



Human Trafficking and Slavery in NSW

Submission to the
Parliament of New South Wales
Legislative Council

Select Committee on Human Trafficking In New South Wales

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Anti-Slavery Australia welcomes the opportunity to respond to the Select Committee on Human Trafficking.

About Us

Established in 2003, Anti-Slavery Australia is a leading research, policy and legal centre at the University of Technology Sydney with the mission of abolishing human trafficking, slavery and slavery-like practices in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced human trafficking, slavery and slavery like practices in Australia.

Anti-Slavery Australia assists over 85 clients at any one time, who have been trafficked, enslaved or forced to marry in Australia providing access to comprehensive legal advice, representation, referrals and assistance to vulnerable people. Areas of legal advice includes advice about immigration, citizenship, human rights, employment law, family law, criminal law, and victims' compensation. Anti-Slavery Australia convenes a number of networks including the Sydney Trafficking Response Network and the NSW Forced Marriage Network, to bring together Government and community-based organisations to share their knowledge, pool resources and coordinate responses.

My Blue Sky is Australia's first website dedicated to forced marriage prevention, information and legal advice. Launched by Anti-Slavery Australia in November 2015 and funded by the Commonwealth Attorney-General's Department, the My Blue Sky website is a portal for information and legal assistance for individuals facing forced marriage and those who support them. Since its launch, the My Blue Sky website has attracted over 24,000 page views and more than 7,000 users accessing the website from 106 countries around the world. The website receives a steady stream of requests for both information and legal support from people facing forced marriage, from people worried about a friend and from service providers, journalists and researchers.

In 2014 Anti-Slavery Australia launched Australia's first ever free, specialist, online training course on slavery, forced labour, forced marriage and human trafficking. This Government funded interactive E-Learning course is aimed at frontline workers, lawyers, students and educators. To date, over 48,453 lessons have been completed through the E-learning course and feedback from users has been consistently positive, with over 90% of surveyed users saying they would recommend the course to a colleague or friend.

Anti-Slavery Australia Director Jennifer Burn was appointed to the Community Relations Commission for a multicultural NSW *Inquiry into the exploitation of people through trafficking, in all its forms in NSW*. A copy of the report of the Inquiry will be provided with this submission.

Acknowledgements

This submission was written by Jennifer Burn and Elizabeth Sheridan, with research contributions of Indika Chandrasekera.

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EXECUTIVE SUMMARY

This submission is made to the NSW Parliament Legislative Council, Select Committee on Human Trafficking in response to the Committee's Inquiry into human trafficking. This submission draws upon Anti-Slavery Australia's research and publications as well as our advocacy and legal casework experience with survivors of human trafficking and slavery in Australia. This submission will address the following terms of reference:

- (a) The role and effectiveness of New South Wales law enforcement agencies in responding to human trafficking including:
 - (i) How New South Wales law enforcement agencies respond to human trafficking, including slavery, slavery like practices such as servitude, forced labour, and people trafficking, and
- (b) The prevalence of human trafficking in New South Wales,
- (c) The effectiveness of relevant legislation and policies,

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

- (1) Implement effective, State-based, law enforcement policies and procedures to facilitate the identification and prevention of human trafficking and slavery in NSW**
- (2) Establish effective referral pathways between key stakeholders to ensure that victims of human trafficking and slavery in NSW have access to essential services**
- (3) Strengthen State support services for potential victims and survivors of forced marriage in NSW**
- (4) Fund education and training programmes on forced marriage**
- (5) Conduct an assessment of NSW Victim's Services and Support, taking into account comparable State and Territory schemes, to provide financial recognition to victims of all forms of slavery and human trafficking and ensure the harmonisation of all Australian victim compensation schemes**
- (6) Strengthen New South Wales public procurements guidelines to ensure that no goods or services bought with public money are contaminated with human trafficking and slavery**
- (7) Introduce industry specific licensing scheme for labour hire businesses**

HUMAN TRAFFICKING, SLAVERY AND SLAVERY-LIKE PRACTICES IN NEW SOUTH WALES

Human trafficking, slavery and slavery-like practices such as forced labour and forced marriage (human trafficking and slavery) take many forms, such as forced labour, domestic servitude, debt bondage and forced marriage. While contemporary forms of slavery may appear to be different from historical forms of slavery, these abhorrent practices continue to be driven by economic greed and linked to discrimination, racism and economic circumstances. Individuals and communities are made vulnerable to trafficking by certain environmental and contextual factors, such as poverty, inequality, discrimination and gender-based violence.¹ These factors disproportionately affect groups that are already disempowered within society, such as women, children, migrants, refugees and people in occupations with low visibility or legal protections, including domestic workers and prostitutes.²

Human trafficking and slavery are illegal and clandestine, making comprehensive data on the numbers of people living in slavery or slavery-like conditions difficult to estimate. Estimates of the number of adults in slavery and slavery-like conditions vary widely; in 2012 the International Labour Organisation estimated that 21 million people lived in slavery-like conditions,³ while others have estimated that as many as 45.8 million are living as slaves.⁴

Human trafficking and slavery occur throughout Australia, as well as in countries to which Australia is connected by the supply of goods and services.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children definition of human trafficking comprises three elements:

1. An **action**, such as recruitment, transportation, transfer, harbouring or receipt of persons.
2. A **means**, such as threats, use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability, or the giving or receiving of payment to achieve the consent of a person having control over another person.

¹ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010) 415.

² *Ibid.*

³ *Statistics on forced labour, modern slavery and human trafficking*, International Labour Organisation <<http://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm>>.

⁴ *Global Findings*, Global Slavery Index <<http://www.globallslaveryindex.org/findings/>>.

3. For the **purpose**, of exploitation. Exploitation includes forced labour, sexual exploitation, slavery or practices similar to slavery, servitude or the removal of organs.⁵

Slavery is defined by the *Convention to Suppress the Slave Trade and 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.*⁶

This definition was expanded and extended in the Supplementary Convention to the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.⁷ This instrument extends its application to practices similar to slavery,⁸ specifically debt bondage, serfdom, servile forms of marriage, and exploitation of children.⁹

Human trafficking and slavery are criminalised within Australia within the Commonwealth *Criminal Code 1995* (the Criminal Code). The slavery offences are contained in Division 270. The slavery provisions apply to all persons, regardless of whether the conduct occurs within or outside of Australia. Division 271 criminalises activities involving trafficking in persons. However, state offences may be used in conjunction with the Commonwealth offences to secure convictions, such as sexual assault, sexual assault and deprivation of liberty.¹⁰

Human trafficking and slavery in Australia are often hidden or, hidden in plain sight. Traffickers target people made vulnerable by social, cultural or political circumstances such as recent migrants, young people and refugees. Slavery and slavery-like practices occur in industries such as the sex industry, agriculture, hospitality, construction, and in private homes and in intimate or family relationships.¹¹ It is essential that the rights and safety of

⁵ *United Nations Convention against Transnational Organized Crime*, GA Res 55/23, UN GAOR, 55th sess, 62nd plen mtg, Agenda item 105, Supp No 49, UN Doc A/RES/55/25 (entered into force 8 January 2001) annex II ('*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*') art 3 (a).

⁶ *Convention to Suppress the Slave Trade and Slavery*, opened for signature 25 September 1926, 60 LNTS 253 (entered into force 9 March 1927) art 1.

⁷ *Supplementary Convention to the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, opened for signature 1 April 1957, 226 UNTS 3 (Entered into force 30 April 1957)

⁸ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010) 181.

⁹ *Supplementary Convention to the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, opened for signature 1 April 1957, 226 UNTS 3 (Entered into force 30 April 1957) art 1.

¹⁰ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 19.

¹¹ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 31.

survivors be at the centre of any legislation, policies or programmes developed to combat human trafficking and slavery.

