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Submission to the Senate Inquiry into the Welfare of International Students

The Anti-Slavery Project (ASP) is a research and legal centre in the Faculty of Law at the University of Technology, Sydney (UTS). The ASP provides legal advice, representation and social support to trafficked and enslaved people, undertakes academic research and engages a broad audience of client, community and government stakeholders in activities aimed at ending violence, exploitation and injustice.

Human rights

The ASP made a submission to the National Human Rights Consultation on 15 June this year and that submission is attached here. Recommendations made to the Consultation about the right to be free from forced labour and similar practices, the protection of migrant workers and significance of rights-based education may be of interests to the Committee.

Our core recommendations to the National Consultation on Human Rights were to:

- 1. Introduce an Australian Human Rights Act that protects human rights of everyone in Australia's jurisdiction, regardless of their immigration status. This Act should include protection for the right to be free from slavery, servitude, forced labour and other practices similar to slavery.**
- 2. Increase the use of human rights education to raise understanding and awareness of important human rights issues like forced labour, trafficking, and the rights of migrant workers. Rights-based education should focus on engaging people who have little or no access to information about their rights and how to exercise those rights.**

We believe that these recommendations are relevant to the Committee's inquiry into student welfare. Everyone in Australia, regardless of immigration status, should have their human rights protected. Rights-based education will promote access and certainty about rights and remedies in Australia.

Importance of increased awareness about rights, responsibilities and avenues for redress in Australia

We believe that better awareness of foreign students and education providers about their rights and responsibilities, Australian workplace and anti-discrimination laws, the role of law enforcement agencies and the role of the Fair Work Ombudsman (and state authorities) will go part of the way towards ensuring better awareness and appropriate compliance of both students and providers.

International student clearinghouse

Many international students have complex needs and there are a range of relevant agencies with jurisdiction to inquire into complaints and provide remedies. For example, the Department of Immigration and Citizenship may investigate issues around visa integrity, or the Fair Work Ombudsman may take action to restore work place entitlements. The Committee may wish to consider recommending the establishment of an international student information agency to draw together agencies already engaged in investigation of complaints and provide information about these agencies and activities to international students through a central body. International students should be given clear appropriate information about relevant agencies and complaints processes at the time of visa grant.

Twenty hours work restriction

International students are subject to a 20 hour per week work limitation during tuition periods. The policy reason behind the 20 hour work restriction is that students should be available to study conscientiously and with commitment and that the primary purpose of the student visa is for study, and that the visa should not be primarily a vehicle for employment in Australia.

Anecdotal reports indicate that some students feel compelled to work more than 20 hours per week during term time for a range of reasons including high student fees, unforeseen family or personal debts, increasing family expectations that the student will send money home, and unexpectedly high rental and living costs. A consequence of breaching the 20 hour per week work limitation is that students may be subject to serious sanctions, such as visa cancellation and possibly removal from Australia. While we do not in any way endorse students' working in excess of their visa entitlement, we note that where students feel compelled to work additional hours, they are then likely to undertake informal and often exploitative work.

Students in breach of a visa condition are unlikely to report an exploitative employer to authorities. We suggest consideration of whether that a more appropriate path would be lifting the work restriction, alongside the requirement that students meet course (including attendance) requirements. This would 'formalise' the informal

foreign student workforce as well as forcing students to engage with their studies at a certain level.

The 900 hour work experience requirement

Anecdotal reports indicate that the 900 hour work experience requirement mandated by Trades Recognition Australia (TRA) through “Pathway E” to permanent residence (the Australian Qualification pathway for courses of under 18 months duration completed in Australia) may lead to exploitation.

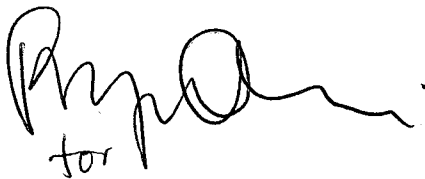
We suggest that more could be done to prevent the exploitation of foreign students seeking permanent residence through Pathway E by regulating workplaces engaged in supervision of foreign students for TRA assessment (**TRA work experience providers**). Measures that could be considered by the Australian Government include:

- ‘formalising’ TRA work experience (such as pre-approval, a formal register and regular inspection of TRA work experience providers), and
- better education of foreign students and TRA work experience providers about their rights and responsibilities in relation to TRA work experience as well as education about Australian workplace and anti-discrimination laws, and the role of the Fair Work Ombudsman (and state authorities)

Thank you for the opportunity to make a submission to this important Inquiry. For further information about this submission, please contact:

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Yours sincerely



for

The Anti-Slavery Project

THE ANTI-SLAVERY PROJECT

LAW FACULTY
UNIVERSITY OF TECHNOLOGY SYDNEY

SUBMISSION TO
THE NATIONAL HUMAN RIGHTS
CONSULTATION

15 JUNE 2009

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Acknowledgements

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*Frances Simmons was involved in preparing this submission in her private capacity, not in her professional capacity as a lawyer at the Australian Human Rights Commission.

1 Why is the Anti-Slavery Project making this submission?

The Anti-Slavery Project at the University Technology Sydney Law Faculty is dedicated to eliminating all forms of trafficking and slavery through direct service and advocacy programs. We provide legal advice and representation to trafficked people and advocate for changes to laws and policies that will improve the protection of the rights of people who have been trafficked or enslaved.

At the Anti-Slavery Project we know that not everybody in Australia enjoys the rights and freedoms that most of us take for granted. The Anti-Slavery Project is making this submission because our clients see a different side of Australia. People who are trafficked to Australia or find themselves enslaved suffer human rights violations that many people in Australia believe are a thing of the past.

Our experience is that members of the public are often surprised to learn that human rights abuses such as trafficking, slavery, sexual servitude, debt bondage and forced labour occur in 21st century Australia. Many of our clients are unaware of their rights under Australian law. We are concerned that these gaps in Australia's understanding and awareness of all forms of trafficking create the risk that we will miss opportunities to identify people who have been trafficked and enslaved.

Although slavery, sexual servitude, and trafficking are already prohibited by the Commonwealth Criminal Code, criminal sanctions alone are not sufficient to prevent these practices or protect their victims. Instead, we need to develop more effective strategies to tackle the human rights issues that make people vulnerable to trafficking and protect the rights of people who are trafficked. This means protecting and promoting civil and political and economic, social and cultural rights.

This submission assesses Australia's response to trafficking and slavery against international human rights standards.¹ In our view, some of the weaknesses in Australia's response to trafficking could have been avoided by paying attention to the human rights of trafficked people during the formulation of Australia's anti-trafficking strategy.²

This is why the Anti-Slavery Project supports introducing an Australian Human Rights Act. A Human Rights Act will make sure more attention is paid to human rights during the law and policy making process and in the delivery of support services to vulnerable people. Changing the way law and policy makers think about rights is a vital step to creating better outcomes for vulnerable people.

To be effective an Australian Human Rights Act must be accompanied by appropriate funding and rights-based education. Developing effective education programs is vital because informing people about how to exercise their rights is the first step towards enabling people who have experience human rights violations to seek an effective remedy.

The recommendations made in this submission are informed by the Anti-Slavery Project's ongoing work with people who have been trafficked. We currently have over 50 clients and the stories of these women and men appear throughout this submission. In every story a pseudonym is used to protect the identity of the person. Every person whose story appears in this submission has consented to tell their story to the Consultation.

2 What can Australia do better?

Australia's response to trafficking would benefit from placing a greater emphasis on protecting the rights of trafficking people. Unless human rights are at the centre of Australia's efforts to combat trafficking, we will fail to address the root causes of trafficking or provide sufficient support for trafficked people to recover from their experiences. In the absence of a clear framework for developing law and policy consistently with human rights, Australia's response to trafficking has sometimes paid insufficient attention to protecting the rights of trafficked people.

This submission recommends reforming the framework for victim support and visas to provide better protection for trafficked people and improving services for victims. It highlights the potential of rights based education both to encourage people who have been trafficked to exercise their legal rights, and to raise awareness of trafficking within the broader community. We urge the Consultation to recognise that people trafficking, slavery, sexual servitude, forced labour and forced marriage are violations of human rights that occur in 21st century Australia and, that as victims of crime, people who are trafficked can benefit from stronger human rights protection.

Our core recommendations to the Consultation are:

- 1. Introduce an Australian Human Rights Act that protects human rights of everyone in Australia's jurisdiction, regardless of their immigration status. This Act should include protection for the right to be free from slavery, servitude, forced labour and other practices similar to slavery.**
- 2. Increase the use of human rights education to raise understanding and awareness of important human rights issues like forced labour, trafficking, and the rights of migrant workers. Rights-based education should focus on engaging people who have little or no access to information about their rights and how to exercise those rights.**

The Anti-Slavery Project's specific recommendations about how to improve Australia's response to trafficking are set out in **Appendix A**.

3 Slavery and trafficking in 21st century Australia

The stories of people who have been trafficked to Australia often do not fit stereotypes about slavery or trafficking. Many Australians believe human rights abuses like slavery are consigned to the history books.³ However, as the High Court of Australia confirmed in the landmark case of the *Queen v Tang*⁴ slavery is a reality in 21st century Australia.

Suspected trafficking victims who have been identified by the Australian Federal Police may not be kept under lock and key 'kidnapped from their home villages, held at gunpoint or chained to beds'.⁵ Instead they may be effectively controlled through the confiscation of travel documents, threats of violence, fear of being reported to authorities and social, cultural and physical isolation. Trafficked people are non-citizens and sometimes in Australia without a valid visa. Traffickers may retain control over their victims by frightening them about the consequences of being identified by immigration officials.

Australia is a destination country for victims of trafficking. So far most of the known cases of trafficking to Australia involve the trafficking of women for sexual exploitation. Until recently, there has been little focus on other forms of labour trafficking (a pattern largely reflected throughout the developed world).⁶ However, as the case study below shows, trafficking can occur in any industry.

Case Study - *I lost my job in my home country when the factory I worked in closed down. A friend introduced me to a man who said that he had a small factory in Australia. He said that he would pay me a lot of money to work in his factory. Although it was a hard decision to leave my family, I decided to come to Australia for 2 or 3 years, to earn money. I wanted my family to have a better life. I needed to work and I couldn't get a job in my country.*

As soon as I arrived in Australia, my 'boss' took my passport away. For more than a year, I worked every day in the factory, for 12 or 13 hours. I was not paid a wage and I was not allowed to go outside. For the first couple of months, my boss sent a small amount of money to my family, but then he stopped. I was verbally and psychologically abused. My boss said that if I tried to escape he would kill my family. He said that if I tried to go home, he would find me and kill me. On a couple of occasions, I was physically beaten.

We do not know precisely how many people are trafficked to Australia each year and more research is needed to gain a more accurate picture of the problem. What we know is:

- Since January 2004, the Australian Federal Police Transnational Sexual Exploitation and Trafficking Team has undertaken more than 150 assessments and investigations of allegations of trafficking-related offences including slavery, deceptive recruiting and/or sexual servitude.⁷
- Between 2003 and November 2008, 34 people in Australia have been charged with trafficking related offences resulting in nine convictions.⁸
- Since 2004, 107 suspected trafficking victims have been placed on the government funded victim support program for trafficking victims.⁹ So far almost all the people who have been placed on the victim support program have been women who have been trafficked into the sex industry. Four people have been identified as having been trafficked to Australia for forced labour.

