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## **Inquiry into the Exploitation of Women through Trafficking**

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**The Community Relations Commission  
For a multicultural NSW**

24 October 2012

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## I. INTRODUCTION

- 1.1. Anti-Slavery Australia welcomes the opportunity to provide this submission to the Community Relations Commission For a Multicultural New South Wales Inquiry into the Exploitation of Women through Trafficking under its authority contained in sections 13(1)( c) and 15 of the *Community Relations Commission and Principles of Multiculturalism Act 2000*.
- 1.2. The Commission established the Terms of Reference for the Inquiry to:
  - Investigate the current issues surrounding the trafficking and exploitation of people in the sex industry and other forms of employment,
  - Identify the Commonwealth Government initiatives and policies to address the trafficking of people and their effectiveness,
  - Identify NSW State and Local Government policies and activities concerning the trafficking of people and their effectiveness,
  - Assess the level of community awareness of people trafficking, and
  - Identify practical measures to address the trafficking of people in NSW.
- 1.3. Anti-Slavery Australia is a specialist law, research and policy centre at the University of Technology, Sydney, dedicated to advancing the rights of people who have experienced slavery, slavery-like conditions and trafficking. Anti-Slavery Australia includes a legal practice that has operated for almost 10 years, providing access to qualified solicitors and migration agents for men, women and children who have experienced trafficking or enslavement in Australia.
- 1.4. Anti-Slavery Australia provides placement and volunteering opportunities for UTS Law Students including Practical Legal Training placements and engagement with UTS Law students enrolled in the Brennan Justice and Leadership Program.<sup>1</sup> In 2012 Anti-Slavery Australia’s director convened a new elective subject in the Faculty of law curriculum, the *Law of Slavery and Human Trafficking*.<sup>2</sup> Students enrolled in this subject have contributed to the Centre’s research and policy development.
- 1.5. In 2011, Anti-Slavery Australia hosted the UN Special Rapporteur on People Trafficking in two major events informing the Rapporteur about initiatives in Australia.

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<sup>1</sup> See University of Technology, Sydney, <http://www.law.uts.edu.au/brennan/index.html>.

<sup>2</sup> See University of Technology, Sydney, <http://www.handbook.uts.edu.au/subjects/78223.html>.

- 1.6. The Anti-Slavery Freedom Awards were established in 2011 to recognise innovative and effective contributions made by individuals and agencies to develop strategies to prevent trafficking, protect trafficked people and develop policy.<sup>3</sup> The 2012 award ceremony took place on 26 October 2012, with Freedom Awards to Rebecca Corby, Australian Federal Police and Mark Zirnsak, Uniting Church.
- 1.7. Anti-Slavery Australia convenes regular meetings of the Sydney Trafficking Response Network, a group of individuals and organisation, including government representatives, involved in direct service provision on behalf of trafficked people in NSW.<sup>4</sup> Anti-Slavery Australia works to raise awareness of all forms of slavery and people trafficking and knows through first-hand experience that the correct identification of trafficking and related human rights abuses is critical.
- 1.8. Anti-Slavery Australia received funding from the Commonwealth Attorney-General's Department in 2009 to make 3 community service announcements about labour trafficking and 4 films targeting the general community, secondary school students, health professionals and law practitioners. The community service announcements and longer educational films are available on the website: [www.antislavery.org.au](http://www.antislavery.org.au).
- 1.9. In 2011, Anti-Slavery Australia received additional funding for 3 years from the Commonwealth Attorney-General's Department to develop a national online learning program for legal, health, and social workers, teaching professionals, community members, and front-line government and law enforcement agencies, conduct a legal needs analysis and provide a legal service for trafficked people.
- 1.10. Anti-Slavery Australia believes that a human rights based approach should be at the heart of any response to the exploitation of people through trafficking and all forms of slavery. This approach in Australia was most recently addressed in the Report by the UN Special Rapporteur on Trafficking and in submissions by the Australian Human Rights Commission, Women's Legal Centre, Inner South Community Health Service, Australian Catholic Religious Against Trafficking in Humans, Australian Lawyers Alliance, and Anti-Slavery Australia<sup>5</sup> to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Crimes

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<sup>3</sup> See more about the Anti-Slavery Australia Freedom Awards at <http://www.antislavery.org.au/newsflash/215-anti-slavery-australia-freedom-awards.html>.