While there are groups and occupations that are disproportionately affected, human trafficking and slavery can affect anybody, and is not limited to any particular industry. In 2015, of the new referrals to the Australian Federal Police for human trafficking and slavery matters, approximately 79 per cent related to forms of human trafficking and slavery other than sexual exploitation. Of this 79 per cent, 44 per cent related to forced marriage, 21 per cent related to labour exploitation and 12 per cent related to other forms of human trafficking and slavery.¹² There are also examples of Australian citizens being trafficked overseas, as in the case of *United States v Damion St. Patrick Baston*, wherein two Australian women were trafficked to the United States.¹³

Anti-Slavery Australia has provided legal advice to over 250 men, women and children who have experienced human trafficking and slavery in Australia. While our clients have been referred from throughout Australia, the majority of our clients have experienced human trafficking and slavery and slavery-like practices in New South Wales.

¹² Australian Government, Submission No 18 to Parliamentary Joint Committee on Law Enforcement, *Inquiry into Human Trafficking*, 16 January 2016, 6.

¹³ *United States v Damion St. Patrick Baston* 818 F 3d 651 (11th Cir, 2016)

1. IMPLEMENT EFFECTIVE, STATE-BASED, POLICIES AND PROCEDURES TO FACILITATE THE IDENTIFICATION AND PREVENTION OF HUMAN TRAFFICKING AND SLAVERY IN NSW

The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, pinpointed the identification of victims of trafficking as the greatest obstacle in ensuring the rights of victims and preventing further exploitation.¹⁴

Survivors of human trafficking and slavery offences may be unable to seek the help of law enforcement or the authorities. This presents a major obstacle in the identification victims. The Australian Institute of Criminology has identified the key barriers to involvement in criminal justice proceedings, for survivors of trafficking and slavery:¹⁵

- Fear of authorities
- Fear of identification by perpetrators, and subsequent reprisals
- Stigma and denial associated with being a 'victim' of trafficking or slavery
- Criminalisation or re-victimisation of victims of trafficking, who may also be prosecuted or detained
- Lack of trust in criminal justice officials

It has been the experience of Anti-Slavery Australia, through our legal practice case work that these barriers also prevent survivors from initially reporting the offence. As such, it often falls to front line officers within law enforcement and relevant government departments to identify the indicia of human trafficking and slavery.

Anti-Slavery Australia commends the New South Wales governments' ongoing commitment to the identification and prevention of human trafficking and slavery. However, as the vast majority of survivors of human trafficking and slavery have been identified New South Wales and Victoria,¹⁶ the continuing development of state-based identification and prevention policies for front line law enforcement and government departments in New South Wales remains vital.

¹⁴ Maria Grazia Giammarinaro, Special Rapporteur, *Trafficking in persons, especially women and children*, UN GAOR, 70th sess, Provisional Agenda Item 73(b), UN Doc A/70/260 (3 August 2015) [27].

¹⁵ Hannah Andrevski, Jacqueline Joudo Larsen and Samantha Lyneham, 'Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study' (2013) 451 *Trends and Issues in crime and criminal justice*, 2-4, <http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi451.pdf>.

¹⁶ *Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016* (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 23.

Anti-Slavery Australia has identified the following key areas in which to strengthen the policies and programmes, in order to facilitate the identification of potential victims and survivors of human trafficking and slavery.

1.1. Develop and implement comprehensive training programs for all relevant front line New South Wales government agencies

The 2013 report of the Community Relations Commission for a Multicultural New South Wales identified the need for further training for authorities to give front-line professionals the skills they need to identify potential victims or survivors of human trafficking and slavery. Awareness raising training should be made available to key front line officers, including police officers, judicial officers and other first response officials, such as a health professionals and child protection case workers.¹⁷ Anti-Slavery Australia continues to support this recommendation.

The majority of human trafficking, slavery and slavery-like offences referrals to the Australian Federal Police have resulted from official state, territory and commonwealth government activities.¹⁸ To ensure timely identification of trafficked people in New South Wales, Anti-Slavery Australia recommends that NSW provides front line agencies with access to comprehensive training programmes on the indicia of human trafficking and slavery, as well as the emergency support services available to survivors or potential victims.

New South Wales government departments which represent key front line agencies in the identification of potential victims, or survivors of human trafficking and slavery include:

- Department of Family and Community Services
- Department of Education
- Ministry of Health
- Department of Justice
 - Including other front line agencies within the 'Justice Cluster', particularly the New South Wales Police Force.

¹⁷ Community Relations Commission for a Multicultural New South Wales, Parliament of New South Wales, *Inquiry into the exploitation of people through trafficking all its forms in NSW* (2013) 52.

¹⁸ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016)

FORCED LABOUR: CRIMINAL CODE (CTH)

Section	Offence	Maximum penalty
270.6A(1)	Causing a person to enter into or remain in forced labour	9 years, or 12 years for an aggravated offence
270.6A(2)	Conducting a business involving forced labour	9 years, or 12 years for an aggravated offence

Figure 1 Power Point slide from the Anti-Slavery Australia presentation to Human Trafficking forum convened by WA Red Cross

This training is essential to ensure that frontline officers within these Departments are fully equipped to recognize the indicia of human trafficking and slavery in the course of their work, and better able to articulate the support services available to potential victims and survivors.

Anti-Slavery Australia recommends that a comprehensive training

framework be developed and implemented for New South Wales government agencies. This training should include modules on identifying potential victims and survivors of human trafficking and slavery, the emergency support services available such as medical assistance, accommodation, legal advice, counselling and financial support.¹⁹

Anti-Slavery has extensive experience delivering training courses and seminars to local, state and commonwealth government agencies. Most recently, Anti-Slavery Australia delivered two seminars on the detection of extreme exploitation to City of Sydney Council building and construction inspectors. Council inspectors are in a unique position to access commercial kitchens, building and construction sites.

Recent reports of

COMMON INDICATIONS OF FORCED LABOUR

- **Pay and contracts:**
 - Prohibitions on earnings/savings, underpayment, excessive deductions, denial of benefits, lack of contract, forced to enter new contract, no evidence of payments, dismissal without cause, notice or benefits.
- **Workplace Health and Safety:**
 - No safety gear, denial of medical assistance, excessively long/unusual hours, little to no leisure time, punishments/fines for failing to meet quotas.
- **Restrictions on Movement/Substandard Facilities:**
 - Restrictions on their freedom to move or leave the workplace
 - Employees face different or less favourable conditions because of their visa status
 - They live at the work place or another location controlled/owned by the employer

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Figure 2 Power Point slide from the Anti-Slavery Australia presentation to the City of Sydney Council.

¹⁹ Anti-Slavery Australia, *Submission to the Community Relations Commission Inquiry into the Exploitation of Women through Trafficking* (24 October 2012) 4.

exploitation in the construction issue has resulted in an increased number of referrals concerning extreme labour exploitation in the construction industry. Such identification is vital to the identification of survivors of human trafficking and slavery.²⁰

The implementation of training policies and programmes for front line officers with unique access to high-risk industries and first response officials such as health professionals and child protection case workers will substantially strengthen the legal response to human trafficking and slavery in New South Wales.

1.2. Develop and implement effective law enforcement policies and programmes to facilitate the identification of survivors of human trafficking and slavery.

The Australian Federal Police is in the process of developing the National Policing Protocol to Combat Human Trafficking, Slavery and Slavery-like Practices (the National Policing Protocol), which will provide the national framework for Australian police agencies to combat human trafficking and slavery. The Protocol has yet to be endorsed across all states and territories²¹ and will provide a framework for national and state and territory cooperation in the identification, investigation and referral of trafficked and enslaved people.

The proposed National Policing Protocol replaces the 2011, Australian Policing Strategy to Combat Trafficking in Persons (Australian Policing Strategy), which was endorsed by the all state and territory police.

1.3. Implement programmes and policies within the Department of Family and Community Services to facilitate the identification and prevention of forced marriage, and provide effective assistance to potential victims of forced marriage

Forced marriage was criminalised in Australia in 2013,²² since then the number of forced marriage referrals to the Australian Federal Police and the Support for Trafficked People Programme has been steadily rising.²³ Furthermore, the Australian Federal Police expect

²⁰ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 20.

²¹ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 22.

²² *Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Act 2013* (Cth) ('*Slavery Act 2013*'), amending *Criminal Code Act 1995* (Cth).