These figures must be treated cautiously: the number of people identified by law enforcement does not indicate the true nature of the extent of trafficking in Australia and may reflect the fact that, to date, most efforts to address trafficking have focused on trafficking for sexual servitude.¹⁰

The first critical step towards protecting the rights of people who have been trafficked to Australia is identifying these people as victims of trafficking. Failing to identify a trafficked person correctly 'is likely to result in a further denial of that person's rights'.¹¹ This is why we urge the Australian Government to develop best practice models for identifying and raising awareness of cases of labour trafficking, as well as trafficking for forced marriage and trafficking in children.

4 Why does Australia need to address trafficking and slavery in a human rights framework?

4.1 Overview of existing protection

Before 2003, trafficking victims who came into contact with Australian authorities were at risk of being placed in immigration detention before being removed to their country of origin.¹² Since then, Australia's response to trafficking has improved (a timeline of significant developments can be found at **Appendix A**). However, despite many improvements, Australia's response to trafficking has sometimes been undermined by a failure to pay sufficient attention to human rights. This section assesses Australia's response against international human rights standards and identifies gaps in our existing protection.

The 2004 *Australian Government's Action Plan to Eradicate Trafficking in Persons* Australia's response to trafficking had four key elements: prevention; detection and investigation; criminal prosecution; and victim support and rehabilitation. However, because this plan was formulated within a law enforcement framework, it did not provide sufficient protection for trafficked people.¹³ For example, under the plan access to victim support was contingent on trafficking victims being of interest or assistance to police investigations or prosecutions and there were no efforts to ensure trafficked people received information about the possibility of obtaining compensation.

The publication of the Action Plan was followed by the introduction of new offences which criminalised trafficking in persons¹⁴, trafficking in children,¹⁵ domestic trafficking in persons¹⁶ and debt bondage arrangements¹⁷ into the *Criminal Code Act 1995* (Cth) (the Criminal Code). Offences of slavery and sexual servitude were introduced in 1999. These reforms preceded Australia's ratification of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention on Transnational Crime* (The Trafficking Protocol) in September 2005.¹⁸

Although the focus of anti-trafficking efforts has been on the trafficking of women for sexual servitude, recently there have been significant efforts to improve Australia's understanding of other forms of labour trafficking.¹⁹ The Commonwealth Government Anti-Trafficking Strategy 2008 includes the following measures:

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- A dedicated Australian Federal Police team to investigate people trafficking operations and a *National Policing Strategy to Combat Trafficking in Women for Sexual Servitude*.
- Visa arrangements for potentially trafficked persons who are of interest or assistance to police. Holders of visas under this framework are eligible for victim support. This framework is currently under review.
- A targeted *Communication Awareness Strategy* providing information about trafficking and the help available. So far, this awareness strategy has not resulted in communication products designed to increase awareness of trafficking to industries other than the sex industry.
- Regional cooperation to combat people smuggling and trafficking in persons, and return and reintegration support for victims of trafficking returning to their countries of origin. There are also Senior Migration Officer Compliance positions in Thailand, China and the Philippines. Research into trafficking trends in the region, including labour trafficking, is being conducted by the Australian Institute of Criminology.
- Support, including funding, and training for the Commonwealth Director to Public Prosecutions to prosecute trafficking matters.

In 2007, a further \$38.3 million was allocated to anti-trafficking measures. In 2008 the Minister for Home Affairs established the National Roundtable on People Trafficking. This Roundtable brought together anti-trafficking NGOs, unions and employer groups to identify how to improve Australia's response to trafficking. The Anti-Slavery Project strongly supports these efforts to facilitate greater community participation by specialist NGOs in law and policy development.

A recent audit by the Australian National Audit Office (ANAO) of the effectiveness of Australia's response to trafficking concluded that the lack of proper measurement of the effectiveness of the Strategy means it is difficult to see how effective it is, and how many people are receiving the help they need. The ANAO recommended monitoring the percentage of victims willing to assist police, the percentage of people receiving victim support and the time victims remain in Australia on trafficking visas.²⁰

This type of monitoring is valuable. However, in assessing the effectiveness of Australia's response to trafficking we can not simply look at the operation of criminal legislation or the number of victims willing and able to assist police. These issues are important but they only reflect a law enforcement perspective. Instead, we need to actively seek out the views of service providers in Australia and in countries of origin and, where possible, people who have been trafficked, so we can measure the effectiveness of prevention strategies, victim protection measures, and efforts to rehabilitate and reintegrate trafficked people. This will help ensure that the evaluation of the effectiveness of Australia's response to trafficking reflects the experience of trafficked people.

In our view the failure to pay sufficient attention to the rights of trafficked people in the formulation of Australia's anti-trafficking strategy is the result of conceptualising trafficking as a law enforcement issue. One explanation for this focus is that the

Trafficking Protocol itself provides limited protection for victims of trafficking. As commentators have observed, the gaps in the Trafficking Protocol's protection of trafficked people can be filled by according trafficked people the full protection of rights recognised in international human rights instruments.²¹ However, because many of these instruments are not incorporated into Australian law or our process for making law and policy, these rights were sometimes overlooked in developing Australia's response to trafficking.

The 2009 report of UN Special Rapporteur on trafficking in persons observed that while the issue of trafficking 'can be considered from a number of different perspectives, including human rights, crime control, criminal justice, migration and labour [a]n integrated approach that places human rights at the core of all efforts is most desirable'.²² The Special Rapporteur identified the following rights as being particularly relevant to trafficked people:

Trafficking is a grave violation of human rights, in particular the right to liberty, human dignity, and the right not to be held in slavery or involuntary servitude. Moreover, as experience from round the world shows, trafficking is often related to a range of other fundamental human rights. The rights violated include, but are not limited to: the right to freedom from discrimination, right to life and security of person, right to human dignity, freedom from torture, inhuman or degrading treatment, right to recognition as a person before the law, right to freedom from arbitrary detention, right to access to justice, legal aid and representation, right to equal protection before the law, right to compensation and effective remedy, right to non-conditional assistance, right to privacy, right to freedom of movement, right to information and freedom of expression, right to freedom of association, right to be heard, right not to be held in slavery and freedom from forced or compulsory labour, right to just and favourable conditions of employment, right to remuneration, right to equal pay for equal work, right to marry, right to health, right to bodily integrity, right to reproductive self-determination, right to gender equality.²³

This international context informs the interpretation of laws which criminalise trafficking and slavery.²⁴ International human rights standards also provide the benchmark for assessing Australia's efforts to protect trafficked people who are identified in Australia and identify and address the conditions that give rise to trafficking. It is time to formally reassess and revise the *National Action Plan to Eradicate Trafficking in Persons* to make sure human rights are at the centre of our efforts to prevent trafficking and protect trafficked people.

4.2 Has Australia effectively implemented its obligations under the UN Trafficking Protocol?

Trafficking is a practice which always involves the abuse of human rights. *The Trafficking Protocol* defines trafficking in persons in article 3a as:

....the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁵

This definition has three critical elements. There must be an **action** which involves moving a person across or within borders (**the first element**); by **means** of the threat or use of force, coercion, deception, the abuse of power or a position of vulnerability²⁶ or the giving or receiving of payments or benefits to achieve the consent of a person having control over another (**the second element**); for the **purpose** of exploitation (**the third element**).

Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs. Consent becomes irrelevant where any of the means set out in article 3(a) of the Trafficking Protocol are used to obtain the victim's consent.²⁷ Children can never consent to be trafficked.²⁸

Section I of the Trafficking Protocol requires States to criminalise trafficking.²⁹ Section II contains provisions to protect trafficking victims. Most of these provisions are optional and, as a result, provide relatively weak protection. Under section II, State Parties should:

- Protect the privacy and identity of trafficking victims (in appropriate cases and to the extent possible under domestic law).³⁰
- Provide trafficking victims with information on legal proceedings and enable their views to be heard at appropriate stages during criminal proceedings.³¹
- Consider implementing measures to provide for the physical, psychological and social recovery of trafficking victims and endeavour to provide for the physical safety of trafficking victims within its territory.³²
- Ensure trafficking victims have the possibility of seeking compensation.³³
- Consider adopting measures that permit trafficking victims to remain in its territory, temporarily or, if appropriate, permanently.³⁴

Section III concerns 'Prevention, cooperation and other measures' and encourages State Parties to establish 'comprehensive policies and programs to prevent and combat trafficking' and protect trafficking victims from re-victimisation. State Parties must also endeavour to alleviate the factors such as poverty, underdevelopment and lack of equal opportunity that make people, especially women and children, vulnerable to trafficking.³⁵

Another important source of guidance is the UN Principles and Guidelines on Human Rights and Human Trafficking (the UN Principles and Guidelines).³⁶ These provide 'practical, rights-based policy guidance on the prevention of trafficking and the protection of trafficking victims'.³⁷ They recognize that 'violations of human rights are both a cause and a consequence of trafficking in persons' and, therefore, 'it is essential to place the protection of human rights at the centre of any measures taken to prevent and end trafficking'.

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The UN Principles and Guidelines provide that States shall criminalise trafficking and address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination. Trafficked persons should be protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care should not be made conditional on the capacity or willingness of the trafficked person to cooperate with legal proceedings. Safe and to the extent possible, voluntary repatriation shall be guaranteed. Legal alternatives should be available in cases where returning the trafficked person would put the person, or their family, in danger.

In 2005 trafficking offences were introduced to implement Australia's obligations under the Trafficking Protocol. However, the trafficking offences in the Criminal Code do not mirror language of the Trafficking Protocol. The trafficking in persons offences in the Criminal Code prohibit trafficking in persons by means of force or use of threats³⁸ or deception³⁹, or in circumstances where a person is reckless as to whether another person will be exploited regardless of the means used.⁴⁰ There are separate offences of trafficking in children⁴¹ and domestic trafficking.⁴²

The Anti-Slavery Project believes that it would be fruitful to review trafficking offences with the objective of identifying how they could better reflect the scope of Australia's obligations under the Trafficking Protocol and other international instruments prohibiting practices similar to slavery (see further section 4.4). This review should consider whether the trafficking offences in the Criminal Code should be amended to capture trafficking which occurs by means of: other forms of coercion; the abuse of power or of a position of vulnerability; or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

A review of the trafficking offences would also be an opportunity to consider whether the jurisdiction of trafficking offences is sufficiently broad. Trafficking offences fall within Category B jurisdiction.⁴³ This covers Australian citizens or Australian residents anywhere in the world, subject to a foreign law defence. This is a narrower category than category C, which covers anyone anywhere regardless of citizenship or residence, subject to a foreign law defence, and Category D (which covers anyone regardless of citizenship and residence).⁴⁴

Professor Bernadette McSherry has suggested that as a result of giving trafficking offences Category B jurisdiction 'the focus of prosecutions will be on Australian citizens and permanent residents working within Australia rather than on Australian citizens and foreign nationals working abroad to traffic people into Australia'.⁴⁵ We agree with Professor McSherry's assessment that trafficking offences should have Category C or D jurisdiction.

In 2005 a review of the trafficking offences was recommended by the Parliamentary Joint Committee on the Australian Crime Commission on the Inquiry into trafficking of women for sexual servitude recommendation to review trafficking offences. The Committee recommended this review consider providing the court with victim impact statements.⁴⁶ We support the introduction of victim impact statements for trafficking offences.⁴⁷ This reform would be consistent with art 6(2)(b) of the Trafficking Protocol

which requires State Parties to provide trafficking victims with assistance to enable their views to be heard at appropriate stages of criminal proceedings.⁴⁸

The issue of providing victim impact statement is tied to the broader question of whether federal victims of crime are sufficiently protected. Historically, many federal crimes were crimes committed against the State. However, in the last decade we have seen the introduction of crimes prohibiting transnational crimes such as trafficking and online grooming, exploitation and sexual abuse of children. However, the Criminal Code does not contain provisions for protecting vulnerable witnesses.⁴⁹ At a federal level we lack guidance about how to protect the rights of victims of crime, including those people who lack legal capacity or who are unfamiliar with their rights under Australian law. It is, in our view, important to recognise the benefits that stronger human rights protection can deliver to victims of crimes.