<sup>4</sup> Including the Law Council of Australia, ACRATH, ACTU, Australian Red Cross, Immigrant Womens Speakout, the Good Shepherd network, Salvation Army, Scarlet Alliance and United Voice and World Vision.

<sup>5</sup> *Submissions* 4, 8, 12, 19, 38, and 28, to the Senate Legal and Constitutional Affairs Committee, Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Practices, and People Trafficking) Bill 2012.

Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012.

## II. RECOMMENDATIONS

- 2.1. The identification of trafficked people is vital to ensure their protection from further harm, and to ensure that they receive appropriate services. To this end, training of NSW police and government agencies is critical as is a process to articulate available support services and identify any gaps.
- 2.2. Further recommendations include:
  - The articulation of a comprehensive NSW framework for the development of effective training programs across all levels of government agencies and community sectors. At minimum, training should include information about the identification of slavery, slavery-like conditions, forced marriage and people trafficking, information about legislative schemes at State and Commonwealth level, challenges in investigating and prosecuting, and about victim support services.
  - As part of the training framework, the development of comprehensive community outreach programs, including:
    - Training and awareness materials for school teachers, community workers, legal, social and health professionals, police, and government officials;
    - Undertaking outreach programs in schools, youth centres, community events, and migrant resource centres; and
    - Support and training for services that provide emergency and ongoing accommodation, medical assistance, legal advice, financial assistance and counselling.
  - Establishment of protocols for comprehensive collaboration between all levels of police and regulatory arms of local government, to create clear pathways of responsibility and procedures in identifying and responding to victims of trafficking, slavery and exploitation.
  - Prioritise research into the full nature and extent of all forms of slavery, slavery-like practices including forced marriage and forced labour, and people trafficking in the Australian context.
  - Conduct a public consultation on the New South Wales Victims Compensation Scheme
  - Participation in the National Roundtable on People Trafficking.

- Partner with Anti-Slavery Australia to convene workshops bringing together government agencies and community representatives to identify services and issues in NSW.

### III. SUMMARY

- 3.1. This submission focuses on the implementation of key practical measures that the NSW government may consider to address community consultation, education and training of all front-line workers.
- 3.2. **Section IV** of this submission addresses legislative issues in relation to trafficking and exploitation.
- 3.3. **Section V** calls for the development of comprehensive training for state and local police officers and the need for better coordination between all levels of government.
- 3.4. **Section VI** outlines the critical importance of community awareness and outreach, and the practical measures that can be implemented in New South Wales.
- 3.5. **Section VII** addresses the Commonwealth's legislative response to the emerging issue of forced marriage and the need for the development of a focussed strategy within New South Wales to respond to the issue.
- 3.6. **Section VIII** discusses the need for clarity and better access to victims' compensation for victims of slavery, exploitation and trafficking.

### IV. Background

- 4.1. Australia is a destination country for men, women and children trafficked for exploitation and slavery. The majority of identified victims of trafficking are from the South East Asian region, and most victims of trafficking have been identified in Sydney and Melbourne.<sup>6</sup> Nationally, the Australian Federal Police have undertaken 325 investigations of trafficking related offences since January 2004.<sup>7</sup>

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<sup>6</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Submission to the UN Human Rights Council 18 May 2012 (A/HRC/20/18) at [5].

<sup>7</sup> Ibid.