²³ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 1, 23.

forced marriage referrals to continue to increase due to the strengthened legislative protections and greater community engagement.²⁴

Forced marriage entails various human rights abuses. It represents a specific manifestation of a wider problem of gender-based violence against women and girls.²⁵ Those subjected to forced marriage may experience psychological and physical harm, sexual assault and false imprisonment.²⁶ Forced marriage is often hidden, and people who have been forced to marry may be unable to seek help due to social stigma, family pressure, fears of violence or deportation, as well as concerns about their children.²⁷ There are many different manifestations of forced marriage, and it may occur in a variety of settings. However, such marriages are often arranged by family members.²⁸ Family members may not perceive their actions as wrong, and may seek to organise the marriage for reasons, such as a wish to control behaviour that challenges cultural norms, prevent unsuitable marriages, or to conform to perceived cultural and gendered ideas about marriage.²⁹ Women are disproportionately affected by forced marriage, although men are also affected.³⁰ Furthermore, the experiences of people who have been forced to marry reflect a spectrum of exploitation. At the extreme end of the spectrum a victim may be forced into a condition of servitude and be sexually exploited by their 'husband' or 'wife'.³¹

1.3.1. *The role of the Department of Family and Community Services in the identification of potential victims forced marriage*

In the 2013 report of then Community Relations Commission for a Multicultural New South Wales (now Multicultural NSW) the Department of Family and Community Services (FACS) was identified as a key agency in the prevention and identification of survivors of human trafficking, slavery and slavery-like conditions in New South Wales. The Report recommended that FACS coordinate the service response provided by New South Wales authorities to trafficked people.

FACS is uniquely situated to prevent forced marriage and identify potential victims and survivors. FACS officers have a unique level of access to families and communities. This

²⁴ Ibid, 24.

²⁵ Sundari Anitha and Aisha Gill, 'Coercion, Consent and the Forced Marriage Debate in the UK' (2009) 17 *Feminist Legal Studies* 165, 166.

²⁶ Frances Simmons and Jennifer Burn, 'Without Consent: Forced Marriage in Australia' (2013) 36 *Melbourne University Law Review* 970, 974-975.

²⁷ Attorney-General's Department (Cth), 'Forced and Servile Marriage' (Discussion Paper, 2010) 5–6 [12]–[14].

²⁸ Frances Simmons and Jennifer Burn, above n 13, 975.

²⁹ Attorney-General's Department (Cth), 'Forced and Servile Marriage', above n 14, 4 [5].

³⁰ Frances Simmons and Jennifer Burn, above n 13, 975.

³¹ Ibid, 976.

access places FACS at the front line in the prevention of forced marriage and the identification of potential victims and survivors.

Anti-Slavery Australia commends the commitment of FACS to the prevention of forced marriage in New South Wales, in particular the Early and Forced Marriage Masterclasses organised by FACS in

2015 and 2016, at which Anti-Slavery Australia presented. We also commend FACS participation in the New South Wales Forced Marriage Network and initiatives such as the expansion of the Child Protection Hotline to support potential victims and survivors of forced marriage.³²

Anti-Slavery Australia recommends that FACS implement formal policies and programmes to ensure that potential victims and survivors of forced marriage are identified and referred to the appropriate services. We also recommend that FACS continue to have the responsibility to coordinate the New South Wales government agency response to forced marriage in consultation with key stakeholders. In this role as lead agency, we suggest that FACS develop and implement a New South Wales Action Plan, which could coordinate the state-based implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015-2019*.

WARNING SIGNS & INDICATORS OF FORCED MARRIAGE

A combination of these warning signs and indicators may point towards forced marriage:

- EDUCATION:** absence from school or university, requests for leave, change in behaviour, including school performance, withdrawn, refused permission to attend extra-curricular activities, announcement of an engagement.
- FAMILY HISTORY:** siblings forced to marry, self harm, suicide of sibling, death of a parent, family disputes, running away from home, unreasonable restrictions.
- EMPLOYMENT:** poor attendance & performance, financial control, accompanied to and from work, inflexible working arrangements.
- HEALTH:** self harm, suicide, mental health issues, substance abuse, accompanied visits to health professionals.
- CONTACT WITH SUPPORT SERVICES AND LAW ENFORCEMENT:** family violence, reported for petty criminality, threats to kill or harm, reports of other offences.

Figure 3 Power Point slide from the Anti-Slavery Australia Forced Marriage Masterclass presentation to the Department of Family and Community Service.

³² Department of Family and Community Services (NSW) 'Girls not brides - helpline expands to include underage forced marriage' (media release, 30 September 2014) <https://www.facs.nsw.gov.au/about_us/media_releases/pru/girls-not-brides-helpline-expands-to-include-underage-forced-marriage>.

KEY RECOMMENDATIONS

1. Implement programmes and policies within the Department of Family and Community Services to facilitate the identification and prevention of forced marriage, and provide effective assistance to potential victims of forced marriage
2. Develop and implement effective law enforcement policies and programmes to facilitate the identification of survivors of human trafficking and slavery.
3. Develop and implement comprehensive training programs for all relevant front line New South Wales government agencies

2. ESTABLISH EFFECTIVE REFERRAL PATHWAYS BETWEEN KEY STAKEHOLDERS TO ENSURE THAT VICTIMS OF HUMAN TRAFFICKING AND SLAVERY IN NSW HAVE ACCESS TO NECESSARY SERVICES

It is essential that survivors of human trafficking and slavery, once identified are referred to law enforcement, the appropriate government agencies and non-government organisations to ensure that their immediate safety and needs are met.

2.1. Establishment of protocols for comprehensive collaboration between all levels of police and regulatory arms of local government

The 2013 report of then Community Relations Commission for a Multicultural New South Wales (now Multicultural NSW) found that there were no formal relationships between the agencies which should have responsibility for providing services and information to survivors of human trafficking and slavery practices.³³ It is unclear whether these formal procedures have been implemented in the intervening years. Nonetheless, Anti-Slavery Australia supports the recommendation of the 2013 report that the New South Wales Government establishes comprehensive protocols for cooperation between all levels of government. This protocol could establish clear pathways of responsibility as well as procedures to identify and respond to survivors of human trafficking and slavery. This protocol must emphasise the human rights of survivors, particularly on the short and long-term safety and needs of survivors of human trafficking and slavery.

2.2. Implement education and awareness raising programmes within law enforcement and government agencies concerning referral pathways

Survivors of human trafficking and slavery may have experienced physical, psychological abuse and/or sexual assault. Survivors short and long term needs may include, interpreters, housing, food, clothing, medical care, legal and immigration advice, safety planning, assistance in finding employment and information about legal rights such as compensation and financial assistance.³⁴ It is important that officers within law enforcement and government agencies are aware of the unique needs of survivors, and the referral pathways that are in place to connect survivors to the services they require. Anti-Slavery Australia also recommends that officers who may come into contact with survivors of human

³³ Community Relations Commission for a Multicultural New South Wales, Parliament of New South Wales, *Inquiry into the exploitation of people through trafficking all its forms in NSW* (2013) 5.

³⁴ National Roundtable on Human Trafficking and Slavery, 'Guidelines for NGOs Working with trafficked people' (3rd edition, 2015) 8.

trafficking and slavery be provided with appropriate practice guidelines to provide guidance about responding to survivors. Anti-Slavery Australia notes that the *Guidelines for NGOs Working with Trafficked People* were developed by the Australian Government National Roundtable on Human Trafficking and Slavery, to ensure front line representatives of NGOs can identify, assess and provide survivors with essential services without risking the re-victimisation of vulnerable survivors.³⁵

KEY RECOMMENDATIONS

1. Establish formal protocols for comprehensive collaboration between all levels of police and regulatory arms of local government
2. Implement education and awareness raising programmes within law enforcement and government agencies concerning referral pathways

³⁵ Ibid, 16.