The Anti-Slavery Project supports the introduction of a federal Charter of Victims' Rights that sets out the rights of people who are identified as victims of federal crime. While there has been discussion about introducing a federal Charter of Victims Rights, there has been no public consultation on the content of a draft charter. The absence of a Charter (such Charters have been introduced in States and Territories) means that there is no formal guidance about what type of service, assistance and protection victims of federal crimes can expect from public authorities. We therefore recommend that the Consultation recommend that the Government introduce a Charter of Victims' Rights that reflects, at a minimum, the principles articulated in the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.⁵⁰

4.3 How is the right to be free from slavery and servitude protected in Australia?

The right to be free from slavery is a fundamental human right.⁵¹ Slavery is proscribed by article 8(1) of the *International Covenant of Civil and Political Rights (ICCPR)*⁵² which provides 'no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited'. Article 8(2) prohibits servitude and article 8(3) prohibits forced or compulsory labour. The freedom from slavery and servitude is an absolute right that can not be restricted in any circumstances.⁵³

The definition of slavery at international law is found not in the text of the ICCPR but in article 1(1) of the *International Convention to Suppress the Slave Trade and Slavery 1926* ('the 1926 Convention').⁵⁴ Article 1(1) defines slavery as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'. Article 2(b) requires states 'to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms'.

In 1999 the Commonwealth introduced offences of slavery, sexual servitude and deceptive recruiting for sexual services.⁵⁵ The Criminal Code makes it an offence to intentionally possess a slave or exercise over a slave any other powers attaching to the right of ownership. The word 'slave' takes its meaning from the definition of slavery in s 270.1. This definition states slavery is 'the condition of a person over whom any or all of

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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’.

In 2006 a jury convicted a Melbourne brothel owner, Wei Tang, of five offences of possessing a slave and five offences of exercising a power of ownership over a slave. Wei Tang owned a licensed brothel and the five women who she was alleged to have used as slaves all travelled from Thailand to Australia with the intention of working in the sex industry.⁵⁶ In sentencing remarks the trial judge said that while the complainants were not kept under lock and key, he was satisfied that, in the totality of circumstances, the women were effectively restricted to the premises. His Honour asked the ‘rhetorical question’:

How could they run away when they had no money, they had no passport or ticket, they entered on an illegally obtained visa, albeit legal on its face, they had limited English language, they had no friends, they were told to avoid Immigration, they had come to Australia consensually to earn income and were aware of the need to work particularly hard in order to pay off a debt of approximately \$45,000 before they were able to earn income for themselves?⁵⁷

Ms Tang was sentenced to 10 years imprisonment, with a non-parole period of six years. However, in 2007, Ms Tang’s appeal was upheld on the ground that the trial judge failed to direct the jury that the prosecution needed to prove that Ms Tang appreciated the character of her own actions.⁵⁸ A retrial was ordered on the basis that ‘it was open to a reasonable jury to have convicted [Ms Tang]’.⁵⁹

The High Court allowed the appeal by the Prosecution and overturned the orders of the Court of Appeal of the Supreme Court of Victoria for a new trial. The High Court said the prosecution did not need to prove that Ms Tang knew or believed that the powers she exercised over the five Thai women were powers attaching to the right of ownership.⁶⁰ On the evidence, it was open to the jury to conclude that Ms Tang had exercised the following powers attaching to the right of ownership: the power to make each woman an object of purchase, the power to use the women in a substantially unrestricted manner for the duration of their contracts, the power to control and restrict their movements, and the power to use their services without commensurate compensation.

The High Court unanimously held that the definition of slavery and the offences of slavery were appropriate and adapted to implement Australia’s obligations under the 1926 Slavery Convention. The High Court said neither the definition of slavery in the 1926 Slavery Convention nor the Criminal Code was confined to situations akin to chattel slavery, where one person has absolute control over another. Instead, the High Court recognised that the question of when a person has been enslaved is a complex one that involves questions of degree. The ability to deal with a person ‘as a commodity’ ‘an object of sale and purchase, may be a powerful indication that a case falls on one side of the line [between harsh employment and slavery]’. Another indicator of slavery may be ‘the exercise of powers of control over movement which extend well beyond powers exercised even in the most exploitative of employment circumstances, and absence or extreme inadequacy of payment for services’.⁶¹

The Anti-Slavery Project believes that it is important that the significance of the High Court's decision about the scope of the definition of slavery is widely understood and traditional stereotypes about slavery are corrected. We urge the Consultation to consider the right to be free from slavery (and practices similar to slavery) as human rights issues that could be better promoted and understood within the Australian community.

4.4 How is the right to be free from forced labour and practices similar to slavery protected in Australia?

Australia must prohibit practices similar to slavery to implement its international obligations pursuant to the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* 1956 ('the 1956 *Supplementary Convention*').⁶² The 1956 *Supplementary Convention* obligates States to proscribe certain exploitative practices whether or not they are covered by the definition of slavery in the 1926 Slavery Convention. Article 1 states:

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and **whether or not they are covered by the definition of slavery** contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

- (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- (c) Any institution or practice whereby:
 - (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;
- (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

The *Forced Labour Convention* 1930 (ILO No.29)⁶³ and the *Abolition of Forced Labour Convention* 1957 (ILO No. 105)⁶⁴ also provide for the abolition of 'forced labour', which

is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.⁶⁵

'Forced labour' and 'forced marriage' and 'exploitation of child labour' are not specifically prohibited in the Criminal Code. There is currently no specific offence of 'forced labour' in the Criminal Code. Depending on the facts of the particular case, a case of 'forced labour' may fall within the offence of slavery. It is an offence to traffic a person to Australia for the purpose of exploiting that person through forced labour.

'Exploitation' is defined in the Criminal Code as occurring when the exploiter's conduct causes a person to enter into a situation of slavery, *forced labour*, sexual servitude or unlawful organ removal.⁶⁶ Section 73.2(3) of the Criminal Code defines forced labour as '...the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats' and who is either 'not free to cease providing labour or services' or 'is not free to leave the place or area where the person provides labour or services.'⁶⁷

The definition of exploitation in the Criminal Code does not explicitly cover servile marriage. Forced marriage is a form of servile marriage. Article 1(c)(i) of the *Supplementary Convention on Slavery* 1956 prohibits any institution or practice whereby:

- (a) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group, or
- (b) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (c) A woman on the death of her husband is liable to be inherited by another person.

Therefore the definition of exploitation in the dictionary of the Criminal Code should be amended to include servile marriage.⁶⁸ A specific offence of engaging in conduct causing another person to enter into servile marriage could also be introduced.

4.5 Why are economic, social and cultural rights and civil and political rights important to trafficked people?

The Anti-Slavery Project believes the protection of the economic, social and cultural rights set out in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) is vital to help reduce people's vulnerability to trafficking and to assist those people who have been identified as trafficking to recover from their experiences. Practices such as trafficking, slavery and forced labour are inconsistent with article 6 of the ICESCR which protects the right of everyone to have the opportunity to gain a living by work which they freely choose or accept and article 7 of ICESCR which recognises the right of all people to just and favourable conditions of employment.

Inadequate protection of economic, social and cultural rights such as the right to an adequate standard of living, the right to education and the right to health can increase people's vulnerability to trafficking or undermine the ability of someone who had been

trafficked to recover from their experience. Access to culturally appropriate services (including medical treatment, counselling, housing, social support, education, and legal and migration advice) is vital to help trafficked people enjoy their rights to health, housing and family life.

There are also civil and political rights that are particularly relevant to trafficked people who are receiving support services. For example, the unauthorised disclosure of personal information by Commonwealth agencies or NGOs about trafficked people may breach their right to privacy and may jeopardise their safety.⁶⁹ Another right that is important to our clients is the right of the family unit to protection. This is because people who have been trafficked to Australia may have children or family in their country of origin and may seek opportunities to be reunited with their family while they are giving evidence.

4.6 How is Australia protecting the special rights of child victims of trafficking?

Australia signed the UN *Convention on the Rights of the Child* (CRC) in 1990 and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* in 2001.⁷⁰ The CRC requires State parties to 'protect the child from all forms of sexual exploitation and abuse'⁷¹ and take national, bilateral and multilateral measures to 'prevent the abduction of, the sale of or traffic in children for any purpose or in any form'.⁷² A child victim of trafficking is anyone who was under the age of 18 at the time he or she was trafficked.⁷³

In 2005, a specific offence of child trafficking was introduced into the Criminal Code. While the Anti-Slavery Project is not aware of anyone being charged with an offence of child trafficking, there are examples of children being trafficked to Australia before 2005.⁷⁴ However, there is also reason to be concerned about Australia's capacity to respond to the special needs of child victims of trafficking in the future. A recent audit of Australia's response to trafficking said there is a need for better coordination between government agencies in response to allegations of child trafficking.⁷⁵

There are no specific social support provisions in place to assist child victims of trafficking. If a child is identified as being a victim of trafficking they should be entitled to the kind and level of support available to adult victims. If a trafficked person has dependent child/ren in Australia, that child may need special support services. If a trafficked person has dependent children and/or a partner in their country of origin they may need legal advice about opportunities for family reunification.

4.7 How does Australia protect trafficked people who would face danger if they were returned home?

Some victims or potential victims of trafficking may be entitled to protection under the Refugee Convention. In order to establish a person is a refugee it is necessary to show that the person has a well-founded fear of being persecuted 'for reasons of' race, religion, nationality, membership of a particular social group, or political opinion. The UN High

Commissioner for Refugees has recognised that victims or potential victims of trafficking may qualify for refugee status on the basis that they are members of a particular social group.⁷⁶ While some trafficked people have successfully applied for a refugee protection visa in Australia, trafficked people may face particular difficulties 'establishing the requisite link between the persecution and the state'.⁷⁷

In May 2009, the Australian Government committed to provide \$4.8 million over four years to implement a system of complementary protection for people to whom Australia has non-refoulement obligations but who does not meet the criteria for the grant of refugee status under the Refugee Convention.⁷⁸ We hope this system will provide an additional safeguard for people who have been trafficked to Australia and who fear being re-trafficked or harmed if they are returned home.⁷⁹ Australia also has a specific visa framework for trafficked people. This is discussed in section 5.1 of this submission.

To assert claims for refugee protection or complementary protection, it is vital that trafficked persons have access to 'fair and efficient asylum procedures and proper legal counselling'.⁸⁰ There is also no formal requirement for DIAC, the AFP or victim support providers to inform people who are identified as suspected trafficking victims that they may be able to apply for a protection visa and receive other independent legal advice.

