, 1 (2008-2009), 6.
- 149 Ibid.

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- 150 The Cost of Coercion at [37].
- 151 The National Employment Standards guarantee the rights of all employees to certain employment conditions including leave, public holidays, termination notice and maximum weekly hours of work. .
- 152 For example, 457 visa workers have made complaints of discrimination to the Australian Human Rights Commission. See Barbara Deegan, 'Visa Subclass 457 Integrity Review', Department of Immigration and Citizenship, October 2008.
- 153 Fact Sheet – Subclass 457 Sponsor Obligations, Department of Immigration and Citizenship, 2009, available online at http://www.immi.gov.au/skilled/skilled-workers/_pdf/fs-457-sponsor-obligations.pdf
- 154 Inspector Robert John Hortle v Aprint (Aust) Pty Ltd & Anor [2007] FMCA 1547. Mr Chuan was also convicted of a criminal offence for hindering and obstructing a workplace inspector and fined \$2500. For discussion of this case and why it was not investigated as a suspected case of slavery or labour trafficking see Miriam Cullen and Bernadette McSherry, 'Without Sex: Slavery, trafficking in persons and the exploitation of labour in Australia, (2009) 34(1) *Alternative Law Journal* 4.
- 155 See Miriam Cullen and Bernadette McSherry, 'Without Sex: Slavery, trafficking in persons and the exploitation of labour in Australia, (2009) 34(1) *Alternative Law Journal* 4.
- 156 Ibid 6-7. See UNODC, Model Law Against Trafficking in Persons (2009), 42-43 for a model definition of forced labour.
- 157 The dictionary of the Criminal Code states that "exploitation, of one person (the victim) by another person (the exploiter"), occurs if: (a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; or (b) the exploiter's conduct causes an organ of the victim to be removed and: (i) the removal is contrary to the law of the State or Territory where it is carried out; or (ii) neither the victim nor the victim's legal guardian consented to the removal and it does not meet a medical or therapeutic need of the victim".
- 158 Criminal Code, s 73.2(3). The term 'threat' in the context of the forced labour in Australia's Criminal Code means any threat of force, deportation or any other detrimental action unless there are reasonable grounds for that action.
- 159 In Australia sex work is either legal (Western Australia, Victoria, Queensland, Tasmania, the Australian Capital Territory and the Northern Territory) or decriminalised (New South Wales).
- 160 The ILO has stated 'a forced labour situation is determined by the nature of the relationship between a person and an 'employer' and not by the type of work performed, or the legality or illegality of the work. The Cost of Coercion' (2009), 6[26]. Similarly UNODC has said national legislatures should "not conclude that coercive sexual exploitation does not amount to forced labour or services, particularly in the context of trafficking." United Nations Office of Drugs and Crime, Model Law against Trafficking in Persons, (2009), 14.
- 161 *Trafficking Victims Protection Reauthorization Act 2008* § 1351. Fraud in foreign labour contracting.
- 162 *Trafficking Victims Protection Reauthorization Act 2008* §1593A.
- 163 *Trafficking Victims Protection Reauthorization Act 2008* § 202.
- 164 The pamphlet is available online at <http://www.travel.state.gov/pdf/Pamphlet-Order.pdf>
- 165 UNODC, "Model Law against Trafficking in Persons", 2009
- 166 Andreas Schloenhardt, Genevieve Beirne & Toby Corsbie, 'Human Trafficking and Sexual Servitude in Australia' (2009), 32(1) *UNSW Law Journal*, 27, 33 (noting reports about the use of fraudulent documents or, in some cases, arranged marriages as a way to traffic people to Australia). See also Australian Human Rights and Equal Opportunity Commission, Submission to the Inquiry into the future impact of serious and organised crime on Australian society, Parliamentary Joint Committee on the Australian Crime Commission, 27

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- Feb 2007, at
http://www.hreoc.gov.au/legal/submissions/jcacc_impact_organised_crime07.html;
Andreas Schloenhardt, Human Trafficking Working Group, University of Queensland,
Trafficking in Persons and Sham Marriages in Australia, (2009) at
<http://www.law.uq.edu.au/documents/humantraff/victimsupport/Sham-Marriages.pdf>
- 167 *R v FAS* [2007] NSWDC 257.
- 168 *Ibid*, [56]-[61].
- 169 *R v Kovacs* [2008] QCA 417.
- 170 2009 Australian Government Report on Trafficking in People, 48.
- 171 In 2005, offences of child trafficking were introduced into the Criminal Code. However, there is no specific offence of child labour
- 172 The provisions of the Criminal Code that criminalize the trafficking of adults do not fully adopt the language of *Trafficking Protocol*. While the Criminal Code provides guidance on the meaning of “threats”, the description of the circumstances in which the consent of the trafficked person will be annulled does not provide guidance on the meaning of ‘the abuse of power or a position of vulnerability’ or the meaning of ‘coercion’.
- 173 For example, in the United States the *Trafficking Victims Protection Reauthorization Act* 2008 provided greater legislative guidance about the legislative meaning of coercion. For discussion see Charles Doyle, “The William Wilberforce Trafficking Reauthorisation Act of 2008 (PL 110-457); see also the discussion of defining an abuse of a position of vulnerability in the UNODC model trafficking law. UNODC, *Model Law Against Trafficking in Persons* (2009), 22
- 174 See, for eg, the comparative analysis of forced labour cases in the International Labour Office, ‘Forced Labour and Human Trafficking: Casebook of Court Decisions’ (2009) Geneva, International Labour Organisation.
- 175 Parliamentary Joint Committee on the Australian Crime Commission, ‘Supplementary report to the Inquiry into trafficking of women in sexual servitude’, 2005, 7.
- 176 See further Elizabeth Broderick, ‘Slavery in the 21st Century, A Human Rights Challenge’, speech presented at the Australian Human Rights Commission, 16 October 2008, available at :
http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20081014_slavery.html.