3. STRENGTHEN STATE SUPPORT SERVICES FOR VICTIMS OF FORCED MARRIAGE IN NEW SOUTH WALES

Young adults and adults may be forced to marry through threats, coercion and/or physical abuse. Although a marriage may be forced even in situations where there is no physical danger. This situation was seen in the court case of *In the Marriage of S*, wherein a young woman was found to be, “caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious commitment and a culture that demanded filial obedience.”³⁶

While Anti-Slavery Australia continues to support the criminal justice response to forced marriage, there are significant gaps in the protection framework for those facing forced marriage in Australia and overseas.³⁷

3.1. Develop civil remedies and protections for potential victims of forced marriage

Criminalisation is an important component of the legal response to forced marriage. However, criminalisation of the practice of forced marriage does not address the cause of the forced marriage, nor does it provide people facing forced marriage with tools to prevent a forced marriage before it occurs, or to avoid forced marriage overseas. Civil remedies have the following advantages in the context of forced marriage:

- Criminal charges are reactive and must be proven beyond reasonable doubt. Whereas civil remedies such as protection orders could be made in situations which satisfy the civil standard of proof (the balance of probability).
- People facing forced marriage may be reluctant to give evidence to the police. This may be due to trauma they have experienced or they may not wish to provide evidence against family members.³⁸

Anti-Slavery Australia advocates for the introduction of a civil protective framework in New South Wales to address gaps in victim support and protection where any person, regardless of age, is at risk of or in a forced marriage.

One model that this could take is similar to the United Kingdom Forced Marriage Protection Order. Forced Marriage Protection Orders enable those at risk of forced marriage or their

³⁶ (1980) 5 Fam LR 831, 838.

³⁷ Frances Simmons and Jennifer Burn, above n 13, 998.

³⁸ Attorney-General's Department (Cth), 'Forced and Servile Marriage' (Discussion Paper, 2010) 16, [84]-[85].

advocates to make an application for a wide-ranging protective order including the surrender of passports regardless of the age of the person at risk.³⁹ Applications for Forced Marriage Protection Orders can be made by the person at risk of forced marriage, a relevant third party or any other person with the leave of the court.

Anti-Slavery Australia recommends that the New South Wales government engage in a consultative process, including affected communities and other key stakeholders, to frame an effective civil legal response to prevent forced marriage, in order to ensure that those at risk of forced marriage are protected regardless of their age.⁴⁰ The implementation of a framework of civil remedies for people facing forced marriage would ensure that prevention and protection are at the heart of Australia's legal response to forced marriage.

KEY RECOMMENDATIONS

1. Engage in a consultative process to frame an effective civil legal response to prevent forced marriage, in order to ensure that those at risk of forced marriage are protected regardless of their age.

³⁹ *Forced Marriage (Civil Protection) Act 2007 (UK)* c 20

⁴⁰ *Family Law Act 1996 (UK)* s 63C (2)-(3); *Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011* s 12. Note that the definition of third person differs between the UK and Scottish Acts.

4. FUND FURTHER EDUCATION AND TRAINING PROGRAMMES ON HUMAN TRAFFICKING, TO BE ADMINISTERED TO PRIMARY AND HIGH SCHOOL STUDENTS IN NSW SCHOOLS

Education at all levels is an essential tool in the prevention of human trafficking, slavery and slavery-like offences. Education can empower survivors to seek help, and prevent slavery and slavery-like practices by providing potential victims with knowledge of Australian law and their legal. Education within the community can also help to overcome stereotypes about survivors and encourage compassion.

The Commonwealth Government has provided funding to non-government organisations to provide targeted education, particularly regarding forced marriage. The Commonwealth Government funded Anti-Slavery Australia to develop My Blue Sky, Australia's first comprehensive online resource dedicated to preventing and addressing forced marriage, <www.mybluesky.org.au>. The Commonwealth Government also provided funding to Australian Catholic Religious Against Trafficking in Humans (ACRATH) to develop and forced marriage education targeted towards the education sector, and the Australian Muslim Women's Centre for Human Rights community education and training programme to increase the capacity of front line organisations in vulnerable communities.⁴¹ Anti-Slavery Australia commends the Commonwealth Government's ongoing support for educational programmes to prevent human trafficking, slavery and slavery-like conditions.

Within New South Wales, Anti-Slavery Australia co-convenes the New South Wales Forced Marriage Network with the Australian Red Cross, which brings together over 130 members from 60 government and community organisations. Membership includes representation from the Cultural and Linguistically Diverse (CALD) communities, migrant resource centres, government agencies at the local, state and federal level as well as from community organisations and individual advocates. The purpose of the Network is to engage the community to raise awareness about and prevent forced marriage as well as to provide coordinated support and assistance to people who may be in, or at risk of, forced marriage. Three working groups have also been established in the areas of prevention, education and training and direct service provision. Anti-Slavery Australia also convenes the Sydney Trafficking Response Network, which brings together community agencies to share resources, consider policy development, develop best practices. Biannually the Sydney Trafficking Response Network meets with representatives of government agencies to consult about anti-trafficking initiatives and developments.

⁴¹ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 10.

However, there remains considerable scope for the New South Wales government to fund, develop and support educational and awareness raising initiatives to prevent these practices at the state level.

4.1. Develop and deliver targeted education to Primary and High School children

The intersectionality between domestic violence, violence against women and slavery-like practices suggests that there is potential for the integration of education about slavery-like practices into the primary prevention models such as respectful relationship education and child abuse prevention programmes. New South Wales has integrated respectful relationship education with the Personal Development, Health and Physical Education syllabus. Research has demonstrated that these primary prevention education models, such as respectful relationship education, represent the best-practice in sexual violence prevention education.⁴² However, more research is needed in this area.

Amongst the educational and awareness raising programmes in place to prevent forms of human trafficking and slavery, there remains a need for a sustainable, strategic campaign delivered in schools.

ACRATH has developed the 'My Rights- My Future' Forced Marriage teaching kit, in order to deliver targeted education to high school students about forced marriage.⁴³ This represents an important development. Other forms of human trafficking and slavery may affect children and young people. For example, research has demonstrated the significant intersection between servitude offences and family violence.⁴⁴

Anti-Slavery Australia recommends that the New South Wales government develop a targeted education and awareness programme, in consultation with communities and key stakeholders, to be provided systematically in primary and high schools.

4.2. Community education and awareness raising initiatives

In order to prevent human trafficking and slavery, it is essential that people in communities in New South Wales understand the indicia of these practices, as well as their legal rights within Australia. The 2013 report of the Community Relations Commission for a

⁴² See eg, Michael Flood et al, 'Respectful Relationships Education Violence prevention and respectful relationships education in Victorian secondary schools' (Report, Department of Education and Early Childhood Development, November 2009); Cara Gleeson et al, 'Respectful Relationships Education in Schools: Evidence Paper' (Report, Our Watch, December 2015); Kerryann Walsh et al, 'Child Sexual Abuse Prevention Education: A Review of school policy and curriculum provision in Australia' (2013) 39(5) *Oxford Review of Education* 649.

⁴³ *ACRATH Develops Forced Marriage Education Kit* (10 January 2016), Australian Catholic Religious Against Trafficking in Humans <<https://acrath.org.au/acrath-develops-forced-marriage-education-kit/>>.

⁴⁴ Allison Munro, 'Slavery and Servitude within Intimate Relationships' (2013) 38 (1) *Alternative Law Journal* 44, 45.

Multicultural New South Wales (now Multicultural NSW) recommended that the New South Wales Government, in consultation with the Commonwealth Government, fund and develop educational campaign to target people in New South Wales who might be experiencing, be aware of, participating in human trafficking, slavery or slavery-like practices. As well as members of the New South Wales community who may come in contact with people who are experiencing these practices.⁴⁵

Targeted community education programmes have been developed by non-government organisations, with the assistance of the Commonwealth government. Some leading examples of these initiatives are discussed in section 4.1. In addition, Anti-Slavery Australia was funded by the City of Sydney to develop multilingual materials to raise awareness about human trafficking and slavery in New South Wales.

