

**Submission by ACRATH
to the Inquiry into human trafficking
of the *Parliamentary Joint Committee on Law Enforcement*
February 2016**

The terms of reference

The committee will examine Commonwealth law enforcement responses to human trafficking, including slavery, slavery-like practices (such as servitude, forced marriage and forced labour) and people trafficking, to and from Australia.

In particular, the committee will examine:

1. the prevalence of human trafficking in Australia, including in culturally and linguistically diverse communities;
2. the role and effectiveness of Commonwealth law enforcement agencies in responding to human trafficking;
3. practical measures and policies that would address human trafficking;
4. the involvement of organised crime, including transnational organised crime, in human trafficking;
5. the extent to which human trafficking is facilitated by:
 - a. migration visas (including marriage, partner, student and work visas),
 - b. technology, and
 - c. false identities;
6. the effectiveness of relevant Commonwealth legislation and policies; and
7. other related issues.

Introducing ACRATH

- Australian Catholic Religious Against Trafficking in Humans

ACRATH's vision is to work towards the elimination of human trafficking in Australia, the Asia Pacific region, and globally. In our current strategic plan we have four objectives:

Objective 1: Raise awareness of human trafficking, its causes and the scope for action. We do this by developing educational resources for schools and for *Culturally and Linguistically Diverse (CALD)* communities in Australia. We have a strong website with at least fortnightly uploads, and a social media presence. We encourage all to take action locally and more widely.

Objective 2: Work to ensure that the rights and complex needs of people trafficked into Australia are met. These needs may include: retraining, employment assistance, access to financial compensation, accompaniment, repatriation assistance, if desired, and meeting medical, dental, psychological & other health needs. We do this by working with client service NGOs to provide pastoral support to people who have been trafficked. We also campaign to ensure people trafficked into Australia can access their rights.

Objective 3: Collaborate with like-minded organisations in Australia, in the Asia Pacific region, and globally to advocate for measures to address human trafficking. We do this by working in networks to ensure slavery-free supply chains of goods such as chocolate, cotton, clothing, seafood. We use the language of addressing the demand for cheap goods produced by trafficked labour, forced labour and child labour. We work in networks to advocate for systemic change to eliminate human trafficking.

Objective 4: Build a sustainable future for ACRATH. We do this by developing our archives to preserve the story, by working to achieve financial sustainability for ACRATH and by expanding ACRATH membership into new demographics.

Terms of Reference Section 2: the role and effectiveness of Commonwealth law enforcement agencies in responding to human trafficking

ACRATH wishes to note with concern that prosecutions and convictions in Australia for human trafficking crimes are low.

Terms of Reference Section 3: practical measures and policies that would address human trafficking.

ACRATH's submission will refer almost entirely to Terms of Reference Section 3.

ACRATH will address these issues:

1. Forced labour
2. Forced marriage
3. Slavery-free supply chains
4. Support for people trafficked into Australia whose circumstances make them vulnerable to 'falling between the cracks'.
5. Prevention of human trafficking through effective and generous provision of Overseas Development Assistance (ODA)
6. The establishment of an independent Anti-Trafficking Commissioner, similar to the one in the USA

1. Forced labour

a. ACRATH urges the Inquiry to recommend enforcing employer sanctions provisions of the *Migration Act 1958*.

In September 2015, an ACRATH advocacy group met with 52 MPs, including a Minister, Ministerial advisers, Shadow Ministers and other Parliamentarians.

One of our priority issues in all these meetings was the prosecution of exploitative employers of overseas workers as enabled by the *Migration Amendment (Reform of Employer Sanctions) Act 2013*.

We were therefore dismayed to read recently that there were no prosecutions under the employer sanctions provisions in 2014-15 against employers exploiting 'illegal' overseas workers, and that overall enforcement activity was extremely 'light-touch'.

The January 2016 blog post on the employer sanctions provisions by immigration expert Bob Kinnaird ¹ cites DIBP data showing that in 2014-15 there were:

- No prosecutions at all for the civil or criminal offences, and hence no penalties.
- Only 8 'infringement notices issued to non-compliant employers, with fines totalling \$62,730' – less than the maximum civil penalty for a single company with one illegal worker (\$81,000), and an average of only \$7,840 per employer.
- Only 655 'Illegal Worker Warning Notices' (carrying no fine) issued 'to educate businesses about their responsibilities when hiring non-citizens and (warn) them of the consequences of continued non-compliance with legislation.' Of these, 210 notices to businesses related to visa holders working in breach of their visa conditions.

This profile reflects the government's current approach to enforcing this legislation primarily through 'voluntary compliance... through the provision of targeted education and engagement activities'.

The legislation has now been in force for two and a half years, so there has been ample time to assess whether this 'voluntary compliance' approach has worked.

