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ADDITIONAL NOTES

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From ACRATH (Aust Catholic Religious Against Trafficking in Humans)

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Significant updates:

1. Funding

Several NGOs have received three consecutive three-year grants from the Commonwealth Attorney-General's Department. This funding expires in June 2017 and the federal government has repeatedly refused to acknowledge the ongoing need to re-fund these and other NGOs. While continued funding is uncertain, the unfortunate reality is that the counter trafficking work of NGOs in Australia is ever-expanding. This is a most pressing need for ACRATH.

2. A significant change is the focus on victims of forced marriage.

NGOs are concerned that while the number of investigations by the AFP has grown significantly, there is little action by the Australian government to fund the victim protection, awareness raising and prevention work of NGOs.

Through our ACRATH extensive work in schools across Australia, we realised that there are three groups of young women who could be described as being subject to forced marriage.

- The first are young women brought to Australia to marry who, on arriving in Australia, discover that the marriage they are entering into is not what they had agreed to and is not a real marriage.
- Second are young women taken to their parents' country of origin to marry against their will.
- Third are young women, often Australian citizens or permanent residents, who are forced to marry in Australia.

Our experience is that forced marriage is little understood in Australia and often is not seen as an aspect of family violence. Our plan is to address this shortcoming and to ensure that from now on, forced marriage is seen across Australia as an aspect of Australia's work to address family violence. The NGOs working in this space need financial support to do this work.

ACRATH insists we need to ensure that there are readily available and responsive **long-term alternatives for housing and support** for young people who are being pressured by family into a forced marriage. We know 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. This gap in federal government provided housing and support is of particular concern because state-based child protection is unable to address the needs of this emerging group.

We are also advocating for a pilot project for **flexible entry to the Support for Trafficked People Program**, delivered by the Red Cross. Currently people are referred to the Support Program by the Australian Federal Police. We believe that the young people who are facing forced marriage in Australia need access to long term quality support services without being obliged to testify against those arranging their forced marriage. These young people, predominantly girls and young women, are not surprisingly often unwilling to testify against their family members. ACRATH proposes a flexible entry

pilot project with referrals by certified agencies, including the Department of Immigration, the Red Cross and a few registered NGOs. From 2006 ACRATH and other NGOs asked for flexible entry to the Support for Trafficked People Program for all trafficked people, but in 2015 we amended this request and are proposing flexible entry to the Support Program for those facing a forced marriage. The hope is that this more limited proposal is likely to be more palatable to government. Providing such support could in fact prevent a forced marriage from occurring.

ACRATH also asks that forced marriage be **included in the definition of family violence** in Australia, and that family violence workers be trained to recognise forced marriage and to know what they can do to support young people who are facing a forced marriage.

As a result of our presentations on human trafficking at secondary schools and tertiary institutions across Australia, we have come to the conclusion that the issue of forced marriage can and should be addressed within the family violence sector, which has a great deal to teach from its vast experience in victim/survivor care, community education and development of resources.

Specifically on the issue of **awareness raising on forced marriage**, ACRATH raised this with the federal Attorney-General's Department, and in mid-2014 were awarded a Commonwealth grant to run a pilot project raising awareness of forced marriage in school communities. In 2015 we rolled out that pilot project in nine government and Catholic schools in Victoria, New South Wales and South Australia. The pilot project was successful and now there is an urgent need to fund a roll out of a follow up nation-wide awareness raising project.

Over recent years ACRATH has given many presentations about trafficking to young people around Australia in both secondary and tertiary institutions and to people officiating at marriages. These engagements tell us that there is a great deal of ignorance about the issue of forced marriage, the difference between forced and arranged marriages, the human rights of all people with regard to marriage, and the support that is available to people, mostly girls and young women, who are facing forced marriage.

Our members have worked energetically with many networks and NGOs who bring their considerable expertise in cultural sensitivity, community engagement, family violence prevention and the provision of sensitively targeted support services for those subject to forced marriage.

ACRATH urges the federal government to recognise the pressing need for community education about forced marriage.

There is a need for all marriage celebrants, including priests and ministers of religion, to receive material on forced marriage to ensure they can detect a forced marriage and then know what they can do to assist.

The 2014 departmental grant enabled us to produce curriculum materials on forced marriage for Australian schools. The resulting kit, available at <https://www.mybluesky.org.au/wp->

<content/uploads/2016/04/ACRATH-School-Curriculum-Kit-2016-1.pdf> , was trialled in nine schools, and we became convinced that much more work needs to be done.

First, it is important to ensure all schools with vulnerable populations **promote this awareness in their school communities**. We have noted hesitation on the part of many schools, particularly those with vulnerable student populations, to engage with the project. We want to assist those schools to find a path through their concerns.