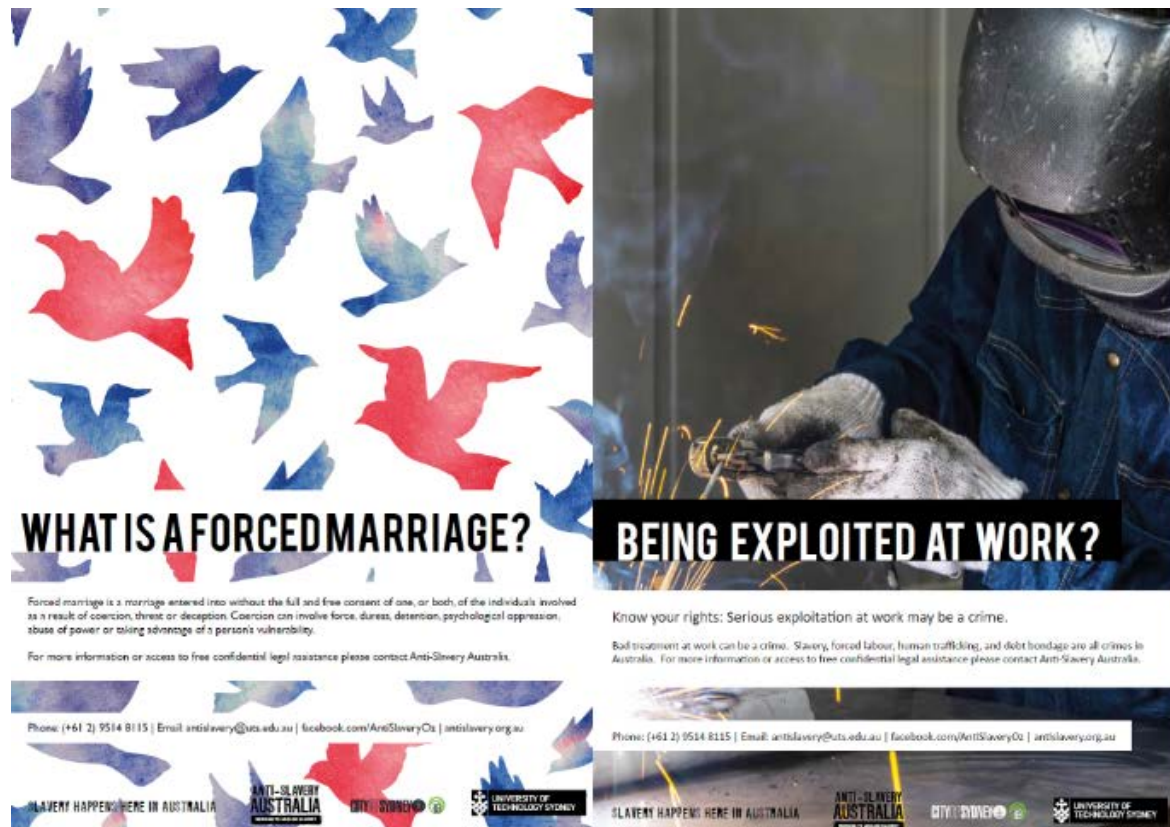


Figure 4 Posters developed by Anti-Slavery Australia for the City of Sydney

However, awareness raising programmes of this kind require significant ongoing resources. As such, Anti-Slavery Australia recommends that the New South Wales Government engage with stakeholders to fund and develop ongoing education and awareness raising

⁴⁵ Community Relations Commission for a Multicultural New South Wales, Parliament of New South Wales, *Inquiry into the exploitation of people through trafficking all its forms in NSW* (2013) 55.

campaign, targeting key communities in New South Wales to prevent human trafficking, slavery and slavery-like conditions.

4.3. Fund targeted forced marriage education

Forced marriage disproportionately affects children and young people.⁴⁶ 44 per cent of new referrals for human trafficking and slavery to the Australian Federal Police in 2015 related to forced marriage,⁴⁷ and the number of forced marriage referrals are expected to continue to increase due to the strengthened legislative protections and greater community engagement.⁴⁸ While the Commonwealth Government has supported important initiatives in this area, as discussed in section 4.1, there remains an ongoing need for sustained, evidence-based primary prevention education regarding forced marriage in New South Wales.

4.3.1. 'My Rights- My Future' Forced Marriage teaching kit

The Forced Marriage Teaching Kit, titled *My Rights-My Future*, was developed by ACRATH, in consultation with government departments and other non-government organisations. The teaching kit contains pilot curriculum project and resource kit for teachers, school support staff and students,⁴⁹ and is designed to raise awareness and to educate people about what they can do if they, or someone they know, are being forced into a marriage.⁵⁰ The kit was rolled out to nine government and catholic schools.⁵¹ Teachers and staff are also required to respect the culture of students at all times.⁵²

Prior to using the kit, it is recommended that teachers and staff undergo training through the Anti-Slavery Australia eLearning tool.⁵³

⁴⁶ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 24.

⁴⁷ Australian Government, Submission No 18 to Parliamentary Joint Committee on Law Enforcement, *Inquiry into Human Trafficking*, 16 January 2016, 6.

⁴⁸ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 24.

⁴⁹ Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 10.

⁵⁰ ACRATH Develops Forced Marriage Education Kit (10 January 2016) Australian Catholic Religious against Trafficking in Humans <<https://acrath.org.au/acrath-develops-forced-marriage-education-kit/>>.

⁵¹ Ibid.

⁵² 'My Rights – My Future forced marriage' (Australian Catholic Religious Against Trafficking in Humans, 2016) available online at <<https://www.mybluesky.org.au/wp-content/uploads/2016/04/ACRATH-School-Curriculum-Kit-2016-1.pdf>>.

⁵³ Available online at <http://www.antislavery.org.au/e-learning.html>

4.3.2. My Blue Sky

In response to the recognition that forced marriage is a slavery-like practice, Anti-Slavery Australia was funded by the Commonwealth Attorney-General's Department to develop a specialist website dedicated to forced marriage prevention, information and legal advice.

Launched in November 2015, the My Blue Sky website aims to educate and raise awareness about forced marriage. It includes information about forced marriage law in Australia, the difference between forced and arranged marriage, safety planning, referral organisations and available support services.

My Blue Sky includes dedicated pages for young children and teenagers; educators and medical practitioners; as well as a page for those who are worried about a friend who may be forced to marry. Parts of the website are available in six languages with links to the Commonwealth Attorney-General's Department Forced Marriage Community Pack.



Figure 5 My Blue Sky Home Page <https://www.mybluesky.org.au/>

The UK experience in responding to forced marriage shows that people facing forced marriage may only have one opportunity to reach out for help.⁵⁴ This website offers vulnerable people the opportunity to access reliable information about marriage in Australia and direct access to legal advice and support through a simple email or text message.

⁵⁴ Foreign and Commonwealth Office and Home Office (UK), 'The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage' (Practice Guidance, 19 July 2016) 5.

Australian nationals may be forced to marry in Australia or overseas. My Blue Sky offers important contact information for people who may be travelling overseas and who are concerned they will be forced to marry once outside of Australia, as well as for those who may have already been taken overseas. Since the launch of My Blue Sky, vulnerable young people, school teachers and counsellors and health professionals have reached out to the service for help and legal advice.

KEY RECOMMENDATIONS

1. Engage with stakeholders to fund and develop ongoing education and awareness raising campaign, targeting key communities in New South Wales to prevent human trafficking, slavery and slavery-like conditions.
2. Fund and develop a sustained, targeted, evidence-based primary prevention education programme on human trafficking, and slavery, in particular forced marriage. This programme to be developed in consultation with key stakeholders and delivered in schools throughout New South Wales.