- 4.2. In November 2011, Dr Joy Ngozi Ezeilo, the United Nations Special Rapporteur on Trafficking in Persons, especially women and children, conducted a two week fact finding mission in Australia. The Special Rapporteur is an independent expert appointed by the United Nations Human Rights Council (formerly the Commission on Human Rights) to investigate, monitor, and advise on human rights.
- 4.3. The Special Rapporteur developed recommendations for Australia which included better coordination between state and federal authorities and agencies, and recommendations to prevent or combat trafficking and protect the human rights of trafficked people. During her visit to Australia, the Special Rapporteur visited representatives of government agencies, the judiciary and non-government organisations to assess Australia’s anti-trafficking policy, support programs for trafficked people and the legal framework.
- 4.4. The Special Rapporteur observed in her report to Australia that there has been a strong focus on sex trafficking, which could lead to the non-identification of other victims of trafficking and the stereotyping of trafficking victims as sex workers.<sup>8</sup> The Special Rapporteur also noted that trafficking victims in Australia are generally controlled not through use of force, but through psychological coercion, illegal debt and fear of violence towards the victim and their family members.<sup>9</sup> The use of these forms of coercion and threat complicates the ability of front-line workers to identify people in slavery or slavery-like conditions, and may account for the underreporting in official statistics.
- 4.5. To access the Support for Trafficked People Program administered by the Australian Red Cross, a person must be identified by the Australian Federal Police as a suspected person of trafficking. In the period between 1 January 2012 and 30 June 2012 there have been 5 new clients referred to the Support for Trafficked People Program, bringing the total of identified trafficking victims to 192 since 2004.<sup>10</sup> There are currently 62 clients receiving assistance through the Support for Trafficked People Program as at 30 June 2012.<sup>11</sup>

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<sup>8</sup> Ibid at [8].

<sup>9</sup> Ibid at [6].

<sup>10</sup> Australian Government Anti-People Trafficking Strategy Whole-of-Government Performance Management Reporting 1 January 2012 to 30 June 2012; Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response July 2010-June 2011*, Third Report, 2011; Australian Crime Commission, Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into Slavery, Slavery-like Conditions and People Trafficking (October 2012) 5.

<sup>11</sup> Australian Government Anti-People Trafficking Strategy Whole-of-Government Performance Management Reporting 1 January 2012 to 30 June 2012.

- 4.6. Over the past decade, the majority of people identified as trafficking victims have been women trafficked into and exploited in the sex industry.<sup>12</sup> Reliable statistics do not yet exist on the full nature and extent of people in circumstances of forced labour and domestic servitude. Anti-Slavery Australia anticipates that if the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 is passed by the Australian Parliament, the identification of trafficked people by the Australian Federal will increase.<sup>13</sup>
- 4.7. This year has seen two Parliamentary inquiries to which Anti-Slavery Australia has made submissions. The first was the Senate Committee on Legal and Constitutional Affairs Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012. The inquiry received 40 submissions addressing the amendments to be introduced by the Bill. Anti-Slavery Australia recommended passage of the Bill to the Committee and we were pleased to see that the Committee recommended that the Bill be passed subject to a clarification in the Explanatory Memorandum to the Bill.<sup>14</sup> The Committee also recommended that:
- The Australian Government investigate the establishment of a federal compensation scheme for victims of slavery and people trafficking;<sup>15</sup>
  - The Australian Government review the People Trafficking Visa Framework and the Support for Victims of People Trafficking Program, and consider access to ongoing visas and victim support that is not conditional on participation in the criminal justice process.<sup>16</sup>
- 4.8. On 13 August 2012 the Minister for Foreign Affairs, The Hon Senator Bob Carr, asked the Joint Standing Committee on Foreign Affairs, Defence and Trade to conduct an Inquiry into Slavery, Slavery-like Conditions and People Trafficking. The Inquiry is ongoing, with a focus on Australia's efforts to address people trafficking including prosecution and victim support and protection, encouraging effective international action, and international best practice.<sup>17</sup>

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<sup>12</sup> Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response July 2010-June 2011*, Third Report, 2011.

<sup>13</sup> Anti-Slavery Australia Submission to the Senate Legal and Constitutional Affairs Committee, Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, *Submission 28*, 6 August 2012.

<sup>14</sup> Senate Legal and Constitutional Affairs Committee, Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, *Report* (13 September 2012).

<sup>15</sup> *Ibid* vii.

<sup>16</sup> *Ibid*.

<sup>17</sup> The Joint Standing Committee on Foreign Affairs, Defence and, Inquiry into Slavery, Slavery-like Conditions and People Trafficking, *Terms of Reference* (2012).

- 4.9. In our submissions to the two Parliamentary Inquiries,<sup>18</sup> we identified gaps in the Australian legislative, civil, and community responses. We recommended that Australia consider establishing a national compensation scheme for victims of trafficking and related offences and that the emerging issue of forced marriage be addressed through a range of legislative and non-legislative measures.