4.8 Do people who are trafficked and enslaved have a right to an effective remedy (including compensation)?

Article 2(3) of the ICCPR provides that if a person's rights under the ICCPR have been violated that person has a right to an 'effective remedy', including, where appropriate, compensation.⁸¹ Article 6(6) of the Trafficking Protocol obliges Australia to ensure 'that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered'.⁸² This is consistent with the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* which articulates the rights of victims of crime to 'prompt redress, as provided for by national legislation, for the harm that they have suffered'.⁸³ Such redress should be available 'through judicial and administrative procedures that are expeditious, fair, inexpensive and accessible'.⁸⁴

While the Trafficking Protocol 'does not specify any potential source of compensation' UNODC has suggested that 'any or all' of the following options might meet the requirements of the Protocol: provisions allowing victims to sue offenders under statutory or common law torts for civil damages; provisions allowing criminal courts to award damages or to make orders for restitution; and provisions establishing dedicated victim compensation schemes whereby the victim can claim compensation from the State.⁸⁵

So far, there have been insufficient efforts support trafficked people to seek compensation or obtain information about the possibility of pursuing civil claims against their traffickers (for example, an action for false imprisonment). There are significant practical obstacles that may prevent a trafficked person from making a compensation claim in Australia. Trafficked people may find it difficult to obtain independent legal advice about claiming compensation or obtain a visa that enables them to say in Australia to pursue compensation. There are also limited legal avenues for victims of federal crime

to seek compensation. To date, there is only one public case of a trafficking victim receiving compensation as a victim of crime and, as discussed below, this award was not actually made on the basis of the woman's status as a victim of trafficking.⁸⁶ This is in contrast to the experience in other jurisdictions such as the UK⁸⁷ and the US.⁸⁸

Australia does not have a statutory compensation scheme for victims of federal crime. People who have been trafficked may also be able to make civil claims or seek to recover unpaid wages or workers' compensation under existing work place relations laws. However, unless trafficking victims receive '[c]ounseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand' they may not be able to exercise these rights.⁸⁹

Case Study - In May 2007, The Age reported that a 'former child sex slave has become the first person in Australia to be compensated as a victim of sex trafficking'. Thai woman, Jetsadophorn Chaladone, spoke about the sexual abuse she suffered in 1995 when, as a thirteen year old, she was trafficked to Australia and forced to have sex with over 100 men at a Sydney brothel. Ms Chaladone was awarded compensation as a victim of sexual assault under the Victims Support and Rehabilitation Act 1996 (NSW).

Ms Chaladone's case highlights the possibility of obtaining compensation for trafficked people through statutory compensation schemes for victims of crime. However, Ms Chaladone received compensation as a victim of sexual assault, not a victim of trafficking and her claim was initiated and funded by private individuals. Ms Chaladone was trafficked to Australia in 1995 before trafficking had been criminalized. When she was found by Australian authorities she did not have an opportunity to seek legal remedies and was returned to Thailand. No charges were laid against the brothel owner or any of the 100 men with whom she was forced to have sex. In Thailand, a police investigation resulted in the prosecution of the traffickers.

In 2004 Ms Chaladone was interviewed in Thailand for the film Trafficked: the Child Sex Trade. The film maker lodged a claim for compensation on behalf of Ms Chaladone under the Victims Support and Rehabilitation Act 1996 (NSW). Applications under this act are determined by compensation assessors. The pre-requisite for a successful claim is establishing 'an act of violence' that apparently occurred in the commission of an offence and resulted in injury or death. The definition of 'violent conduct' includes sexual assault and domestic violence but not sexual servitude. Therefore, Ms Chaladone sought compensation as the victim of sexual assault.

Under the NSW Compensation scheme compensation may be obtained even if (as was the case here) no criminal charges have been brought in Australia. Instead, there was evidence about the conviction of Ms Chaladone's traffickers in Thailand, as well as psychiatric assessments and a declaration from a former AFP office who met Ms Chaladone in 1995. Pro bono legal advice was provided by Fiona McCleod and the film maker covered the cost of Ms Chaladone coming to Australia to give evidence.

The compensation assessor found that Ms Chaladone was subjected to multiple acts of sexual intercourse by numerous offenders over a period of 10 days while being virtually held captive. In view 'of the age of the victim, the circumstances of the assaults, the nature and number of offences and the impact upon her of this appalling episode in her life', Ms Chaladone was awarded \$50 000: the maximum available compensation. The brothel owner in Sydney had not been convicted, so restitution from the offender could not be sought.

Anti-Slavery Project, University of Technology, Sydney
Submission to the National Consultation on Human Rights, 15 June 2009

The Anti-Slavery Project encourages the Australian Government to look at ways to improve the legal avenues that are available to trafficking victims to seek compensation. This could be done by establishing a compensation scheme for federal victims of crime.⁹⁰ In the absence of a federal compensation scheme other alternatives should be explored. These include taking steps to ensure trafficking victims have access to existing state and territory victims of crime compensation schemes and establishing a Victims Assistance Trust funded from the confiscated asset account. Lawyers representing trafficked people should consider the viability for bring civil claims for lost wages or seeking damages. When a Court sentences a trafficking offender the prosecution should consider whether it is appropriate to seek an order of reparations under the *Crimes Act 1914* (Cth).⁹¹ While this provision has traditionally been used in cases involving economic loss, not non-economic loss such as pain and suffering, there is no barrier to making a reparations order about non-economic loss.⁹² Consideration could also be given to amending *Proceeds of Crime Act 2002* (Cth) to enable the conviction or civil-based forfeiture of an offender's assets to provide compensation.⁹³

The Anti-Slavery Project recommends that the Government should explore ways to improve the ability of people who have been trafficked to effectively access compensation. The ASP's preferred option is to establish a federal compensation scheme for victims of crime which will enable trafficked people to apply for compensation regardless of whether a successful prosecution is brought against the perpetrators.

4.9 How does Australia protect the rights of migrant workers?

Criminal offences have been introduced to give effect to Australia's international obligations to prohibit slavery and debt bondage. Australia's obligations under the major human rights instruments, including ICESCR and the ICCPR, extend to everyone within Australia's jurisdiction, regardless of their immigration status. Australia has not ratified the *United Nations Convention on the Protection of Rights of Migrant Workers and members of their families*. However, existing criminal and workplace relations laws do offer some protection to migrant workers. This protection will only be meaningful if workers are aware of their rights under Australian law which is why the Anti-Slavery Project supports rights-based education that provides information to migrant workers about their rights in a culturally appropriate way.

Most migrant workers will be unfamiliar with Australian labour (and other) laws and appeal mechanisms. Many will have made considerable sacrifices in order to come to Australia. Many will consider this an opportunity (maybe their only imaginable opportunity) to change their and their families' circumstances. Some will have incurred significant debts to off-shore recruiters. Some will be hoping to settle permanently in Australia.

This combination of factors can leave migrant workers vulnerable to exploitation in Australia. As Federal Magistrate Lucev said in *Jones v Hanssen Pty Ltd*, 'Mr Hanssen, the director and secretary of the Respondent, acknowledged that the employees "would sign anything" because they 'are frightened of ... being sent back'.⁹⁴ In the context of trafficking, the *United States Trafficking in Persons Report* expressed concern about employers abusing the 457 Temporary Worker Visa Program.⁹⁵

Anti-Slavery Project, University of Technology, Sydney
Submission to the National Consultation on Human Rights, 15 June 2009

The Anti-Slavery Project recognizes that the problems of slavery, forced labour and debt bondage needs to be distinguished from lesser forms of exploitation which do not fall with the criminal offences of 'slavery', 'sexual servitude', 'trafficking in persons', 'trafficking in children', and 'debt bondage' contained in the Criminal Code. However, it is also important that the problem of labour trafficking is analysed within the broader context of Australian labour laws which can assist people who have been, or at risk of, trafficking from exploitation. This is because stronger workplace protection for the rights of migrant workers may reduce their risk of being exposed to exploitative practices such as slavery or forced labour.

Existing workplace protections can operate to protect migrant workers from exploitation and assist those exploited workers to seek legal remedies. These include the protections provided by existing workplace relations laws and the *Fair Work Act 2009* (Cth) which will start begin taking effect on 1 July 2009. For example, the Workplace Ombudsman appoints Workplace Inspectors empowered to investigate and enforce compliance with the *Workplace Relations Act 1996*. If a migrant worker is not receiving minimum employment entitlements, the worker may contact the Workplace Ombudsman. The Workplace Ombudsman may commence court proceedings against employers who contravene the civil penalty provisions of the *Workplace Relations Act 1996* (Cth).

The case of *Fryer v Yoga Tandoori House*⁹⁶ illustrates the type of protection that can be provided by workplace relations laws. This case concerned the underpayment of wages and lack of workplace entitlements to Mr Rajendran, who was brought from India to Australia to work in an Indian restaurant. The restaurant owner, Mr Rasalingam, was accused of forcing Mr Rajendran to work fourteen hours a day, seven days a week for forty days straight. Mr Rasalingam was also accused of not providing Mr Rajendran with any wages or workplace entitlements for the time Mr Rajendran worked. Mr Rasalingam was charged and acquitted of the offence of trafficking a person. However, he was penalized under the Workplace Relations Act for failing to meet minimum standards of pay and entitlements. There was no argument about to who the penalty should be paid to and the judge decided that the penalty was to be paid to the Commonwealth.

In 2007 the *Migration Amendment (Employer Sanctions) Act 2007* introduced new offences targeting employers who exploit unlawful non-citizens. These offences criminalise knowingly or recklessly allowing an unlawful non-citizen to work or to allow a non-citizen to work in breach of his/her visa conditions. Each of the four offences will be deemed an aggravated offence if the worker is *exploited* and the accused either had knowledge of this fact, or was reckless to the fact.⁹⁷ The term 'exploited' is defined to mean the condition of *forced labour*, sexual servitude, or slavery.⁹⁸

The Anti-Slavery Project supports the development of multi-lingual education and training packages which raise awareness of labour trafficking and the rights of migrant workers under Australian law. The development and targeted distribution of these resources is vital so that migrant workers in Australia are aware that slavery, sexual servitude, debt bondage and trafficking are crimes and understand their legal rights in the workplace. While we welcome the recent reforms to the subclass 457 visa program, the Government needs to work more closely with unions, academic and community agencies

to develop a better understanding of the exploitation of migrant workers in all industries and to develop rights based education programs that target migrant workers who are unfamiliar with their rights under Australian laws.

5 How can Australia improve its protection of the rights of trafficked people?

Australia's response to trafficking has been created in a framework which focuses on addressing trafficking through a criminal justice framework. While prosecuting perpetrators is an important element of an effective anti-trafficking measure, a greater focus is needed on the rights of trafficked people. The best way to immediately improve the rights of trafficked people who have been identified by Australian authorities is to reform the visa framework and victim support program and to make sure every person who is identified as a trafficked person gets access to independent legal advice. This advice should cover their prospects of obtaining civil remedies and compensation.

5.1 The People Trafficking Visa Framework and access to victim support

The People Trafficking Visa Framework was introduced in 2004. The People Trafficking Visa Framework consists of the Bridging F visa (BVF), the Criminal Justice Stay visa (CJSV) and the Witness Protection (Trafficking) (Temporary and Permanent) visas. All visas in the People Trafficking Visa Framework are available to 'immediate family members' in Australia. From 1 January 2004 to 30 April 2009, 119 Bridging Visa F, 73 Criminal Justice Stay Visas and 17 Witness Protection (Trafficking) (Temporary) visas have been granted.

The Australian Government funds the Support for Victims of People Trafficking Program (SVTP) as part of its Anti-Trafficking Strategy.⁹⁹ The support program is available to people trafficked to Australia who are assessed by the AFP as being of interest or assistance to an investigation or prosecution of a people-trafficking offence and granted a visa under the People Trafficking Visa Framework.¹⁰⁰ The level of support available is dependent on whether the victim has been recently identified and whether they are assisting in an investigation or a witness in a criminal trial. The support program is divided into the 30 day Assessment Stream, the Justice Support Stream and the Trial Support Stream.¹⁰¹ The Red Cross is currently the provider of the SVTP.