5. CONDUCT AN ASSESSMENT OF NSW VICTIMS SERVICES AND SUPPORT, TO PROVIDE FINANCIAL RECOGNITION TO VICTIMS OF ALL FORMS OF SLAVERY AND HUMAN TRAFFICKING AND TO ENSURE THE HARMONISATION OF ALL AUSTRALIAN VICTIM COMPENSATION SCHEMES

Anti-Slavery Australia has long recommended the establishment of a national victims of crime compensation scheme. Recently, our organisation, in partnership with the Law Council of Australia, has released a report reflecting this recommendation, and outlining the potential structure of the proposed scheme.⁵⁵ The report notes Australia's obligation to provide access to remedies for survivors of human trafficking and slavery offences as enshrined in international law.⁵⁶

In the absence of a Commonwealth compensation scheme, however, it is our recommendation that State and Territory governments take steps towards harmonising existing, disparate compensation and victims assistance schemes, to ensure that all survivors of human trafficking and slavery in Australian jurisdictions have equal access to remedies. Currently in Australia, each of the eight States and Territories administers its own victims' compensation or assistance scheme. In limited circumstances, trafficked people have access to remedies through these schemes. However, these existing schemes are not designed to specifically address Commonwealth offenses, including crimes of human trafficking and slavery. Anti-Slavery Australia recommends that the NSW government implement changes to the state Victim's Support scheme, taking into account the unique barriers and issues facing survivors of human trafficking and slavery conditions, to ensure that all victims of violent acts in NSW are eligible to receive appropriate support.

Moreover, there are some significant differences between each jurisdiction in relation to the amount of compensation available to applicants, the eligibility requirements for applicants and the applicable limitation periods. This necessarily means that victims of trafficking and slavery acts in each Australian jurisdiction face different compensation outcomes depending on the location where the crime took place. Anti-Slavery Australia suggests that the Select Committee lead a process of harmonisation through the Council of Australian Governments

⁵⁵ Anti-Slavery Australia and the Law Council of Australia, *Establishing a National Compensation Scheme for victims of Commonwealth crime*, (2016) available online at <<http://www.antislavery.org.au/images/FINAL%20REPORT%20-%20ASA%20-%20LCA%20The%20Case%20for%20a%20National%20Compensation%20Scheme.pdf>>.; see also Anti-Slavery Australia, *Establishment of a National Compensation Scheme* (2016) Policy position paper no. 2, available online at <<http://www.antislavery.org.au/images/pdf/Publications/2016%20-%20The%20case%20for%20a%20national%20compensation%20scheme.pdf>> 3.

⁵⁶ A comprehensive list of the relevant international instruments can be found in Anti-Slavery Australia and the Law Council of Australia, above n 1, 4-5.

(COAG) inter-governmental forum to ensure equal treatment of survivors of trafficking in all Australian State and Territory jurisdictions.

5.1. Eligibility and other requirements

In New South Wales, victims of crimes have access to support, facilitated through the *Victims Rights and Support Act 2013* (NSW) (“Victims Rights and Support Act”). This legislation was passed by NSW Parliament in 2013, replacing the existing Victims Compensation Scheme, established in 1987.

Under the current Victims Rights and Support Act, a primary victim of an act of violence is eligible for support including:⁵⁷

- Approved counselling services,
- Financial assistance for immediate needs, including treatment, and urgent measures to ensure the victim’s safety, health and wellbeing,
- Financial assistance for economic loss suffered, and
- A recognition payment.

In NSW, there is a general time limit for applications for victims support to be lodged within two years of the act of violence occurring,⁵⁸ although applications for recognition payments relating to an act of sexual assault may be lodged within 10 years of the relevant act of violence.

It is important to note that support may be refused for a number of reasons, including a failure by the victim to report the act of violence to the police within a reasonable time, and whether the victim has failed to provide reasonable assistance to an investigation of the act of violence, or an arrest or prosecution of any person who committed or is alleged to have committed the relevant act of violence.⁵⁹

The following case study outlines some issues that will be explored in this section.

⁵⁷ Ibid s 26.

⁵⁸ Ibid s 40.

⁵⁹ Ibid ss 44(1)(b) and (e).

Case Study : drawn from NSW cases

Mary was trafficked into Australia, where she was forced into conditions of sexual servitude. Two years after leaving the place where she was exploited she was identified by the Department of Immigration as an unlawful non-citizen.

After hearing her story, the Department of Immigration and Border Protection (DIBP) referred Mary to the Australian Federal Police (AFP). Mary initially assisted the AFP in their investigation of her traffickers. However, after a year, she was unable to continue assisting the police and did not complete her statement due to the severe psychological trauma and re-victimisation that she experienced during this process. Ultimately, the police investigation ceased and charges were not laid against Mary's traffickers.

During this time, Mary feared that she would be returned to her home country as she had been placed on a temporary bridging visa. She lived in a constant state of anxiety, and still feared retribution from her traffickers. It was only after the police investigation had ceased, and a year of processing by the DIBP, that Mary was granted a Referred Stay (Permanent) visa, through the Australian government's Trafficking Visa Framework.

At this stage, four years after the acts of violence committed against her, Mary decided to apply for support through the NSW Victim's Support Scheme. As the violent acts included sexual assault, Mary was able to apply outside of the usual 2 year time period.⁶⁰

Under the scheme, Mary was a primary victim of an act of violence.⁶¹ As a primary victim, she was eligible for payments, outlined in section 26 of *the Victims Rights and Support Act 2013* (NSW), including:

- (a) approved counselling services
- (b) financial assistance for immediate needs
- (c) financial assistance for the economic loss suffered
- (d) a recognition payment

However, as a few years had passed since the act of violence had occurred, Mary had no immediate needs that required financial assistance.⁶² She was also unable to demonstrate any loss of actual earnings during the period in which she suffered harm, as there was no

⁶⁰ *Victims Rights and Support Act 2013* (NSW) s 40(5).

⁶¹ *Ibid.* s 19(1).

⁶² *Victims Rights and Support Regulation 2013* (NSW) cl 8(1).

formal employment arrangement during this time, and she had been under the total control of her traffickers since she entered the country. Although she suffered severe psychological trauma, she had no medical or dental expenses flowing from the acts of violence, and could not quantify any loss of or damage to clothing or other personal effects during this time. She did not incur any out of pocket expenses due to the act of violence, or during the time that she assisted police; she was not employed, and in fact had not found work at all since her discovery during the immigration raid.⁶³ It was therefore unlikely that Mary would be eligible for any financial assistance payment under the scheme.

Mary applied for approved counselling services and a recognition payment. To support her application she provided an initial psychological assessment. The Tribunal was made aware that Mary failed to provide a statement to police. They requested that Mary provide further information as to why she failed to provide reasonable assistance to the investigation. A written submission, statement and further psychological reports were made, which substantiated Mary's claims that severe psychological issues had caused her to cease assisting police. This process was particularly difficult for Mary, who suffered from severe depression, anxiety and suicidal thoughts at this time.

As a victim of sexual servitude, Mary was eligible for a category B recognition payment under the scheme,⁶⁴ and was eventually awarded with the maximum payment of \$10,000.⁶⁵ She was approved for counselling services, although the shame and stigma that she felt speaking about her experiences with strangers prevented her from attending these sessions.

Although there are a number of concerns about the NSW Victims Support Scheme raised in this case study, two key issues that emerge are:

- The maximum amount of payments available to victims of human trafficking and slavery in NSW, and
- The difficulties faced by survivors of trafficking in assisting law enforcement with criminal investigations.

⁶³ *Ibid.* cl 8(2).

⁶⁴ *Victims Rights and Support Act 2013 (NSW)* ss 36(1)(c) and 35(2)(b).

⁶⁵ *Victims Rights and Support Regulation 2013 (NSW)* cl 12(c).

5.1.1. Maximum amount of compensation available to victims of crime

The following table outlines the maximum amount of compensation that may be awarded to the primary victim of an act of violence in each jurisdiction, including a breakdown of payments where relevant.