## V. COORDINATION BETWEEN STATE AND FEDERAL AGENCIES

- 5.1. A formalised framework for coordination between state, territory and Federal organisations and agencies is needed. The Special Rapporteur raised a number of issues regarding training in identification of trafficking victims and jurisdictional issues in identifying trafficking victims on a state and territory level. She stated that:

many state and territory police do not receive trafficking-specific training, including on the identification or treatment of trafficked persons ... State police force themselves have noted the need for increased training of front-line officers in the detection of trafficking. While the annual training course run by the AFP generally includes a small number of state police, this is clearly insufficient to establish a critical mass of trained officers.<sup>19</sup>

- 5.2. With regard to sexual exploitation, the Special Rapporteur noted that:

in states where prostitution is not illegal, police do not actively regulate sex work; they only interact with the industry in the case of a complaint or the commission of an offence. ... This fragmentation of responsibility has led to a gap in the proper regulation of legal sex work, resulting in agencies with little or no experience in trafficking overseeing the sex industry, with state and territory police limiting their role to the investigations of crimes.<sup>20</sup>

- 5.3. While the Australian Policing Strategy to Combat Trafficking in Persons 2011-13 received endorsement from the Federal, state and territory police early last year, the approach by the NSW police to training on slavery, exploitation and trafficking is evolving.

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<sup>18</sup> See Anti-Slavery Australia Submission to the Senate Legal and Constitutional Affairs Committee, Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, *Submission 28*, 6 August 2012; and Anti-Slavery Australia submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into Slavery, Slavery-like Conditions and People Trafficking, 9 October 2012.

<sup>19</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Submission to the UN Human Rights Council 18 May 2012 (A/HRC/20/18) at [46].

<sup>20</sup> *Ibid* at [47].



- 5.4. Anti-Slavery Australia supports the steps that have been taken by the Federal police in the development of the Australian Policing Strategy, the Human Trafficking Investigation Program, and the National Human Trafficking Desk in June 2012. The National Human Trafficking Desk is an initiative that can be a comprehensive source of collaboration between all levels of police. We note that 35 state and territory police investigators were given training under the Human Trafficking Investigation Program.<sup>21</sup>
- 5.5. We recommend that a comprehensive training program is developed and implemented for all NSW police officers. This training should educate NSW police officers not only in identification of victims of all forms of slavery, slavery-like conditions and trafficking, but also in appropriate responses and methods of dealing with victims of this particular type of trauma.
- 5.6. We recommend that a framework be developed, or integrated into the existing policing strategies, that create clear pathways of responsibility in identifying and dealing with victims of trafficking, slavery and exploitation effectively and appropriately.

## **VI. COMMUNITY OUTREACH**

- 6.1. The NSW State Government is well positioned to implement awareness raising and community outreach programs throughout local communities. The Special Rapporteur in her report to Australia noted that “Community awareness of trafficking is widely recognised as a key prevention strategy.”<sup>22</sup> Prioritising the development of materials that raise awareness of slavery, slavery-like conditions and trafficking for migrant resource centres, schools, youth organisations, and workers in domestic situations, the hospitality industry and in the agricultural sector, is a critical component of identifying victims and creating safe pathways for victims to escape these situations.
- 6.2. Anti-Slavery Australia has been involved in community outreach programs to raise awareness of all forms of slavery, slavery-like conditions and people trafficking, as well as forced marriage. We work in collaboration with a number of government and non-government organisations, as well as convene the Sydney Trafficking

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<sup>21</sup> Attorney-General’s Department, Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into Slavery, Slavery-like Conditions and People Trafficking, *Submission 8*, (28 September 2012) 4.

<sup>22</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Submission to the UN Human Rights Council 18 May 2012 (A/HRC/20/18) at [67].

Response Network for community groups that work with people who have experienced slavery, slavery-like conditions and trafficking.