As school communities come to terms with this new legislation and units of study on forced marriage are being introduced, there are challenges to be faced. 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. After our 18-month pilot project, we are convinced that teacher training is essential so teachers can use the unit of study with care and cultural sensitivity. Teachers need focused professional development and support, school welfare staff need professional development, and school leadership and parents need awareness-raising and support.

Second, it is vital to ensure young people, especially girls and young women, **know their rights to refuse to be forced into a marriage**. ACRATH has asked the Attorney-General's Department to continue funding to raise awareness of forced marriage for at least another two years in order to meet this need. One experienced ACRATH ex-principal likened the introduction into schools of forced marriage units of study to the introduction in the 1970s of sex education; she commented that it took a number of years for school communities to accept the sex education material and to be able to face the challenges of teaching the material and offering support to students who need it. ACRATH believes the same challenges are being faced now that units of study on forced marriage are being introduced.

Once teachers, welfare staff, school leadership and parents have undertaken the available online training, we believe they will be well equipped to introduce into their school the ACRATH-developed curriculum resource *My Rights – My Future: Forced Marriage Kit for Australian Secondary Schools*.ⁱ

Third, there is a need to ensure that **all communities** in Australia vulnerable to forced marriage **know of the existence of the 2013 legislative changes**. We know 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 lawmakers. Clearly the need for community education, especially for newly arrived communities, is pressing.

Often in the past we heard of a girl or young woman who was facing a forced marriage and had turned to someone who might be expected to help them – a teacher, a police officer or a doctor. We were dismayed to hear that on several occasions appropriate assistance was not forthcoming, often because the person who was asked for help did not know the law and the available supports. We now work to address this shortcoming and to ensure that the need for appropriate community education is addressed.

3. A further significant change is the severe cuts to Overseas Development Assistance (ODA)

It is a matter of deep concern that the Australian government has made such severe cuts to the Overseas Development Assistance (ODA) program that can assist to address the evils of human trafficking in our international spheres of influence. The 2016 Federal Budget announced a further \$224 million cut in ODA. In 2016, 0.25 per cent of GNI, which is 25 cents in every \$100 in tax revenue earned, is given to foreign aid. ACRATH believes this is the lowest level of foreign aid ever recorded.

4. A third significant change is the growing realization of the extent of overseas worker exploitation and the growing need for federal government action

At presentations across Australia, participants speak over and over again of forced and exploited overseas workers. These workers may be on building sites or in agricultural work or in boxing rings, in abattoirs or in convenience stores or in domestic work in diplomatic households or private homes. They may be in massage parlours or brothels. Forced and exploited overseas workers in these settings have a common story: they arrive in Australia with high hopes of working for an Australian wage, but then they experience severe exploitation. Some have their passports taken, some are tricked into visa fraud, some are intimidated; some receive no wages and some are grossly underpaid. Of course this is not the experience of all overseas workers in Australia; this is the experience of people who have had a crime committed against them.

ACRATH was heartened to see some of these issues included in the *2016 Trafficking In Persons (TIP) Report* researched and published by the US Department of State. ACRATH is concerned though that while the Australian media report more and more instances of forced and exploited overseas workers, the federal government is moving too slowly to address the issue.

The Federal Government has established a Labour Exploitation Working Group that is to examine forced labour and human trafficking in workplaces across Australia and make recommendations to the Minister for Justice on possible actions the government could take. The Working Group, set up from the National Roundtable on Human Trafficking and Slavery, is made up of representatives of civil society, academics and government. It will report back to the government later in 2017. The Working Group was an acknowledgement by the Federal Government of the size of the issues of labour trafficking and forced labour in Australia.

The Federal Government has set up a Migrant Worker Taskforce to examine the wider issue of exploitation of migrant workers in Australia. The Taskforce has a wider set of terms of reference than the Working Group above, in that it is to consider all forms of exploitation of migrant workers (not just human trafficking and forced labour). The Taskforce is chaired by Professor Allan Fels AO with Dr David Cousins AM as Deputy Chair and is made up of representatives of different relevant parts of government.¹ The Taskforce will run for 18 months and make recommendations to government on measures to curb exploitation of migrant workers.

¹ <https://www.employment.gov.au/migrant-workers-taskforce>

The Federal Government is consulting on measures to improve the ability of the Fair Work Ombudsman to prosecute employers who exploit migrant workers and hold responsible those further up the employment chain. This includes increased penalties for employers who fail to keep pay records or make false wage records.² These measures are relevant to human trafficking, as most cases of labour trafficking in Australia continue to be treated as civil matters where the only actions are possible recovery of underpaid wages and a fine on the employer.