The visa framework introduced in 2004 has four stages:

1. **The Bridging Visa F (BVF):** The first stage is the grant of a BVF to a suspected trafficking victim who is a 'person of interest' to AFP in relation to an offence involving human trafficking (this includes offences of slavery, sexual servitude and debt bondage). A 'person of interest' may be able to help police investigate a trafficking, slavery or debt bondage crime. This visa lasts for no longer than 30 days and can be cancelled at any time. A person who holds a BVF is not legally allowed to work.¹⁰² The 30 day assessment stream provides people who hold a BVF with

secure accommodation and Intensive support for 30 days after a person has been registered as a client of the SVPTP. Support depends on need and may include secure accommodation, a living allowance, a food allowance, an amount for the purchase of essentials such as clothing and toiletries; access to health care, including counselling; access to interpreters and access to legal services.¹⁰³

2. **The Criminal Justice Stay Visa (CJSV):** After the expiry of BVF, a CJSV may be issued at the request of the police which allows the holder to remain in Australia for so long as they are required for the administration of criminal justice. This visa allows a trafficked person to stay in Australia while an investigation or prosecution is ongoing. A person on a CJSV is allowed to work and is given access to the Justice Support Stream of the SVTPT on the basis that they are willing and able to continue to assist the AFP and the CDPP.¹⁰⁴
3. **The Witness Protection (Trafficking) Temporary Visa:** After a trafficked person has held a CJSV that person may be offered a Witness Protection (Trafficking) (Temporary) visa. This visa is for people who the Attorney-General certifies have 'made a significant contribution to, and cooperated closely with', the prosecution or investigation of an alleged trafficking offender *and* who the Immigration Minister considers would be in danger if they returned to their home country.
4. **The Witness Protecting (Trafficking) Permanent Visa:** The temporary witness protection visa lasts for three years but after two years the police may recommend that the person be given a permanent Witness Protection (Trafficking) (Permanent) visa. So far no Witness Protection (Trafficking) (Permanent) visas have been granted. There is no application process for either the temporary or permanent witness protection visa. The visas are offered to people holding CJSVs at the discretion of the Government.

Holders of the Witness Protection visas are ineligible for the SVPTP. The Anti-Slavery Project is concerned for the welfare of those victims who have been granted a Witness Protection (Trafficking) (Temporary) visa but who find themselves without social support. The Anti-Slavery Project believes that the SVPTP should accommodate a period of transition from the CJSV to the Witness Protection visa.

Trafficking victims who have returned to their country of origin before deciding to assist in a prosecution of a suspected trafficker may be granted a BVF or criminal justice entry visa allowing them to reenter Australia. People who return to Australia to give evidence in trafficking prosecutions have access to Trial support under the SVPTP.

Case Study - Things are very hard for my family in my home country but I cannot go back there to help them because I will be killed. I am assisting the police here so I am on a visa that does not allow me to bring my family here.

My family is living in poverty and there is nothing I can do. I do not speak English and I am having trouble finding a job. I am depressed and traumatised about what has happened to me. I am constantly anxious for my family. I do not know what I can do to fix this.

The People Trafficking Visa Framework has been criticised for effectively making access to victim support contingent on a person being of interest and assistance to police investigation and prosecutions. The Anti-Slavery Project supports the recommendation by the UN Special Rapporteur on Trafficking that trafficked people should be provided with specialized support and assistance, regardless of their immigration status.¹⁰⁵

5.2 Best practice principles for the visa framework and the victim support program

The Anti-Slavery Project has consistently advocated for reform of the people trafficking visa framework so that it is more responsive to the needs of trafficked people and does not leave those who are still vulnerable to exploitation unprotected.¹⁰⁶ A review of the visa framework was conducted in 2008. We are hopeful that the existing framework will be reformed and the revised framework for visas and victim support will reflect the following principles:

- **Principle 1: Victim support is available to those people who have been trafficked or enslaved in Australia and who need support.**

People who are identified by Australian authorities as suspected victims of trafficking should receive access to the first stage of victim support, regardless of whether they are of interest or assistance to police investigations or prosecutions. Everyone who is identified as a suspected trafficking victim and who needs support should have access to the Victim Support Program for up to 90 days. Access to the Government funded victim support program to all trafficked people assisting law enforcement who need support regardless of their visa status. This will benefit those trafficked people who hold a substantive visa and who are currently required to consent to the cancellation of the substantive visa to access victim support.

- **Principle 2: Avoid stigmatizing or retraumatizing trafficked people.**

Evidence of the grant of the CJSV and the witness protection visas should be provided in a way that is non-specific and avoids the situation where trafficked people are asked to explain why they are involved with the criminal justice system to prospective employers.¹⁰⁷

Case Study - *I am studying and I want to get a job but it is hard. Employers want to see evidence of my visa. I have to fill in 'visa type' on the employment application forms. I don't have a passport and I am ashamed to show my 'Criminal Justice Stay Visa'. Employers will think I am a criminal. To explain to them that I am not a criminal, but I am assisting the police, I will have to tell them my story. I will have to talk about the abuse and exploitation. I don't want to tell anyone else this story. I have been through it so many times, and each time I tell it, I have to relive the experience again. And even if I do tell an employer, will they want to employ me after they know what has happened to me? I am afraid that, as long as I stay on this visa, I will not be able to get a job. My lawyer can arrange for me to get a letter from the Immigration Department saying that I can work and the employer can check with Immigration but employers still want to see my visa.*

➤ **Principle 3: Support trafficked people to make compensation claims and pursue civil action in Australia.**

This could involve providing visa options for trafficked people who want to remain in Australia to make a legitimate compensation claim or pursue civil remedies and ensuring everyone on the victim support program gets access to independent legal advice.

➤ **Principle 4: Protect the family life and children of trafficked people.**

Where a trafficked person holds a visa in the trafficking visa framework and has children living outside Australia, the immediate family, especially the children of the visa holder should be assisted to reunite with their parent in Australia.

➤ **Principle 5: Wherever possible provide trafficked people with certainty about their future.**

Any visa framework for trafficked people should, as far as possible, provide certainty for people who are anxious or fearful about returning to their country of origin. In our experience, the uncertainty of being placed on a succession of temporary visas of uncertain duration is damaging to the mental health of people who have already experienced great trauma. For example, temporary witness protection visas unnecessarily prolong the stress and anxiety of trafficked people because they are still fearful that they may be returned home. If a person holding a CJSV meets the criteria for granting a permanent witness protection visa then the permanent visa should be granted during the investigation and prosecution process, rather than at the end of a criminal justice process.

➤ **Principle 6: Make sure everyone who is identified as a victim of trafficking gets access to independent legal advice.**

Guarantee everyone on the victim support program access to legal advice (including on the possibility of making compensation claims and an application for refugee protection).

➤ **Principle 7: Victim support should be provided in a culturally appropriate manner and in accordance with a service standard for victim support.**

Trafficked people need access to information about their legal rights and options in a language which they understand. The 2008 National Roundtable on People Trafficking recognized there is need to develop culturally appropriate information for victims of trafficking in their own languages.¹⁰⁸ A subsequent report recommended funding culturally appropriate outreach services for trafficked women and developing a service standard for victim support.¹⁰⁹

➤ **Principle 8: People who were trafficked to Australia before the introduction of laws criminalizing trafficking may need protection too.**

The Anti-Slavery Project's experience is that police investigations will not be conducted if relevant offences took place before a later amendment to the law. In the case of a small number of ASP clients who arrived in Australia before the introduction of trafficking offences in 2005 there are strong compassionate and humanitarian considerations that may justify the grant of a visa. However, there is no formal mechanism for the clients to present their individual stories to Immigration.¹¹⁰ A visa based on humanitarian considerations should be available to people reasonably suspected of being trafficked who are unable to access the trafficking visa framework, do not meet the criteria for grant of a Protection visa or any other visa, in circumstances where the Minister considers compassionate factors justify the grant of a visa.

5.3 Making sure trafficked people get access to legal advice and culturally appropriate services and information

In October 2008 the Minister of Home Affairs, the Hon. Bob Debus MP, announced the Anti-Slavery Project, Scarlett Alliance, Australian Religious Against Trafficking and Project Respect would each be given \$250 000 for anti-trafficking work.¹¹¹ While this funding recognises the important role of NGOs in supporting people who have been trafficked, it does not specifically fund the provision of legal services to trafficked people.

It is vital people who have been trafficked to Australia obtain access to independent legal advice and representation. The legal services the Anti-Slavery Project provides assist trafficked people to obtain proper immigration status, compensation, and facilitate safe and comfortable interaction with law enforcement, so that assisting police is less traumatic.

Case Study - Client X, came to see us for the first time on a Friday this year. Her passport recorded a Criminal Justice Stay Visa, which does not allow the holder to travel. She said that she wanted to go home for a very short time, and asked if we would help her arrange a visa that would allow her to travel. A family member was very sick and she wanted to say goodbye. She had missed saying goodbye to another family member before he died and she wanted to be able to say goodbye this time.

We agreed to help. After several calls to DIAC and the AFP, we established that she had actually been the holder of a Witness Protection (Trafficking) (Temporary) Visa, a visa that allowed her to travel, for over 2 years. She had not been given information about her visa status in a culturally or linguistically appropriate way.

We arranged another appointment for the Monday, to tell her that she could in fact travel, if she thought she was safe enough and if the AFP agreed. On Monday she arrived in tears. Her family member had died over the weekend.

Trafficked people can be deeply traumatised by their experience and giving evidence can be frightening. This trauma can impact on their ability to decide whether to assist police or prosecutors. Efforts to improve support for trafficked people assisting police and prosecutors are improving,¹¹² but further measures can be taken to support trafficked

people tell their story in court. One of these measures is to make sure trafficked people have access to independent legal advice, including the opportunity to have an independent lawyer accompany them to interviews with law enforcement officials and prosecutors. This is why the Anti-Slavery Project believes that the Government should provide dedicated funding for legal services as part of the Victim Support Program for trafficked people.

Case Study - *I was a witness in the criminal trial of the person who recruited me and took my passport away. The police were friendly and supportive. –But once I was in the court in front of everyone, I had to confront this person who exploited me. I had to look them in the eye. I had to talk about the bad things they did to me, about the violence, right in front of them. It was so frightening. The lawyer asked me a lot of questions. They were hard questions for me to answer because what happened to me was so personal.*

The first multi-lingual resources for trafficked people in Australia were published in March 2009 along with the NGO Guidelines for Working with Trafficked People. The 'Know Your Rights' fact sheet gives trafficked people information about how they can get advice about their visa status, contact police and get support from the NGOs and the government agencies.¹¹³ The fact sheet has been translated into Thai, Vietnamese, Korean, Chinese and Tagalog. We recommend developing more comprehensive multi-lingual resources that provide information to trafficked people about their rights and the services that can assist them.

6 Why does the Anti-Slavery Project support introducing an Australian Human Rights Act?

Australia's response to trafficking from 1999, when laws criminalizing slavery and sexual servitude were first introduced, to 2008, when the government established the National Roundtable on People Trafficking, has improved. In recent years we have observed a greater focus on the need to protect the rights of people who have been trafficked, instead of simply viewing such people as potential witnesses in a criminal prosecution. However, we remained concerned that human rights are sometimes overlooked in the law and policy making process.

The Anti-Slavery Project believes that introducing an Australian Human Rights Act will provide a greater level of protection for vulnerable and marginalised people within Australia. Our experience assisting trafficked people means that we know that uncertain or unlawful immigration status can make people particularly vulnerable to exploitation. This is why an Australian Human Rights Act must protect the rights of people in Australia's jurisdiction, regardless of their immigration status.

6.1 Protecting and promoting the right to be free from slavery and forced work

An Australian Human Rights Act could identify and protect the right to be free from slavery, servitude and forced work. While slavery and sexual servitude are already defined

in the Criminal Code, an Australian Human Rights Act could help raise public awareness and understanding of the persistence of these human rights abuses in our community. Such a provision could be similar to s 11 of the *Charter of Rights and Responsibilities 2006* (Vic) (The Victorian Charter) which states: '(1) A person must not be held in slavery or servitude (2) A person must not be made to perform forced or compulsory labour'.¹¹⁴ A similar provision is contained in s 26 of the *Human Rights Act 2004* (ACT).