- 6.3. On 28 September 2012, Anti-Slavery Australia in conjunction with the Good Shepherd Network convened a Forced Marriage Community Consultation with over 60 members of community organisations. The Community Consultation resulted in a keen understanding of the commonalities in the experiences of those who have suffered forced and servile marriage. The Community Consultation was able to establish a number of risk factors that can be recognised as identification markers for forced and servile marriage.<sup>23</sup>
- 6.4. Forced marriage remains a key area of community engagement for Anti-Slavery Australia, and we conduct awareness raising and outreach programs that target migrant resource centres, schools, youth centres, and other groups that may come into contact with people experiencing or are vulnerable to forced marriage. Currently, our outreach programs are not externally funded and we are conducting the outreach as part of our overall work to highlight the emerging issue of forced marriage and providing access to justice for people who may be experiencing forced or servile marriage.
- 6.5. In 2009 Anti-Slavery Australia received a grant from the Commonwealth government to raise awareness of all forms of trafficking. We developed three community service announcements (CSAs) and four short films, which were subtitled into Bahasa Malaysian, Chinese, Hindi, Korean, Tagalog, Thai and Vietnamese. The development of these CSAs and short films were a result of extensive research with a community consultation group, and a national telephone survey we conducted through Roy Morgan Research. The telephone survey revealed current community knowledge of slavery and trafficking in Australia. Statistically, we found that the lowest level of awareness was in the 14-24 age group, and we were able to target this group through the screening of one of the community service announcements 9,000 times in cinemas around Australia.<sup>24</sup>
- 6.6. With the funding that we have received, Anti-Slavery Australia has been able to undertake clear and effective research into the issues surrounding slavery,

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<sup>23</sup> These included: absence from schools, self-harm, domestic violence, depression, accompanied on visits to doctor's offices, restricted movement, lack of English skills, unwanted pregnancy and isolation, amongst others. See also Anti-Slavery Australia submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into Slavery, Slavery-like Conditions and People Trafficking, 9 October 2012.

<sup>24</sup> See Anti-Slavery Australia submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, 9 October 2012.

slavery-like conditions and people trafficking, and community awareness of these issues. We believe that the research we have undertaken is a good example of an effective response to slavery, slavery-like conditions and people trafficking.

6.7. We recommend that a number of areas be addressed and practical measures undertaken by the NSW State Government to best combat slavery and exploitation at a local level, especially with regard to forced marriage, forced labour and servitude:

- Develop training and awareness materials for school teachers, community workers, legal, social and health professionals, police, and government officials;
- Prioritise research into the full nature and extent of forced and servile marriage in the Australian context;
- Prioritise research into the full nature and extent of forced labour in the Australian context;
- Support and training for services that provide emergency and ongoing accommodation, medical assistance, legal advice, financial assistance and counselling; and
- Undertake outreach programs in schools, youth centres, community events, and migrant resource centres.

## VII. FORCED MARRIAGE

7.1. Forced marriage is an emerging issue in Australia, and clear statistics and research do not exist on its frequency, root causes and best practice responses for the Australian community. However, a number of cases have been brought before the courts that show that forced marriage does occur within Australia.<sup>25</sup> Forced marriage can affect both men and women, but it predominantly affects young women and girls.<sup>26</sup>

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<sup>25</sup> See *Department of Human Services & Brouker and Anor* [2010] FamCA 742 (Mushin J found that both of the children proposed to be married were not of marriageable age within the terms of the *Marriage Act 1961* (Cth) and made a parenting order restraining the child's parents from removing her from Australia, placing her on the Airport Watch List and prohibiting the parents from applying for a passport for the child until she was eighteen years old); *Kandal & Khyatt & Ors* [2010] FMCAfam 508; *Kreet & Sampir* [2011] FamCA 22; *Madley & Madley and Anor* [2011]; *Police save Sydney girl from forced marriage* (2010) ABC News, <<http://.abc.net.au/news/stories/2010/06/03/2916750.htm>> at June 3 2010.

<sup>26</sup> Anne Gallagher, *International Law of Human Trafficking*, (Cambridge University Press, 2010) 196 observes "certain forms of trafficking including ... trafficking for forced marriage ... are both directed toward and impact disproportionately upon women and girls."