A key deficiency is that most human trafficking and forced labour cases in Australia are treated only as violations of employment law, the *Fair Work Act*, and thus those responsible for the trafficking and forced labour are only subject to civil penalties. They may have to repay wages that were illegally denied to the people working for them and may be subject to a fine, which increases in severity based on the number of times the employer is caught. This leads to a situation where human traffickers are able to continue in their abusive behavior, knowing fines are the only penalties they face.

Part of the reason for this is that the application of the human trafficking offences by the Australian Federal Police would appear to be reserved for the most severe cases, which in turn may be driven by an expectation on behalf of the police that the courts will only accept severe cases of human trafficking as being offences under the human trafficking and forced labour offences under the Criminal Code.

The Fair Work Ombudsman, which is the regulator to enforce the *Fair Work Act*, is grossly under-resourced compared to the number of cases of illegal exploitation of people who are working in Australia from overseas. One person working in Australia from overseas alleged that a Fair Work Ombudsman staff person actively discouraged them from making a complaint about a second employer who had grossly exploited them after they lodged a complaint against their current employer. This appeared to be due to the heavy workload of that Fair Work Ombudsman staff person.

In the 2015-2016 financial year the Fair Work Ombudsman assisted 11,150 people to recover wages they had been illegally cheated by their employer out of 29,900 people who made complaint about alleged non-compliance with the *Fair Work Act*.³ This included 1,894 people from overseas on visas with work rights who collectively had \$3,087,133 recovered (or \$1,629 per person).⁴ The Fair Work Ombudsman is hampered by only having the resources to conduct 50 litigation cases a year, as demonstrated by the fact it was exactly 50 cases that were undertaken in the 2014-2015 financial year and 50 cases again in the 2015-2016 financial year.⁵

The Government runs a Seasonal Worker Program under an agreement with governments in the Pacific. The Program ideally allows people to come in from Timor Leste and the Pacific and work on Australian farms and in hospitality, filling jobs that it has not been possible to find Australian citizens to do, and the worker returns home after six months with money for themselves and their family. However, we and trade unions encounter cases under the Program where the people from the Pacific are exploited, often

² The details of the measures can be found here <https://www.liberal.org.au/latest-news/2016/05/19/protecting-vulnerable-workers-australia>

³ <https://www.fairwork.gov.au/annual-report/02-performance-report/compliance-and-enforcement-activities>

⁴ <https://www.fairwork.gov.au/annual-report/02-performance-report/compliance-and-enforcement-activities>

⁵ <https://www.fairwork.gov.au/annual-report/02-performance-report/enforcement-outcomes>

through substantial overcharging on accommodation or travel costs, despite efforts by the Department of Employment to stop such exploitation. In our view, some of these cases are clear human trafficking.

There are a number of design flaws in this Program that fail to protect victims of trafficking and inform law enforcement of their exploitation. Firstly, most of the people who want to come on the Program wish to be able to come back again for future seasons. The ability to return is entirely at the discretion of the employer to whom the person from the Pacific is effectively bonded. People on the Program subject to exploitation fear the employer will have them immediately removed and they will not be able to return. People on the Program report such direct threats being made. People on the Program also report subtle intimidation to stop them having contact with unions.

Unions and NGOs often do not report cases of trafficking on the Program because the people working on the Program ask them not to, as they fear being immediately removed from Australia and being denied the ability to return.

We are aware of cases where people who have complained about being exploited with inflated accommodation charges have then been excluded from subsequent seasons on the Program at the discretion of the employer.

There have been cases where the Department has detected the exploitation and required the employer to correct it and the employer has then inflicted retaliatory action on the people working for them on the suspicion one of them must have reported the employer to the Department.

The above matters have been raised with the government, but we are unaware of any plans to address these matters and allow people who are being exploited to report the exploitation without being at risk of retaliatory action.

We are also advocating against **overly hasty repatriation of overseas workers and non-payment of back wages**. To give only one example: in 2014, Federal Police and other agencies raided a market gardening operation in Carabooda WA seeking evidence of money laundering. Approximately 160 overseas workers were found there and taken to Yongah Hill Detention Centre before being deported. They did not receive any back wages and ACRATH believes no attempt was made to establish if they had been trafficked or otherwise exploited.ⁱⁱ We are most concerned at such cursory response and we see this as an issue of justice for the workers concerned. All investigations like the one in Carabooda should take account of the possibility that the overseas workers have experienced forced labour. Such a policy change would also be a deterrent for would-be exploitative employers by making them financially liable for potentially huge back wages bills.