However, slavery is not protected in the statutory bill of rights in New Zealand or under the Canadian Charter. In our view this is a major omission that only serves to confirm the popular misconception that slavery is a thing of the past. If an Australian Human Rights Act is introduced it should protect the right not to be subject to slavery or servitude and protect people from being made to perform forced or compulsory labour. The right to be free from slavery and servitude is an absolute right. In our view, it is inconsistent with international human rights standards to subject absolute rights, such as the right to be free from slavery, to a global limitations clause of the type contained in s 7(2) of the Victorian Charter.

As discussed above, slavery is specifically defined in the Criminal Code and the High Court recently settled arguments about the proper scope and application of this definition. To prevent confusion and controversy and to promote greater awareness of the legal meaning of slavery the dictionary of an Australian Human Rights Act should define slavery to have the same meaning as it has under the Criminal Code.

6.2 Placing human rights at the centre of law and policy development

While reforms to Australia's response to trafficking are welcome, Australia's Trafficking Action Plan has been broadly criticised as reflecting a law enforcement focus, rather than a victim-centered, human rights focus.¹¹⁵ This has led to the rights of trafficked people being overlooked. For example, as this submission has discussed, from a human rights perspective, the current approach to the provision of visas and victim support to trafficked people is unsatisfactory because 'access to adequate physical and psychological care [which] shall not be made conditional on the capacity or willingness of trafficked persons to cooperate in legal proceedings'.¹¹⁶ In 2009 the UN Human Rights Committee recommended Australia

strengthen its measures to prevent and eradicate trafficking in human beings, including by adopting a comprehensive strategy, and provide equal assistance and protection to all victims identified regardless of their participation or otherwise in criminal proceedings against perpetrators.¹¹⁷

Without an Australian Human Rights Act that requires law and policy makers to consider the human rights implications of new laws and policies, the rights of trafficked people have sometimes been overlooked or not properly considered. For example, the audit of Australia's response to trafficking found that while there have been cases of alleged victims of trafficking being mentally not fit to decide whether to continue to assist the AFP, Australian government agencies have 'not considered the policy implications, nor

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developed a way forward on managing mentally impaired victims, to ensure that their rights and interests are adequately protected.¹¹⁸

In our view, an Australian Human Rights Act should have the following key features:

- A requirement all new laws and regulations be accompanied by a statement assessing whether they were compatible with human rights. This would encourage law and policy makers to turn their mind to the impact of new laws on human rights.
- A requirement public authorities act consistently with human rights and take into account relevant human rights in making decisions. For example, in our experience sometimes decisions not to grant a person a BVF or to cancel a BVF after it has been granted have made without considering the impact of denying a person access to victim support.
- A requirement that everyone interpreting and applying commonwealth laws to do so – where possible consistently with purpose of the law – compatibly with human rights.¹¹⁹

The cumulative impact of these measures would be to promote a greater awareness of human rights throughout the different arms of government.

7 Why does the Anti-Slavery Project believe rights based education will improve human rights protection

Many people do not realise that trafficking and slavery occurs in Australia. Cases of slavery and trafficking for labour exploitation are not always easy to identify and without training and awareness raising people may not be able to recognise a potential trafficking situation. For example, the UNODC has recognized that:

public awareness campaigns are helpful not only in informing the public about the dangers of trafficking in persons and the signs that help to recognize it, but also in rescuing those who may have already fallen victim to trafficking, particularly by alerting people who may come into contact with potential victims and the general public.¹²⁰

It is also important to encourage the private sector to engage in corporate policies that aim to sever any links between legitimate business and trafficking.¹²¹

An important outcome of the 2008 National Roundtable on People Trafficking was recognition of the need for greater judicial and legal education about slavery and trafficking, the cross-cultural issues facing the victims of these crimes, and the complex issues that can arise in determining when a person has acted freely and voluntarily. In particular judicial and legal education is needed so that all members of the legal appreciate that trafficking victims are subject to psychological coercion as well as physical coercion. Just because women are physically 'free to leave' does not mean that

they are psychologically free to leave. Similarly, it must also be understood that people who have been trafficked are often instructed by their traffickers to lie to authorities or to people who may be able to help them. This creates problems when the credibility of witnesses is attacked by the defence on the basis that their original story has changed.

The Anti-Slavery Project recommends developing rights-based education about all forms of trafficking, including emerging issues such as trafficking for labour exploitation outside the sex industry and trafficking into forced marriage. Targeted training that draws on the expertise of anti-trafficking NGOs should be delivered to legal practitioners, judicial officers, victim support providers, unions and employers work in industries that are identified as being high risk sectors for trafficking.

7.1 Promoting greater human rights dialogue between the government and NGOS

The first National Roundtable on People Trafficking (NRPT) was convened in June 2008 by the Minister for Home Affairs, the Hon. Bob Debus MP with the support of the Minister for Immigration and Citizenship, and the Minister for the Status of Women. The Anti-Slavery Project believes the NRPT provides an important opportunity for the community sector and government agencies to work together to share information and ideas about how to improve Australia's anti-trafficking strategy.

At the 2008 NRPT a working group was formed to produce Guidelines for NGOs working with trafficked people and multi-lingual fact sheets were drafted for trafficked people. The NGOs and the Australian Human Rights Commission also presented the Australian Government with a statement recommending reform to framework for visas and victim support and we are hopeful that these recommendations will be reflected in the outcome of the review to the existing framework.

If the NRPT continues to offer genuine opportunities for the community sector and government to work together to share their expertise then it can provide a model for creating a dialogue about human rights issues. There is, of course, a risk that the discussion that occurs at these events does not result in action. This risk can be reduced by maintaining a clear line of communication between Government and the non-Government members about what action is being taken to address areas of concern identified at the NRPT.

Another issue is that the NRPT does not include representatives from States and Territories. The Anti-Slavery Project believes that efforts to identify and protect trafficked people and prosecute trafficking offenders could be assisted by improving communication between NGOs and federal government agencies, as well as improved cooperation between state and federal agencies. The membership of the NRPT should be expanded to include representatives from state and territory governments and state police.

APPENDIX A: Recommendations to improve Australia's response to trafficking

Improving visa options and victim support

Recommendation 1: Provide access to victim support for 90 days to all people who have been trafficked, regardless of whether they are of interest or assistance to police.

Recommendation 2: Grant permanent witness protection visas to Criminal Justice Stay visa holders early in the investigation and prosecution process, rather than at the end of the criminal justice process.

Recommendation 3: Make sure everyone on the victim support program gets access to legal advice (including on possibility of making compensation claims and an application for refugee protection).

Recommendation 4: Ensure visa options are available to trafficked people who want to remain in Australia to make a compensation claim or pursue civil remedies.

Recommendation 5: Where a trafficked person holds a visa in the trafficking visa framework and has children living outside Australia, that the immediate family, especially the children of the visa holder be assisted to reunite with their parent in Australia.

The criminal justice framework

Recommendation 6: That the Government introduce a Charter of Victims' Rights that reflects, at a minimum, the principles articulated in the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

Recommendation 7: That the trafficking offences in the Criminal Code are reviewed. This review should consider amending the offence of trafficking to cover the following means of trafficking: other forms of coercion; the abuse of power or of a position of vulnerability; or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

Recommendation 8: That the definition of exploitation in the Criminal Code be amended to include servile marriage and other practices similar slavery.

Protecting the rights of trafficked people

Recommendation 9: The ASP urges the Government to explore a variety of legal options which will improve the ability of people who have been trafficked to seek compensation. The ASP's preferred option is to establish a federal compensation scheme for victims of crime which will enable trafficked people to apply for compensation regardless of whether a successful prosecution is brought against the perpetrators.

Recommendation 10: Improve the access of trafficked people to information and legal advice about their existing avenues for making compensation claims, including claims for the recovery of unpaid wages.

Recommendation 11: That the Government provide dedicated funding for legal services for trafficked people as part of the Victim Support Program for Trafficked People.

Creating a human rights culture

Recommendation 12: Introduce an Australian Human Rights Act that identifies and protects human rights, including the right to be free from slavery and forced work.

Recommendation 13: An Australian Human Rights Act should define and protect the right to be free from slavery, servitude, forced labour and other practices similar to slavery. To avoid doubt, the dictionary of the Australian Human Rights Act should provide that slavery in the Human Rights Act has the same meaning as slavery in the Criminal Code.

Recommendation 14: An Australia Human Rights Act should protect everyone in Australia's jurisdiction, regardless of whether or not a person is in Australia lawfully.

Improving Education and community awareness

Recommendation 15: The National Human Rights Consultation Committee recognise the particular need to improve community awareness and understanding of slavery and forced labour through human rights education.

Recommendation 16: The Commonwealth Government should identify best practice models for identifying cases of trafficking for labour exploitation. This best practice model should include a national targeted awareness raising campaign about trafficking for labour exploitation targeted at employers and unions.

Recommendation 17: The development of more culturally appropriate resources so that migrant workers on temporary visas in Australia are aware that slavery, sexual servitude, debt bondage and trafficking in persons are crimes under the Australian Criminal Code and that their rights under workplace relations law.

Recommendation 18: That the Government work with unions, academic and community agencies to better understand the exploitation of migrant workers in all industries, including the complex issue of the exploitation of temporary visa holders including the Subclass 457 Business (Long-Stay) visa.

APPENDIX B: Timeline of Australia response to trafficking

1999	Australia introduced new offences of slavery, sexual servitude and deceptive recruiting into the Australian Criminal Code.
2001-2003	Concern emerges that women who were trafficked to the Australian into sexual servitude and slavery were detained in immigration detention as unlawful non-citizens and deported from Australia.
October 2003	Australian Government announced a \$20 million package to combat people trafficking over four years.
2004	The Australian Government launched of the Commonwealth Action Plan to Eradicate Trafficking in Persons.
2004	A new visa framework was introduced for suspected trafficking victims who were of interest and assistance to police investigations and prosecutions.
2004	Parliamentary Joint Committee on the Australian Crime Commission <i>Inquiry Into the Trafficking of Women for Sexual Servitude</i> (the PJC report).
2005	The <i>Criminal Code Amendment (Trafficking in Persons Offences) Act 2005</i> introduced a range of new offences which criminalised trafficking in persons (s 271.2), trafficking in children (s 271.4), domestic trafficking in persons (s271.5) and debt bondage arrangements (s 271.8).
2005	Australia ratified the <i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime</i> .
2005	Parliamentary Joint Committee on the Australian Crime Commission Supplementary report to the Inquiry into the trafficking of women for sexual servitude.
2007	The Australian Government released an information campaign on trafficking targeting 'contract sex workers'.
June 2008	The Minister for Home Affairs chaired the first National Roundtable on People Trafficking to consult with government and non-government agencies about how to address the complex issues involved in human trafficking.
August 2008	Decision of the High Court in Australia's first slavery case: <i>R v Tang [2008] HCA 39</i>
October 2008	The Minister for Home Affairs announces four NGOs (The Anti-Slavery Project, Australian Catholic Religious Against Trafficking, Project Respect and Scarlett Alliance) will receive funding to work with trafficking victims.
March	Launch of the Guidelines for NGOs Working with Trafficked People and the Know

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2009	Your Rights fact sheets for trafficked people.
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ENDNOTES

¹ United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (United Nations E/2002/68/Add.1) May 20, 2002. The Anti-Slavery Project addressed these Principles and Guidelines in the 'Australian NGO Shadow Report on Trafficked Women in Australia' and the 'Joint Statement from Australian, Cambodian and Thai NGOs Concerning Trafficked Women' each submitted to the Committee on the Elimination of Discrimination against Women, 34th session (January 2006).