ACRATH believes that the scale and severity of abuses of so-called 'illegal workers' uncovered by the Australian media and the Senate inquiry on temporary visas leads to only one conclusion: that the government's current approach to enforcing this legislation is not an effective deterrent to the practice of employers engaging and exploiting 'illegal workers'.

This should come as no surprise. The 2011 Howells review was clear that relying on IWWNs or 'Illegal Worker Warning Notices' (carrying no fine) was next to useless for deterring 'hardened operators' between 2007-2010:

These (IWWNs) were a very important part of the education program and a very useful measure when dealing with employers or labour hire agents who have been careless or irresponsible. But with hardened operators they have become a figure of fun. One brothel owner in NSW has posted dozens of IWWNs on the walls in his lobby apparently regarding them as trophies.²

It is clear also that there are far too many 'hardened operators' in Australia exploiting foreign workers working in breach of their visa conditions, or with no valid visa, with total impunity.

ACRATH urges the Inquiry to recommend that the employer sanctions provisions will be more vigorously enforced in 2015-16, with more emphasis to pursuing substantially larger fines and enforcing the civil penalty provisions against offending employers. To maximise the deterrent effect on other exploitative employers, these fines and penalties should be publicised widely.

¹ Bob Kinnaird, 'Foreign worker exploitation', <http://johnmenadue.com/blog/?p=5379>

² Stephen Howells, *Report of the 2010 Review of The Migration Amendment (Employer Sanctions) Act 2007*, pp68-9.

b. ACRATH is advocating for the licensing of labour hire companies

responsible for placing thousands of overseas workers in Australia. ACRATH believes that these companies need more oversight to ensure overseas workers are not exploited while they work in Australia. ACRATH notes the 2015 media items, especially the 4 Corners programs and Fairfax press, which reported repeated and widespread experience of exploitation of overseas workers. ACRATH wishes to ensure that labour hire companies found to be breaking the law do not 'phoenix' and return the next day with a new mobile number and name. In the Feb 2016 Hearings of the Victorian Inquiry into the Labour Hire Industry and Insecure Work it was noted by a number of presenters, representing both employers and employees, that the licensing of labour hire companies was needed.

c. Overly speedy repatriations and no payment of back wages to overseas workers

for the work they have done in Australia. ACRATH is concerned that, in one example amongst a number known to ACRATH, the approximately 160 overseas workers at a vegetable growing area in Carabooda WA have not yet received their back wages. ACRATH sees this as an issue of justice for the workers and a means of making the exploitative employers financially liable for huge back wages bills. This would also be a deterrent for would-be exploitative employers. ACRATH wants to see all investigations like the one in Carabooda begin by considering the possibility that the overseas workers may have been trafficked or have experienced forced labour; ACRATH is most concerned that the workers in Carabooda and in other parts of Australia were so hastily repatriated that the lens of human trafficking could never have been applied to their situations.

The recent media attention on 7-Eleven dramatic and systematic underpayment of workers raises the issue of deportation; 7-Eleven workers who have come forward face deportation for breaking their visa conditions.

It is also important to note that the Australian National Action Plan to Combat Human Trafficking and Slavery developed by the current government contains Action Item 59 which states: "Ensure trafficked people are not detained, charged or prosecuted for status-related offences, or held in immigration detention." (Goal Five: Australia empowers trafficked people to overcome their experience of human trafficking and slavery.)

d. Mechanisms to link overseas workers in to Australian society

to ensure they have the independent means to explore their rights as workers. ACRATH knows that workers who have been linked in to community groups, church groups, Migrant Resource Centres, Unions have been much less vulnerable to forced labour. In the Feb 2016 Hearings of the Victorian Inquiry into the Labour Hire Industry and Insecure Work it was noted that Community Legal Centres could be places where overseas workers could find out their legal employment rights. In the recent 7-Eleven scandal there were calls by Maurice Blackburn law firm, for mandatory employment education programs for international students and those on working visas.

2. Forced marriage

a. Background of ACRATH work on forced marriage

ACRATH has been working on the issue of forced marriage since 2008 when we raised the issue of forced marriage with the Federal Government Office for Women when workers in Catholic refuges described the plight of women who had been brought to Australia to marry someone and who found themselves in need of refuge from their new 'husband'.

ACRATH realised that there were three groupings of young women who fitted into the description of forced marriage:

- i. Young women who were brought to Australia to marry, and who discovered when they arrived in Australia that the marriage they found they were entering into was not what they had agreed to.
- ii. Young women who were taken to the country of origin of their parents to marry against their will.
- iii. Young women, often citizens or with permanent residency in Australia, who were forced to marry in Australia.