State/Territory	Maximum payment including breakdown (where relevant)
ACT	\$50,000 ⁶⁶
	It should be noted that the Regulations provide only up to \$10,000 where the act of violence occurred in the course of a domestic violence offence ⁶⁷
NSW	\$50,000
	Recognition payments up to \$15,000, ⁶⁸ economic loss up to \$30,000 ⁶⁹ and immediate assistance up to \$5,000 ⁷⁰
NT	\$40,000 ⁷¹
QLD	\$75,000 ⁷²
	Applicants may also receive up to \$500 for legal costs incurred during the application process
SA	\$100,000 ⁷³
Tas	\$30,000 ⁷⁴
	Where there is more than one offence up to \$50,000 ⁷⁵
Vic	\$70,000
	Assistance up to \$60,000 ⁷⁶ plus a special financial assistance payment up to \$10,000 ⁷⁷
WA	\$75,000 ⁷⁸

Table 1: The maximum payment available to primary victims of an act of violence in each Australian State and Territory as of the date of this submission.

⁶⁶ *Victims of Crime (Financial Assistance) Regulation 2016* (ACT) s 5(1)(a) pursuant to *Victims of Crime (Financial Assistance) Act 2016* (ACT) s24.

⁶⁷ *Ibid.* s 5(2).

⁶⁸ *Victims Rights and Support Regulation 2013* (NSW) cl 12 pursuant to *Victims Rights and Support Act 2013* (NSW) s 36.

⁶⁹ *Victims Rights and Support Regulation 2013* (NSW) cl 8(2) for the purpose of the *Victims Rights and Support Act 2013* (NSW) s26(1)(c).

⁷⁰ *Victims Rights and Support Regulation 2013* (NSW) cl 8(1) for the purpose of the *Victims Rights and Support Act 2013* (NSW) s26(1)(b).

⁷¹ *Victims of Crime Assistance Act* (NT) s 38(1); for a table of standard amounts awarded see *Victims of Crime Assistance Regulation* (NT) sch 3.

⁷² *Victims of Crime Assistance Act 2009* (Qld) s 38(1).

⁷³ *Victims of Crime Act 2001* (SA) s20(3)(a)(iii).

⁷⁴ *Victims of Crime Assistance Regulations 2010* (Tas) reg 4(1)(a).

⁷⁵ *Ibid.* reg 4(1)(b).

⁷⁶ *Victims of Crime Assistance Act 1996* (Vic) s 8(1).

⁷⁷ *Ibid.* s 8A.

⁷⁸ *Criminal Injuries Compensation Act 2003* (WA) s 31(1).

The primary difference between the current and past scheme in NSW is the maximum amount of compensation that victims of human trafficking and slavery crimes are generally eligible to receive. In the past, the total amount of compensation was capped at \$50,000.⁷⁹ While this cap also applies to the new scheme, there have been individual statutory maximums introduced for specific payment types. This means that under the new scheme, individuals who have suffered from human trafficking and slavery in our experience are likely to receive a maximum recognition payment of up to \$15,000.

It is also important to recognise that not all jurisdictions recognise the impact of more than one act of violence or offence. For example, in the Tasmanian scheme, where there is more than one offence, the maximum available payment increases from \$30,000 to \$50,000 while in Western Australia, the amount awarded in circumstances where there have been multiple related offences, must not exceed the maximum payable for the last offence.⁸⁰

Anti-Slavery Australia notes that the highest maximum amount of payments in any Australian jurisdiction is \$100,000 through the South Australian scheme. This increase, enacted in 2016,⁸¹ represents the South Australian government's "commitment to continue its strong record of supporting victims of crime" and allows "people who are affected by crime and their family members have some recompense in what is a stressful and traumatic time for them."⁸² Amongst increases on a number of payments within the scheme, the maximum amount of compensation available for grief and financial expenses was doubled, reflecting that "while financial compensation cannot make up for the harm victims suffer, it can assist in their recovery."⁸³

Finally it is our experience that victims of trafficking and slavery are often unable to access the maximum payments awarded in each jurisdiction. In NSW, for example, victims of trafficking and slavery are likely to be awarded a payment of up to \$10,000 out of the maximum \$50,000 available through the scheme, as highlighted in the case study above.

5.1.2. Barriers preventing interaction with the criminal justice system

It is our experience that there are a multitude of barriers preventing individuals who have survived conditions of human trafficking and slavery from seeking the assistance of law

⁷⁹ *Victims Support and Rehabilitation Act 1996* (NSW) s 19, as repealed by the *Victims Rights and Support Act 2013* (NSW) s 118.

⁸⁰ *Criminal Injuries Compensation Act 2003* (WA) s 33.

⁸¹ See the *Victims of Crime (Compensation) Amendment Bill 2015* (SA).

⁸² Attorney General's Department, 'Maximum compensation for victims of crime doubles' (Media release, 10 March 2016) <<http://www.agd.sa.gov.au/maximum-compensation-victims-crime-doubles>>.

⁸³ Deputy Premier John Rau, 'Maximum victims of crime payouts to double' (Media release, 7 February 2014) <http://www.premier.sa.gov.au/images/news_releases/14_02Feb/victimsofcrime.pdf>.

enforcement. First among them is a fear of authorities that may feed into foreign nationals' fear of deportation. It is integral, therefore, that survivors who are unable to communicate with law enforcement are afforded the equal opportunity to seek remedy.

A 2013 paper, from the Australian Institute of Criminology, outlines the following barriers to involvement in criminal justice proceedings, for survivors of trafficking and slavery:⁸⁴

- Fear of authorities
- Fear of identification by perpetrators, and subsequent reprisals
- Stigma and denial associated with being a 'victim' of trafficking or slavery
- Criminalisation or re-victimisation of victims of trafficking, who may also be prosecuted or detained
- Lack of trust in criminal justice officials

In particular, our case work with survivors of these types of traumatic crimes indicates that they often suffer from extreme psychological distress resulting in their re-victimisation during criminal investigation proceedings. For this reason, many survivors of trafficking and slavery are unable to continue to assist police in their investigations of offences.

Section 44 of the *Victims Rights and Support act 2013* (NSW) outlines the reasons for not providing support, or for reducing the amount of financial support, or a recognition payment to an applicant. This section requires that the Commissioner regards:

*whether the act of violence was reported to a police officer within a reasonable time, [and]...whether the victim has failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed...*⁸⁵

While the NSW legislation asks the decision maker to take into regard "any fear of retaliation" preventing the report of the act to a police officer,⁸⁶ it does not require the Commissioner to consider any of the other relevant factors listed above, that may prevent an individual from reporting crimes of trafficking or slavery to law enforcement. Further, the legislation contains no mention of specific mitigating circumstances surrounding a survivor's inability to provide reasonable assistance to the investigation of the relevant act of violence.

⁸⁴ Hannah Andrevski, Jacqualine Joudo Larsen and Samantha Lyneham, 'Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study' (2013) 451 *Trends and Issues in crime and criminal justice*, 2-4, <http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi451.pdf>.

⁸⁵ *Victims Rights and Support Act 2013* (NSW) ss 44(1)(b) and (e).

⁸⁶ *Ibid.* s 44(2)(d).

In contrast, the compensation schemes of three other jurisdictions facilitate the assessment of mitigating circumstances that may specifically prohibit victims of an act of violence in providing reasonable assistance to investigators:

1. **Victoria:** Victorian legislation contains mandatory refusal provisions, where an act of violence was not reported to police in a reasonable time, or the applicant failed to provide reasonable assistance in an investigation, unless special circumstances brought about that result.⁸⁷ Special circumstances are not defined in the Act, and therefore it is not a restrictive term.
2. **Australian Capital Territory:** ACT legislation outlines circumstances in which financial assistance must not be given, including where the applicant has unreasonably failed to give assistance to police in the matter.⁸⁸ However, where such disqualifying circumstances arise, the commissioner must provide a written notice, requesting the applicant to tell the commissioner in writing if there is a reason why the disqualifying circumstance does not apply.⁸⁹ The commissioner must consider any reasons given by the applicant in making their final decision.
3. **Northern Territory:** NT legislation outlines that financial assistance must not be awarded where the violent act was not reported to police within a reasonable time; unless the assessor is satisfied that circumstances prevented this.⁹⁰ Further, assistance must not be awarded under NT legislation where an applicant failed, to assist police officers in an investigation or prosecution, unless there is a reasonable excuse.⁹¹

Anti-Slavery Australia recommends that explicit provisions be included in the *Victims Rights and Support Act 2013* (NSW) to facilitate the consideration of compassionate or compelling mitigating circumstances that prevent survivors of acts of violence, such as human trafficking and slavery, from assisting with police investigations.