² The Anti-Slavery Project has consistently said that Australia's response to trafficking should be developed in a human rights framework. See for eg, Burn, Jennifer and Simmons, Frances, 'Trafficking and Slavery in Australia: An Evaluation of Victim Support Strategies', (2006) 15 *Asian and Pacific Migration Journal* 553; Burn, Jennifer, Simmons, Frances and Blay, Sam, 'Combating Trafficking: Australia's response to Modern Day Slavery', (2005) 79 *Australian Law Journal* 543; Burn, Jennifer and Simmons, Frances, 'Rewarding witnesses, ignoring victims: an evaluation of the new trafficking visa framework', (2005) 24 *Immigration Review* 6.

³ See for example, Michael Sexton's review of Geoffrey Robertson's book where Sexton suggests that protection from slavery is now unnecessary. Michael Sexton: The statute of liberty: how Australians can take back their rights, *The Sydney Morning Herald*, 7 March 2009.

⁴ *The Queen v Tang* [2008] HCA 39.

⁵ Fiona David, 'Trafficking for Sexual Purposes', Australian Institute of Criminology, *Research and Public Policy Series*, no 95, 39; see also Fiona David, 'Prosecuting trafficking in persons: known issues, emerging response', Australian Institute for Criminology, *Trends and Issues in Criminal Justice*, no.358, June 2008.

⁶ UNODC, *Global Report on Trafficking in Persons*, (2009), 6.

⁷ Australian Federal Police, *Annual Report 2007-2008*, (2009), 28.

⁸ United Nations Office on Drugs and Crime (UNODC), *Global Report on Trafficking in Persons*, (2009), 166. UNODC said '[s]exual exploitation is by far the most commonly identified form of human trafficking (79%), followed by forced labour (18%). This may be the result of statistical bias ... Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking, in aggregate statistics. In comparison, other forms of exploitation are under-reported: forced or bonded labour; domestic servitude and forced marriage; organ removal; and the exploitation of children in begging, the sex trade and warfare'.

⁹ Tanya Plibersek, 'Australian Trafficking Forum: Keynote Address to the Anti-Slavery Project, Trafficking Forum, June 2008', (2008) 38 *Immigration Review* 557.

¹⁰ A 2004 parliamentary inquiry into sexual servitude in Australia estimated between 300 and 1000 women were trafficked to Australia every year. However, this inquiry focused on trafficking of women into sexual servitude and did not look at the trafficking of men and women into other industries. The Australian Institute of Criminology is currently conducting research on labour trafficking: the Parliamentary Joint Committee on the Australian Crime Commission *Report of the Inquiry Into the Trafficking of Women for Sexual Servitude*, June 2004.

¹¹ Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council, UN Doc. E/2002/68/Add.1 at 4.

¹² Carrington K and Hearn J 'Trafficking and the Sex Industry: from Impunity to Protection' (2002-3) 28 *Current Issues Brief*, Department of the Parliamentary Library.

¹³ See further Dorevitch and Foster, 'Obstacles on the Road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law', (2008) 9 *Melbourne Journal of International Law* 1; Elaine Pearson, 'Australia' in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance Against Trafficking in Women, 2007; Bernadette McSherry and Miriam Cullen, 'The Criminal Justice Response to Trafficking in Persons:

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Practical Problems with Enforcement in the Asia-Pacific Region, *Global Change, Peace & Security*, (2007) 19 *Global Change Peace and Security* 3, 205-220. Burn, Jennifer and Simmons, Frances, 'Trafficking and Slavery in Australia: An Evaluation of Victim Support Strategies', (2006) 15 *Asian and Pacific Migration Journal* 553; Burn, Jennifer, Simmons, Frances and Blay, Sam, 'Combating Trafficking: Australia's response to Modern Day Slavery', (2005) 79 *Australian Law Journal* 543; Burn, Jennifer and Simmons, Frances, 'Rewarding witnesses, ignoring victims: an evaluation of the new trafficking visa framework', (2005) 24 *Immigration Review* 6; Segrave M. "Surely Something is better than nothing? The Australian response to the trafficking of women into sexual servitude in Australia", *Current Issues in Criminal Justice*, vol 16, no 1, 2004.

¹⁴ *Criminal Code 1995 (Cth)*, s 271.2.

¹⁵ *Criminal Code 1995 (Cth)*, s 271.4.

¹⁶ *Criminal Code 1995 (Cth)*, s 271.5.

¹⁷ *Criminal Code 1995 (Cth)*, s 271.8.

¹⁸ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

¹⁹ The National Roundtable on People Trafficking, 'Statement of Outcomes', October 2008, available online at http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_PeopleTrafficking.

²⁰ Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Report No 30 (2008-2009) [2.24].

²¹ Anne T Gallagher, 'Human Rights and Human Trafficking: a Quagmire?', (2009) 49 *Virginia Journal of International Law* 4, 793; Report submitted by the United Nations Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo (A/HRC/10/16), (2009), [26]

²² Report submitted by the United Nations Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo (A/HRC/10/16), (2009), [15]

²³ *Ibid*, [44]

²⁴ See for example, a discussion of this in *R v Wei Tang*, High Court of Australia No. M5 of 2008, Submissions in Support of Application for Leave to Intervene and Submissions on the Appeal: Human Rights and Equal Opportunity Commission, Filed in Melbourne Registry 5 May 2008; available at: http://www.humanrights.gov.au/legal/submissions_court/intervention/tang.html

²⁵ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, 2.

²⁶ The 'travaux préparatoires' state that the phrase 'abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved'. See United Nations General Assembly, *Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, (UN Doc. A/55/383/Add.1, 3) November 2000, Interpretative Note, 63.

²⁷ See further Anne Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: a Preliminary Analysis', (2001) 23 *Human Rights Quarterly* 975.

²⁸ United Nations General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, 3. See Article 3(c).

²⁹ The Trafficking Protocol, Article 5.

³⁰ The Trafficking Protocol, Article 6(1).

³¹ The Trafficking Protocol, Article 6(2).

³² The Trafficking Protocol, Article 6(3)-(4).

³³ The Trafficking Protocol, Article 6(4).

³⁴ The Trafficking Protocol, Article 7.

³⁵ The Trafficking Protocol, Article 9.

³⁶ Principles and Guidelines on Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council, UN Doc. E/2002/68/Add.1.

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³⁷ Principles and Guidelines on Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council, UN Doc. E/2002/68/Add.1.

³⁸ *Criminal Code 1995 (Cth)* ('the Criminal Code') s 271.2(1).

³⁹ Criminal Code, s 271.2(2) and s 271.2(2B).

⁴⁰ Criminal Code, s 271(1B).

⁴¹ Criminal Code, s 271.4.

⁴² Criminal Code, s 271.5..

⁴³ Criminal Code, s 271.10.

⁴⁴ Criminal Code ss 15.4. In domestic criminal law, the traditional approach to jurisdiction is that a state should only exercise its powers to prosecute offenders where the offence was committed within geographical boundaries. However, following changes to the Criminal Code, jurisdiction is now classed in Categories A to D. 'Category D' jurisdiction reflects the international law concept of universal jurisdiction and applies to terrorist offences, wars crimes and crimes against humanity. See further discussion in Bernadette McSherry, 'Trafficking in Persons: A critical analysis of the new criminal code offences', (2007) 18 *Current Issues in Criminal Justice* 385.

⁴⁵ See Bernadette McSherry, 'Trafficking in Persons: A critical analysis of the new criminal code offences', (2007) 18 *Current Issues in Criminal Justice* 385. 394.

⁴⁶ Parliamentary Joint Committee on the Australian Crime Commission, 'Supplementary report to the Inquiry into trafficking of women in sexual servitude', August 2005, p 7.

⁴⁷ Currently, federal sentencing laws do not provide for the use of victim impact statements. Victim impact statements may be considered where criminal trials are held in State and Territory courts. The Australian Law Reform Commission has recommended that, subject to appropriate safeguards, victim impact statements should be allowed in the sentencing of federal offenders. ALRC, *Same Crime, Same Time: The Sentencing of Federal offenders*, Report No 103 (2006).

⁴⁸ In cases involving the trafficking of children, it may also be required by art12 of the CRC.

⁴⁹ See further Fiona David, 'Prosecuting trafficking in persons: known issues, emerging response', Australian Institute for Criminology, *Trends and Issues in Criminal Justice*, no.358, June 2008.

⁵⁰ It is noted that a draft Convention on Justice and Support for Victims of Crime and Abuse of Power has been prepared by the World Society of Victimology and the International Victimology Institute. The Australian Government has indicated it will consider the proposed convention within the context of its commitment to 'upholding its international obligations and taking leadership within the United Nations to promote and protect human rights. See Australian Government, *National Action Plan to Reduce Violence Against Women*, (2009), 12.

⁵¹ Protection from slavery has been identified as one of the 'obligations *erga omnes* arising out of human rights law', that is, an obligation owed by all nation states to the international community *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) Judgment of 5 February 1971*, ICJ Reports 1970, 32.

⁵² United Nations General Assembly, *International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*, 16 December 1966, A/RES/2200.

⁵³ ICCPR, Article 4(2).

⁵⁴ 25 September 1926, ATS 11 (in force 18 June 1927). Australia ratified the 1926 *Convention* on 18 June 1927

⁵⁵ *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth)*.

⁵⁶ Ms Tang had a 70 per cent share in a 'syndicate' which 'purchased' four of the women for \$20 000 each. The fifth woman was brought to Australia by other 'owners' before being moved to the brothel owned by Ms Tang. Each woman was informed she had a debt to the 'syndicate' of \$A45 000. Customers paid \$110 for the services of each woman. Ms Tang kept the majority of the profits. The remainder was shared between the other syndicate members. The women, who had limited English and little money, received nothing. Their passports and return airline tickets were taken from them and kept in a locker at the brothel. Their visas were fraudulently obtained, and they feared being detected by immigration authorities. They worked long hours, six days a week. To pay off their debt they were required to serve up to 900 customers in four to six months. *R v Tang VCC [2006] 637*.

⁵⁷ *R v Tang VCC [2006] 637* at 6.

⁵⁸ *R v Wei Tang* (2007) 16 VR 454; 479-480 [113].

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⁵⁹ *R v Wei Tang* [2007] VSCA 144.

⁶⁰ *The Queen v Tang* [2008] HCA 39. (Justice Kirby dissenting)

⁶¹ *Ibid*, [44].

⁶² Opened for signature 7 September 1956, [1958] ATS 3 (entered into force 6 January 1958). Australia ratified the 1956 Supplementary Convention on 6 January 1958.

⁶³ Opened for signature 29 July 1929, 39 UNTS 55, (entered into force 1 May 1932).

⁶⁴ Opened for signature 25 June 1957, 320 UNTS. 291, (entered into force 17 January 1959).

⁶⁵ *Forced Labour Convention 1930* (ILO No.29), Article 2(1).

⁶⁶ *Criminal Code*, s 480.1.

⁶⁷ The term 'threat' in the context of forced labour means any threat of force, deportation or any other detrimental action unless there is reasonable grounds for that action.

⁶⁸ This would affect the recklessness as to exploitation offences in ss 271.2(1B) and 271.5(2), the deceptive trafficking offences in ss 271.2(2), 271.2(2B) and 271.5(2A), the aggravated trafficking offences in s 271.3, and the trafficking in children offence in s 271.4 of the *Criminal Code 1995* (Cth).

⁶⁹ Guidelines for NGOs working with trafficked people (2009), 6.