The 2016 media attention on 7-Eleven's dramatic and systematic underpayment of workers also raises the issue of deportation; some workers who came forward face deportation for breaking their visa conditions.

It is also important to note that one of the goals in the Australian National Action Plan to Combat Human Trafficking and Slavery reads: 'Ensure trafficked people are not detained, charged or prosecuted for status-related offences, or held in immigration detention.'⁶

Labour hire businesses in some business sectors, such as agriculture and food processing, remain a significant risk of contributing to human trafficking and forced labour. In Australia there are no national licensing requirements for labour hire businesses, making it easy for a person to set up such a business to traffick people into Australia for the purposes of exploitation and then shut up the company and disappear if law enforcement starts to investigate. A new labour hire business then can be set up by a relative or an associate.

Such phoenix activity was pointed to in a 2012 report by PwC commissioned by the Fair Work Ombudsman, which noted that "Stakeholders highlighted that phoenix activity is a significant issue in the labour hire industry (where companies provide labour to other companies on a contract basis)."⁷ PwC was unable to investigate the level of phoenix activity by labour hire businesses as they found "there is no reliable data on the number of operators or employees in the industry."⁸

The Victorian State Government has promised to introduce a licensing scheme for labour hire businesses operating in that state.⁹ It is clear that this needs to be a federal government initiative to cover the rights of overseas workers right across Australia.

5. A further significant point to make is the need for an independent Australian Anti-Trafficking Commissioner

Currently the AGD has the lead in government anti-trafficking efforts. ACRATH has joined Anti-Slavery Australia and other NGOs in calling for an independent Australian Anti-Trafficking Commissioner. <http://www.antislavery.org.au/newsflash/275-the-case-for-an-anti-slavery-and-trafficking-commissioner-policy-paper-by-anti-slavery-australia.html> We maintain that to be effective, such an office must be independent from government and accountable to parliament. This is especially urgent since the Counter-Trafficking Section of the Australian Attorney-General's Department was dramatically downsized in late 2015. For many years this section had been exemplary in coordinating government departments and NGOs in an anti-trafficking response in Australia.

We propose that an Australian Anti-Trafficking Commissioner would be similar to the United Kingdom's Independent Anti-Slavery Commissioner, which was established by an Act of Parliament to prevent, detect, investigate and prosecute slavery and human trafficking offences and to identify victims. Public

⁶ Commonwealth of Australia, 'National Action Plan to Combat Human Trafficking and Slavery 2015–2019', <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>, accessed 17 August 2016.

⁷ PwC, 'Phoenix activity. Sizing the problem and matching solutions', June 2012, p. 17.

⁸ PwC, 'Phoenix activity. Sizing the problem and matching solutions', June 2012, p. 17.

⁹ <http://www.vic.gov.au/news/inquiry-into-the-labour-hire-industry-and-insecure-work-b.html>

authorities in the UK have a duty to cooperate with the Commissioner, who has an advisory panel which we believe includes the Chancellor of the Pontifical Academy of Sciences and Pontifical Academy of Social Sciences.

We envisage an Australian **Anti-Trafficking Commissioner** who would have statutory powers to collect and request data and information on trafficking and coordinate government departments on a national and state level. The Commissioner would monitor trends and assess the impact of policies and legislation relevant to trafficking and submit annual reports to parliament with findings and recommendations. These reports should be publicly available. In addition, the Commissioner would develop accredited training packages, advocate generally for victims of trafficking and, potentially,

6. Speedy resolution for people who fall through the cracks

As part of our strategic plan, ACRATH volunteers act as companions to trafficked women and their children. In the first six months of 2016, our members offered informal support and companionship to 22 people who have been trafficked into Australia and 21 of their children. Members offering companionship help trafficked people to access medical and dental services and to find financial support to purchase school uniforms, pay for training courses and subsidise housing utility costs and food. Some of the women trafficked into Australia have been supported by ACRATH members for more than eight years, so we have detailed practical knowledge of many of their experiences. We also have some understanding of the complexity of the problems experienced by the women and children to whom we offer companionship.

We advocate a speedy and compassionate response to women who might otherwise ‘fall through the cracks’. One of the women we support had been waiting eight years for her situation to be clarified. Living all that time in uncertainty was a huge pressure on her and a severe strain on her mental wellbeing. In late 2016 she was offered permanent residency. We urge that the tiny number of women in this situation have their cases heard speedily and with compassion, and that they be granted permanent residency so that they can get on with their lives. Anti-Slavery Australia’s paper puts this proposal <http://www.antislavery.org.au/images/policy%20position%20paper%20-%20visas%20for%20trafficked%20people%20-%20final%20v2.pdf>

We also wish to note that family reunification is an important part of the healing process for people who have been trafficked.