- 7.2. Forced marriage is not the same as arranged marriage. Arranged marriage involves the consent of both parties; while forced marriage involves a situation in which one or more parties do not give “free and full” consent.<sup>27</sup> Forced marriage can sometimes lead to a situation of domestic servitude, and can involve coercion, psychological and physical threat and harm to the victim or her friends and family, domestic violence, and rape; both prior to and after the forced marriage takes place.
- 7.3. The Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 introduces the new offence of forced marriage and is defined at 270.7A as:
- ... a marriage is a *forced marriage* if, because of the use of coercion, threat or deception, one party to the marriage (the *victim*) entered into the marriage without freely and fully consenting.
- 7.4. The development of this new offence is a significant step in identifying and prosecuting cases of forced marriage. However, criminalisation can only be one part of a broader strategy that also addresses community awareness, training, support, advice, counselling and civil protection measures. On a state and local level strong community engagement must be a priority.

## VIII. COMPENSATION

- 8.1. Australia has an international obligation to provide pathways to compensation for damage suffered as a victim of trafficking under Article 2 and Article 6(6) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*<sup>28</sup> (Trafficking Protocol). The Special Rapporteur made two significant recommendations regarding compensation for victims of slavery, slavery-like conditions and trafficking. Firstly, to develop a Federal compensation scheme; and secondly, to identify and confiscate assets and proceeds of trafficking related crime to use for compensation and continued support for victims.<sup>29</sup>

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<sup>27</sup> *Universal Declaration of Human Rights* 217 A(III) (adopted by the General Assembly Resolution 217 A(III) of 10 December 1984) art 16(2); *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 660 UNTS 195 (entered into force 3 September 1981), art 16(1)(b).

<sup>28</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*, 15 November 2000.

<sup>29</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Submission to the UN Human Rights Council 18 May 2012 (A/HRC/20/18).

8.2. Access to reparations and compensation is crucial to any effective response to support for victims of trafficking<sup>30</sup> and a much needed step towards meeting Australia's international obligations.<sup>31</sup> There are currently eight different state and territory financial compensation schemes for victims of crime in Australia.<sup>32</sup>

8.3. Associate Professor Jennifer Burn in evidence to the Senate Legal and Constitutional Affairs Committee stated that Anti-Slavery Australia has made 20 applications to the NSW Victims Compensation Tribunal, and:

To date, 11 awards have been made to victims of trafficking. In each case there was a determination by the tribunal that the applicant experienced violent conduct in the commission of an offence. In each case the offence was considered to be category 3 sexual assault, being systematic rape, and awards have been made accordingly. We have referred a further 12 cases to our pro bono partner for assistance with victims compensation applications.<sup>33</sup>

8.4. Trafficking, slavery, slavery-like conditions and servitude are not compensable injuries under the *Victims Support Rehabilitation Act 1996* (NSW).<sup>34</sup> In NSW, a victim of crime may claim compensation for compensable injuries listed in the Table in Schedule 1 of the Act. A victim may claim a Category 3 Sexual Assault under the Act, as a pattern of sexual assault. Alternatively, if “the injury is similar to an injury specifically mentioned in the table” as provided for in clause 8 of Schedule 1 of the Act, the victim can claim that they are a victim of an ‘act of violence’ as defined under section 5 of the Act.

8.5. Under these provisions, an applicant who has suffered a form of sexual exploitation must prove they suffered multiple acts of sexual assault, or multiple ‘acts of violence’ which caused “injury”, defined as “actual physical harm” and “psychological or psychiatric harm”. The requirement of an assessment of psychological harm to qualify for the compensation scheme can be a particular

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<sup>30</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Submission to the UN Human Rights Council 13 April 2011 (A/HRC/17/35).

<sup>31</sup> See Pam Stewart ‘Tortious Remedies for Deliberate Wrongdoing to Victims of Human Trafficking’ (2011) 34 *University of New South Wales Law Journal* 898.

<sup>32</sup> *Victims of Crime (Financial Assistance) Act 1983* (ACT); *Victim Support & Rehabilitation Act 1996* (NSW); *Crimes (Victims Assistance) Act 2006* (NT); *Victims of Crime Assistance Act 1996* (Vic); *Criminal Injuries Compensation Act 2003* (WA); *Victims of Crime Assistance Act 2009* (Qld); *Victims of Crime Act 2001* (SA); *Victims of Crime Assistance Act 2009* (Qld); *Victims of Crime Act 2001* (SA); *Victims of Crime Assistance Act 1976* (Tas).