⁷⁰ Australia is also a party to the *International Labour Organisation Convention No 182*, dealing with the Worst Forms of Child Labour.

⁷¹ CRC, Article 34.

⁷² CRC, Article 35. In addition the *Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography* emphasises the need to criminalise serious violations of children's rights including the sale of children, illegal adoption, child prostitution and pornography. The Optional Protocol entered into force on 12 February 2002 and was ratified by Australia on the 26 September 2006.

⁷³ The UN International Children's Fund guidelines on the protection of child victims of trafficking provide detailed guidance on how to assist child victims of trafficking and are available at http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf.

⁷⁴ For eg, Ms Chaladone, who was reported to be the first person in Australia to be awarded compensation as a victim of trafficking was trafficked to Australia when she was 13 years old: see 6.3 of this submission. Allegations of child abduction in India and subsequent trafficking to Australia through the adoption visa system have been addressed by the Attorney General : ABC online, *A-G's dept scours India on adoption kidnap trail*. <http://www.abc.net.au/news/stories/2009/02/24/2499888.htm>.

⁷⁵ See ANAO, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Report No 30 (2008-2009) [2.11].

⁷⁶ UNHCR, 'Guidelines on International Protection: the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked', HCR/GIP/06/07, 7 April 2006, 32.

⁷⁷ See Dorevitch and Foster, 'Obstacles on the Road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law', (2008) 9 *Melbourne Journal of International Law* 1

⁷⁸ Australia has obligations under ICCPR 'not to extradite, deport, expel or otherwise remove a person from their territory where there are **substantial grounds for believing that there is a real risk of irreparable harm**, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed' UNHRC, *General Comment 31: Nature of the General Legal Obligation imposed on States Parties to the Covenant* (26 May 2004), [12]. UN Treaty bodies have repeatedly recommended Australia introduce a system of complementary protection. *Concluding Observations of the Committee Against Torture: Australia*, (Advance unedited version) 40th session, 28 April -16 May 2008, CAT/C/AUS/CO/115 May 2008; *Concluding Observations of the Committee Against Torture: Australia*, 25th session, 13-24 November 2000, CAT A/56/44/2001; See also *Report of Senate Select Committee on Ministerial Discretion in Migration*, 2004, [8.82].

⁷⁹ See Jane McAdam, *Complementary Protection in International Refugee Law* (2007), 171; see also Ryszard Piotrowicz & Carina van Eck, 'Subsidiary Protection and Primary Rights' (2004) 53 *ICLQ* 107, 125, 126.]

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⁸⁰ UNHCR, 'Guidelines on International Protection: the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked', HCR/GIP/06/07, 7 April 2006.

⁸¹ The UNHCR has stated that '... importance [is attached] to State Parties' establishing appropriate judicial and administrative mechanisms for addressing claims of human rights violations under domestic law': UNHRC, *The nature of legal obligations imposed on state parties to the covenant*, General Comment no. 31, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) [15].

⁸² A similar provision is found in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

⁸³ *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN Doc A/Res/40/34 (1985), [4].

⁸⁴ *Ibid*, [5].

⁸⁵ UNODC, *Toolkit to Combat Trafficking in Persons*, 2006; see also IPU-UNODC *United Nations Combating Trafficking in Persons – A Handbook for Parliamentarians* (2009) 56.

⁸⁶ The award was made under the *Victims Support and Rehabilitation Act 1996* (NSW) in response to a claim for compensation for sexual assault by a Thai woman who was trafficked to Australia when she was 13. Natalie Craig, 'Sex slave victim wins abuse claim – EXCLUSIVE - 'It still hurts to talk about it ... I have been depressed'', *The Age*, 29 May 2007. For discussion of another effort to obtain compensation in a trafficking case see Julie Lewis, 'Out of the Shadows', *Law Society Journal* 17, February 2007.

⁸⁷ *AT & Ors v Dulghieru & Anor* [2009] EWHC 225 (QB) (19 February 2009).

⁸⁸ April Reiger, 'Missing the Mark: Why the Trafficking Victims Protection Act fails to protect sex trafficking victims in the United States', 30 *Harv. J. L. & Gender* 231.

⁸⁹ Trafficking Protocol, [X]. Similarly, the *Principles and Guidelines on Human Rights and Human Trafficking* recognises that while trafficked persons have a right to effective and appropriate remedies, such remedies are: ... often not effectively available ... as [trafficked persons] frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation'. See Human Rights and Human Trafficking, Report of the High Commissioner for Human Rights to the Economic and Social Council, UN Doc. E/2002/68/Add.1 Guideline 9; see also Elaine Pearson, 'Australia' in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance Against Trafficking in Women, 2007, p 54.

⁹⁰ This was mooted by the Minister for Home Affairs: see Jonathan Pearlman, 'Rights Charter to Vindicate Victims', *Sydney Morning Herald*, 7 February 2008 p.4.

⁹¹ *Crimes Act 1914* (Cth) s 21(1) (c).

⁹² In its report on the sentencing of federal offenders, the Australia Law Reform Commission (ALRC) observed that 'there is no reason in principle to distinguish between economic and non-economic loss suffered as a result of a federal offence', but recommended that federal sentencing legislation be amended to 'clarify that judicial officers are authorised to order federal offenders to make reparation for any loss suffered by reason of an offence, whether the loss is economic or non-economic'. See ALRC, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report 103 (2006), [8.41]-[8.46]. A victim's right to commence civil proceedings is not affected by a federal reparation order: *Crimes Act 1914* s 15F.

⁹³ The *Proceeds of Crime Act 2002* (Cth) has been used to restrain the alleged proceeds of trafficking in persons in at least one Australian prosecution (see, for eg, *Commonwealth DPP v Xu* [2005] NSWSC 191): Fiona David, 'Prosecuting trafficking in persons: known issues, emerging response', Australian Institute for Criminology, *Trends and Issues in Criminal Justice*, no.358, June 2008.

⁹⁴ [2008] FMCA 291, [8].

⁹⁵ United States, *Trafficking in Persons Report*, (2008). The report found that '[a]fter holding several hearings, Australia's parliament issued 25 recommendations to address allegations that some employers abused the 457 Temporary Worker Visa Program to subject migrant workers to conditions of forced labor and debt bondage. The Department of Immigration and Citizenship (DIAC) subsequently instituted a series of reforms to improve monitoring of this migrant worker visa program, resulting in a greater number of trafficking cases found in the program'.

⁹⁶ [2008] FMCA 288.

⁹⁷ The maximum penalties are five years imprisonment / fines of up to \$33,000 for people and \$165,000 for companies per worker.

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⁹⁸ *Migration Act 1958* (Cth) s 245AH. Forced labour has the same meaning as it has in s 73.2 of the Criminal Code.

⁹⁹ The program is administrated by the Australian Government Office for Women.

¹⁰⁰ The AFP is responsible for deciding whether a person is a suspected trafficking victim and if he/she may be able to assist with the investigation of a suspected trafficker. DIAC refers suspected trafficking victims to the AFP. Some NGOs also refer suspected trafficking victims

¹⁰¹ Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, People Trafficking fact sheet,

www.fahcsia.gov.au/sa/women/progserv/violence/Pages/peopletrafficking.aspx#3

¹⁰² A recent audit observed the law relating to BVF applications by 'lawful' non citizens (ie those who hold student visas or working holiday visas) has been inconsistently applied. The ANAO observed that TSETT officers occasionally withdraw support from an alleged victim who has been assisting the AFP. However, there was limited recording of reasons for decisions to withdraw support. The ANAO recommended guidance on documenting reasons for decisions in these cases to improve transparency in decision making. Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Report No 30 (2008-2009) [3.14]. [4.48], table 4.2.

¹⁰³ *Ibid.*

¹⁰⁴ CJSV holders are entitled to work and have access on a basis of need to Special Benefit, Rent Assistance and a Health Care Card administered by Centrelink (if they are eligible); assistance securing longer term accommodation; the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme; legal services and interpreters; assistance to obtain employment and training (including English language training); and links to social support.

¹⁰⁵ Joy Ngozi Ezeillo. Report of the Special Rapporteur on trafficking in persons, especially women and children. 10th session of the Human Rights Council, 2009. A/HRC/10/116 page 27.

¹⁰⁶ In 'Australian Trafficking Visas: 15 recommendations to better protect victims of human trafficking', the Director of the Anti-Slavery Project, Associate Professor Jennifer Burn, made 15 recommendations to improve the operation of the visa framework. See also The National Roundtable on People Trafficking – Human Rights and Equal Opportunity Commission and NGO Recommendations for changes to the trafficking visa framework (23 June 2008); Fiona David, Australian Institute of Criminology, 'Trafficking of women for sexual purposes', *Research and Public Policy Series No 95*, 2008, 16-17; Jennifer Burn and Frances Simmons, 'Trafficking and Slavery in Australia: An Evaluation of Victim Support Strategies', *Asian and Pacific Migration Journal*, Vol 15, No 4, 2006.

¹⁰⁷ CJSVs are evidenced by printed information on a single sheet of A4 paper including formal statements such as 'I consider that [the victim of people trafficking] should remain in Australia temporarily for the purposes of the administration of criminal justice in relation to an offence against a law of the Commonwealth of Australia'. The Anti-Slavery Project believes DIAC should provide evidence that a person holds a CJSV in a different way.

¹⁰⁸ The National Roundtable on People Trafficking, 'Statement of Outcomes', October 2008, available online at http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_PeopleTrafficking.

¹⁰⁹ Fiona David, 'Trafficking for Sexual Purposes', Australian Institute of Criminology, *Research and Public Policy Series*, no 95, 66.

¹¹⁰ Examples of these considerations are where Australia has obligations in international law, where the person is in a long-standing relationship with an Australian where they have children or where the circumstances in their country of origin are such that a return to that country may render the person vulnerable to re-trafficking or other harm.

¹¹¹ The source of this funding was from assets confiscated under the Proceeds of Crimes Act. See Minister for Home Affairs, *Commonwealth Funding to Combat People Trafficking* 23 October 2008.

¹¹² For eg, in November 2008, the Commonwealth Director of Public Prosecutions Witness Assistance Service Pilot employed a Witness Assistance Officer to provide information and support to victims and witnesses of Commonwealth crimes including victims of human trafficking, sexual slavery, sexual servitude, debt bondage and labour trafficking.

¹¹³ This fact sheet is available online at

http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_PeopleTrafficking.

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¹¹⁴ Section 11(3) states "forced or compulsory labour" does not include— (a) work or service normally required of a person who is under detention because of a lawful court order or who, under a lawful court order, has been conditionally released from detention or ordered to perform work in the community; or (b) work or service required because of an emergency threatening the Victorian community or a part of the Victorian community; or (c) work or service that forms part of normal civil obligations. (4) In this section "court order" includes an order made by a court of another jurisdiction.

¹¹⁵ Segrave M. 'Surely Something is better than nothing? The Australian response to the trafficking of women into sexual servitude in Australia', (2004) *Current Issues in Criminal Justice*, 16 (1).

¹¹⁶ United Nations High Commissioner For Human Rights Principles and Guidelines on Human Rights and Trafficking, E/2002/68/Add.1 (2002).

¹¹⁷ Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee – Australia (2009), UN Doc CCPR/C/AUS/CO/5, 2 April 2009 (Advanced Unedited Version), [22].

¹¹⁸ Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Report No 30 (2008-2009) [2.10].

¹¹⁹ Such a provision could be modelled on s 30(1) of the *Human Rights Act 2004* (ACT) or s 32(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic)

¹²⁰ IPU-UNODC, *Combating Trafficking in Persons – A Handbook for Parliamentarians*, (2009) 70.

¹²¹ *Ibid.*