ACRATH made submissions to Federal Government Inquiries on the issue of forced marriage. ACRATH, through our extensive work in schools across Australia, became aware of the need in schools to raise awareness of the new legislation of International Women's Day 2013 which described the rights of people not to be forced into marriage. ACRATH raised this with the federal Attorney-General's Department, and was subsequently awarded in mid 2014 a Federal Government grant to run a pilot scheme raising awareness in school communities of the issue of forced marriage. In 2015 ACRATH rolled out that pilot scheme in three states, Victoria, NSW and SA, and in Government and Catholic schools.

ACRATH has extensive experience across Australia in giving counter trafficking presentations to young people in both secondary and tertiary institutions since 2005. Our engagement with young people tells us that there is a great deal of ignorance about the issues of forced marriage, about the difference between forced and arranged marriages, about the human rights of all people with regard to marriage, and about supports that are available to people, mostly girls and young women, who are facing forced marriage.

b. ACRATH urges the Inquiry to recommend that the pressing need for community education on the issue of forced marriage is addressed.

Following the AGD grant to ACRATH to produce curriculum materials on forced marriage for Australian schools, the resulting kit was trialled in 9 schools, and ACRATH was convinced that much more work needs to be done

- i. to ensure all schools with vulnerable populations promote this awareness raising with their students. ACRATH has been surprised at the reticence of

schools, particularly schools with vulnerable student populations, to engage with the project.

- ii. to ensure young people, especially girls and young women, know their rights to refuse to be forced into a marriage. ACRATH has asked the AGD to continue forced marriage awareness raising funding for a minimum of a further two years in order to grapple with this need for awareness raising. ACRATH is concerned that as school communities face the impact of this new Australian law, teachers need focussed professional development and support, school welfare staff need professional development, and school leadership needs awareness raising and support. One experienced ACRATH ex-principal likened the introduction into schools of forced marriage units of study with the introduction in the 1970s of sex education; the ex-principal commented that it took a number of years for school communities to accept the sex education material and to be able to face challenges of students self-identifying and asking for support. ACRATH believes the same challenges are being faced now with the beginning of an introduction of forced marriage units of study: school leadership is nervous, school parents are wary, school welfare staff are unsure of what support they can offer, and teachers feel unsure of the new territory. ACRATH is convinced now, after our 18 month pilot project that teacher training is essential; we had originally thought to make the ACRATH generated kit available to all from our website.
- iii. to ensure the wide range of communities in Australia vulnerable to forced marriage know the March 2013 Australian law. ACRATH knows of a number of community leaders who were surprised to hear that the law existed and were not convinced that this was the business of Australian law makers. Clearly the need for community education is pressing.
- iv. to ensure that there are readily available and responsive long-term alternatives for housing and support for young people who want to escape a family plan for a forced marriage. ACRATH knows of a teenager who asked for help to avoid a forced marriage, but when she experienced the inadequate housing response, she said she would prefer to go home and accept the forced marriage!

ACRATH has on several occasions heard of a girl or young woman who is facing a forced marriage and has turned to someone who might be expected to help them (a teacher, a member of the police force, a medico); ACRATH is dismayed that on several occasions appropriate assistance has not been forthcoming, often because the potentially helpful person did not know the law and the available supports. We call on this Inquiry to address this shortcoming and ensure that the need for appropriate community education is addressed.

- c. **ACRATH is advocating for a Pilot Project for flexible entry to the Support for Trafficked People Program**, delivered by the Red Cross. ACRATH believes that the young people, predominantly girls and young women, who are facing forced marriage in Australia, need access to quality Support Services without agreeing to testify against those arranging their forced marriage, very often their family members. Currently referral to the Support Program is by the AFP. ACRATH proposes a flexible entry pilot project with referrals by certified agencies, including DIBP, the Red Cross, and a few registered NGOs. Since 2006 ACRATH & other NGOs have been asking for a flexible entry to the Support for Trafficked People Program for **all trafficked people**, but this year we are asking for flexible entry **only for those facing a forced marriage**. We believe we have a strong chance of achieving this.
- d. **ACRATH asks that forced marriage is included in the definition of family violence in Australia**, and that family violence workers are trained to recognise forced marriage and to know what they can do to support people, mostly young women, who are facing a forced marriage.
- ACRATH, in giving presentations on human trafficking at secondary schools and tertiary institutions across Australia, has become keenly aware of the issue of forced marriage. ACRATH is keen to see that the issue is addressed within the family violence sector. We have learned from the family violence sector because of this sector's vast experience in victim/survivor care, community education and development of resources.
- Our experience is that forced marriage is little understood in Australia. And often it is not seen as an aspect of family violence. We call on this Inquiry to address this shortcoming and to ensure that in Australia forced marriage is, from now on, seen as an aspect of our national work to address family violence.