<sup>33</sup> Jennifer Burn, *Committee Hansard*, Legal and Constitutional Affairs Committee, 28 August 2012.

<sup>34</sup> Frances Simmons and Jennifer Burn (2010), ‘Evaluating Australia’s Response to All Forms of Trafficking: Towards Rights-Centred Reform’ 84(1) *Australian Law Journal* 721, 729.

deterrent for victims from seeking compensation due to fear of re-traumatisation.<sup>35</sup>

- 8.6. The scheme also poses particular difficulties for victims of slavery, slavery-like conditions, and trafficking that did not suffer sexual assault, such as men and women in situations of forced labour or domestic servitude.
- 8.7. Currently victims of trafficking and slavery can make claims for unpaid wages under legislation such as the *Fair Work Act 2009* (Cth) or through other legal means. Complaints about breaches of the Act, including breaches of the National Employment Standards or General Protections set out in the Act, can also be made to the Fair Work Ombudsman.
- 8.8. Similarly there are mechanisms for reporting and dealing with unsafe work practices through Safe Work Australia or WorkCover NSW. However, these mechanisms are generally designed to protect the employment entitlements and safety of workers and are not aimed at redressing the physical and psychological harm suffered by a person exploited through slavery, slavery-like practices and trafficking.
- 8.9. Further, there are practicable difficulties in claiming compensation if the harm suffered occurred in a state that the victim does not reside in, particularly given the vast discrepancies in the amount of compensation payable, eligibility and timeframes.<sup>36</sup>
- 8.10. We note that there is a review into the NSW Victims Compensation Scheme by the Department of Attorney General and Justice that is currently underway. PricewaterhouseCoopers was due to report to the NSW Government on 30 June 2012 on alternative support and rehabilitation services.<sup>37</sup> With regard to the review, we support the Open Letter prepared by the Community Legal Centres NSW's Victims Compensation Committee on 25 September 2012, that the PricewaterhouseCoopers report to the Government be released.<sup>38</sup>

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<sup>35</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Submission to the UN Human Rights Council 18 May 2012 (A/HRC/20/18) at [64].

<sup>36</sup> Jennifer Burn, *Committee Hansard*, Legal and Constitutional Affairs Committee, 28 August 2012.

<sup>37</sup> PricewaterhouseCoopers, *Review of NSW's Victims Compensation Scheme*, Issues Paper, 22 March 2012; NSW Attorney General, and Minister for Justice Greg Smith, Budget Estimates Inquiry, General Purpose Standing Committee No 4, 10 October 2012, 11; Community Legal Centres NSW's Victims Compensation Committee, Open Letter to the NSW Attorney General, 25 September 2012.

<sup>38</sup> Community Legal Centres NSW's Victims Compensation Committee, Open Letter to the NSW Attorney General, 25 September 2012, 2.

- 8.11. Given the particular difficulties posed by the current NSW Victims Compensation Scheme for some victims of slavery, slavery-like conditions and people trafficking, we endorse the Open Letter recommendation that a public consultation is held before any changes are made to the Scheme.<sup>39</sup>

## **IX. CONCLUSION**

- 9.1. Anti-Slavery Australia commends the commitments that both the Commonwealth and NSW Government have made in combating slavery, servitude and trafficking. The continued investigation into the nature of all forms of exploitation of people in commercial and private situations is essential to a best practice response at all levels of government.
- 9.2. The Australian response to trafficking and related crimes has evolved considerably over the last 5 years, with legislation and policy developments making a real difference to the lives of trafficked people. The next step is to build better networks in NSW across community and government, linked to national initiatives. We strongly support this process and look forward to continuing our work in NSW on behalf of trafficked people.
- 9.3. We most sincerely thank the committee for the opportunity to make this submission to the Inquiry and address these critical issues. Anti-Slavery Australia includes a law practice that provides specialist legal advice and representation to trafficked people. This work includes the provision of high quality, free, confidential legal advice and representation through our law practice, community networking, identification of support services and frameworks, further development of the Sydney Community Response Network and the provision of training for government and community. We have an active community awareness program and are developing the first online training program in Australia, to inform front-line government officers and the Australian community about trafficking. We would value the opportunity to work with NSW government agencies to develop our State response to trafficking and related issues.

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<sup>39</sup> Ibid.