⁸⁷ *Victims of Crime Assistance Act 1996* (Vic) s 52(a).

⁸⁸ *Victims of Crime (Financial Assistance) Act 2016* (ACT) s 45(1)(e).

⁸⁹ *Ibid* s 45(2).

⁹⁰ *Victims of Crime Assistance Act* (NT) ss 43(b) and (c).

⁹¹ *Ibid* s 43(d).

KEY RECOMMENDATIONS

1. Conduct an assessment of the *Victims Rights and Support Act 2013* (NSW), taking into account comparable state and territory schemes, to ensure the harmonisation of all Australian victim compensation schemes
2. Include explicit provisions in the *Victims Rights and Support Act 2013* (NSW) to facilitate the consideration of compassionate or compelling mitigating circumstances that prevent survivors of acts of violence, such as human trafficking and slavery, from assisting with police investigations.

6. INTRODUCE GUIDELINES TO ELIMINATE HUMAN TRAFFICKING AND SLAVERY FROM NEW SOUTH WALES PUBLIC PROCUREMENT SUPPLY CHAINS

The New South Wales Government is a significant purchaser of goods and services. The Government has demonstrated clear intent to reduce human trafficking and slavery and there is an opportunity to show leadership in this area by developing policies and processes to strengthen public procurement guidelines.

There is considerable potential for exploitation in the supply chains of goods and services used by New South Wales government departments. Human trafficking and slavery may be present in the supply chains of items such as disposable gloves,⁹² and complex surgical instruments.⁹³

The New South Wales *Code of Practice for Procurement* rule 5.1 requires that all those involved in government procurement must demonstrate a commitment to continuous improvement and best practice. This may be demonstrated through ethical business practices. Anti-Slavery Australia commends the New South Wales Government on the procurement guidelines and points to the opportunity to lead by example and strengthen the *Code of Practice for Procurement* to prevent human trafficking and slavery in the supply chains of goods and services used by government departments.

Recognising that all jurisdictions are challenged in the development of public procurement guidelines, in a recent amendments to the Commonwealth Procurement Rules, which will commence on 1 March 2017, Commonwealth officials must make reasonable enquiries as to the tenderers practices regarding ethical employment practices.

KEY RECOMMENDATIONS

Anti-Slavery Australia recommends that the New South Wales Government, in consultation with key stakeholders, audit and review the *Code of Practice for Procurement* to eliminate human trafficking and slavery from the supply chains of goods and services used by government departments.

⁹² Mahmood Bhutta and Arthy Santhakumar, 'In good hands-Tackling labour rights concerns in the manufacture of medical gloves' (Report, British Medical Association, 2016) 3.

⁹³ *Surgical instruments in Pakistan*, International Labour Organisation <http://www.ilo.org/global/about-the-ilo/multimedia/video/video-news-releases/WCMS_074421/lang--en/index.htm>.

7. INTRODUCE INDUSTRY SPECIFIC LICENSING SCHEME FOR LABOUR HIRE BUSINESSES

The Labour Hire industry is defined by the existence of “triangular” employment relationships. This typically includes a labour hire agency, which supplies the labour of a labour hire worker to a third party (the host employer) in exchange for a fee.⁹⁴ The labour hire employment arrangement involves no direct contractual relationship between the labour hire worker and the host employer.⁹⁵ There is considerable scope for exploitation within this relationship. Labour hire work is highly insecure for several reasons, these include:

- Poor regulatory protections,
- Successive casual or fixed term contracts,
- Low or variable pay rates,
- No paid employment entitlements or benefits,
- Lack of control over labour process and low bargaining power, and
- Poor and/or dangerous work conditions.⁹⁶

Insecure labour hire employment can lead to severe labour exploitation and slavery-like practices. Particularly when unscrupulous operators prey on existing vulnerabilities of groups such as impoverished people, people with disabilities, youth, women, temporary migrants and refugees.⁹⁷ The potential for unscrupulous labour hire arrangements leading to slavery-like practices can be seen in the following case study, drawn from the experiences of Anti-Slavery Australia clients.

⁹⁴ Richard Johnstone et al, *Beyond Employment: The Legal Regulation of Work Relationships* (The Federation Press, Annandale, 2012), 60.

⁹⁵ Department of Economic Development, Jobs, Transport & Resource (Vic) ‘Victorian Inquiry into the Labour Hire Industry and Insecure Work’ (State of Victoria, 27 October 2016) 2.1.1.

⁹⁶ Department of Economic Development, Jobs, Transport & Resources, ‘Victorian Inquiry into the Labour Hire Industry and Insecure Work’, above n 70, 269-270.

⁹⁷ Judy Fudge and Diedre McCann, *Unacceptable forms of work: A global and comparative study* (International Labour Organization, 2015) 26.

Case Study

A skilled tradesman was recruited by a labour hire company in his home country. He was told to apply for a Working Holiday Maker visa and pay a fee to the labour hire company. He was told that the labour hire company would pay for his airfare and accommodation, and would arrange for employment in Australia.

When the man arrived in Australia he was hired out as a mechanic for an Australian host company. He was forced into a situation of debt bondage. He stayed in a hostel and was only given \$100 per week to cover his living expenses, which was less than he had been originally promised. The man had bank account set up for him, into which his wages were to be paid. These accounts were under the complete control of their employers.

The labour hire company told him that the debt he owed was much higher than he originally thought. He was forced to sign 'contracts' stating that they owed the employer AUD\$25,000.

A third party, to whom the man told his story, contacted the police on his behalf.

Following his escape, demands were made by the employers for money allegedly owed by the trafficked man. Over the course of two or three months, the man was repeatedly threatened by email and over the phone. His family in his home country was also threatened.

Detective Sergeant Ken Foster said of the matter:

"They [the victims] come from different parts of the world, their views of policing are somewhat different to what we understand here, they're frightened of that type of thing, they are also a long way from home, and threats were made against them, not only them but their families..."⁹⁸

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

The role of the labour hire industry in the exploitation of vulnerable migrant workers has been recognised in the reports of Queensland, South Australian and Victorian government inquiries.⁹⁹ The Senate report 'A National Disgrace: The Exploitation of Temporary Work

⁹⁸ Aleisha Orr, 'Perth people trafficking ring busted', *WA Today* (online), 21 March 2013 <<http://www.watoday.com.au/wa-news/perth-people-trafficking-ring-busted-20130321-2gh3g.html>>.

⁹⁹ Parliament Finance and Administration Committee, Parliament of Queensland, *Inquiry into the practices of the labour hire industry in Queensland* (2016); Economic and Finance Committee, Parliament of South Australia, *Inquiry*

Visa Holders' details the extensive exploitation of migrant workers by labour hire companies. The report recommends that a licensing regime be established for labour hire contractors, all licensed labour hire contractors be published on a public register, and that labour hire companies that subcontract to other labour hire companies, including overseas businesses, be obliged to ensure that those subcontractors hold a license.¹⁰⁰

Anti-Slavery Australia recommends that the New South Wales Government engage in a consultative process regarding worker exploitation and slavery-like practices within the labour hire industry, with a view to potentially implementing a sector specific licensing scheme for the labour hire industry.

KEY RECOMMENDATIONS

Anti-Slavery Australia recommends that the New South Wales Government Anti-Slavery Australia recommends that the New South Wales Government engage in a consultative process regarding the extent of worker exploitation and slavery-like practices within the labour hire industry, as well as preventative measures such as a sector specific licensing scheme.

into the Labour Hire Business (2016); Department of Economic Development, Jobs, Transport & Resources, 'Victorian Inquiry into the Labour Hire Industry and Insecure Work', above n 70.

¹⁰⁰ The Senate Education and Employment References Committee, 'A National Disgrace: The Exploitation of Temporary Work Visa Holders' (Commonwealth of Australia, 17 March 2016) 9.309.