3. Slavery-free supply chains

- a. **ACRATH asks that the Australian Government endorse and implement the *UN Guiding Principles on Business and Human Rights* (UNGPs)** through a National Action Plan on Business and Human Rights.
- b. **ACRATH asks that the Australian Government implement a communication and awareness strategy** on slavery-free supply chains as part of a comprehensive suite of other policy and legislative initiatives.

4. Support for people trafficked into Australia whose circumstances make them vulnerable to ‘falling between the cracks’

a. Background to ACRATH’s work with people who have been trafficked into Australia.

As part of our program, ACRATH volunteers act as a companion to trafficked women and their children; in the last 6 months of 2015 ACRATH provided support to about 21 women and their children. Some of these women have been supported by an ACRATH volunteer for over 7 years. ACRATH has a detailed and on-the-ground knowledge of many of the experiences of women trafficked into Australia. We also have some understanding of the complexity of the problems experienced by the women and children we work with.

b. ACRATH urges this Inquiry to recommend a speedy and compassionate response to women who might otherwise ‘fall between the cracks’

Waiting seven years for her situation to be clarified and living all that time in uncertainty is a huge pressure on one of the women we support; it is a severe strain on mental well-being. ACRATH wants this Inquiry to recommend that the tiny number of women in this situation have their cases heard speedily and with compassion, that permanent residency is granted so that women can get on with their lives.

c. ACRATH urges this Inquiry to recommend the establishment of a

federally-funded Crimes Compensation Tribunal to ensure people who are trafficked into Australia have financial compensation to assist them to begin on a new path in their lives. ACRATH also notes that a number of trafficked people who have sought Victims of Crime Assistance in Victoria have commented positively on the experience of having an official Australian magistrate accepting that a crime has been committed against them; victims need to hear that they are victims of a crime. All too often ACRATH hears people who have been trafficked into Australia blaming themselves instead of naming the crime that was committed against them.

5. Prevention of human trafficking through effective and generous provision of Overseas Development Assistance (ODA)

- a. It is essential Australia honours its commitment to the Sustainable Development Goals (SDGs) and commits to an aid budget of at least 0.7% of GNI.** It is essential that a holistic approach be taken to combat trafficking in persons that addresses these underlying factors, and this includes setting considerable foreign aid targets. Australian aid can assist and help improve education for girls, healthcare and access to basic services, and in turn reduce the number of young women and men vulnerable to trafficking. Australia's Overseas Development Assistance is also vital for the continuation of counter human trafficking initiatives and projects of ACRATH's partner organisations, particularly throughout the Asia Pacific region.
- b. ACRATH would like to express our deep concern regarding the Federal government's cuts to Overseas Development Assistance, with a further \$224 million forecast to be cut from the aid budget in 2016 (Caritas, 2016).**
- c. Many people across the Asia Pacific region are vulnerable to human trafficking. Two ACRATH colleagues from Nepal drew our attention to the vulnerability of children in Nepalese Children's Homes; many of these Homes are unregistered, and children from these Homes, especially girls, are suspected to have been trafficked into sexual exploitation. In 2015, many victims and survivors of Nepal's Earthquake became subject to sexual and domestic violence and were vulnerable to trafficking due to poor security conditions, displacement of communities, temporary shelters and other risk factors. As well as natural disasters, war, conflict, climate change, poverty, inequality and lack of employment also render people vulnerable to human trafficking. The managers of emergency aid from Australia must view the receiver communities of the aid in the disaster areas through a human trafficking lens.**

6. The establishment of an independent Anti-Trafficking Commissioner, similar to the one in the USA.

The proposed Anti-Slavery Commissioner/Anti-Trafficking Commissioner would:

1. exercise statutory powers to collect and request data and information on trafficking;
2. co-ordinate functions between government departments on a national and state level;
3. monitor trends and assess the impact of policies and legislation relevant to trafficking;
4. submit annual reports to Parliament with findings and recommendations. These reports should be publicly available;
5. develop accredited training packages;
6. advocate generally for victims of trafficking; and
7. potentially, undertake inquiries into trafficking cases which raise issues of public policy.

For the Anti-Slavery Commissioner to be effective, the Commissioner must be independent from Government and accountable to Parliament. This is especially significant given the recent downsizing of the Crimes Against the Person Section of the Australian Attorney-General's Department, the Section that has for many years lead an exemplary inter departmental and collegial anti trafficking Australian response. ACRATH maintains that staff numbers co-ordinating the Australian government response to human trafficking should not be vulnerable to capricious downsizing; ACRATH maintains that any downsizing will have deleterious effects on the ability of the Australian government and community to eliminate human trafficking in our country. ACRATH believes that an independent Anti-Slavery Commissioner would not be so vulnerable to staffing cuts.

ACRATH thanks the Inquiry for this opportunity to make a submission on these significant matters. We would be happy to provide any further input should that be of assistance.

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