

## Support for victims of trafficking and slavery

- 5.1 Victims of trafficking and slavery in Australia are provided support through various programs administered by both the Australian Government and non-government organisations (NGOs).
- 5.2 This chapter will provide an outline of the facilities that are currently available to victims of trafficking, slavery or slavery-like conditions in Australia as well as an examination of suggested additional support mechanisms for victims of trafficking.

### **People trafficking visa framework**

- 5.3 In its submission, the Attorney General's Department (AGD) commented on the types of visas available to foreign nationals who are suspected victims of trafficking:

The Australian Government People Trafficking Visa Framework, administered by DIAC [Department of Immigration and Citizenship], enables foreign nationals who do not already hold a valid visa, and are suspected victims of trafficking, to remain lawfully in Australia. They are then, like other valid visa holders who are suspected victims of trafficking, able to access support through the Support Program. The Visa Framework comprises three visas: the Bridging F visa (BVF), the Criminal Justice Stay visa (CJSV), and the Witness Protection (Trafficking) (Permanent) visa (WPTV).<sup>1</sup>

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<sup>1</sup> Attorney-General's Department, *Submission 8*, p. 6.

- 5.4 The AGD added that the suspected victim can be granted a BVF for up to 45 days initially, stating:

A person assessed by the police as a suspected victim of trafficking may be eligible for a BVF for up to 45 days, irrespective of his or her willingness or ability to assist in the criminal justice process. BVFs can also be granted to immediate family members in Australia. There are no work rights associated with BVFs, but holders receive intensive support through the Assessment Stream of the Support Program. On the expiry of the first BVF, in cases where a suspected victim is willing, but not able, to assist police, there is also an option to grant a second BVF for a further 45 days (taking the total to 90 days). During this time, the suspected victim would continue to receive support through the Extended Intensive Support Stream of the Support Program.<sup>2</sup>

- 5.5 The ADG noted that after the BVF expires:

... a CJSV may be granted to a suspected victim of trafficking who is willing and able to assist with the criminal justice process. CJSVs enable holders to remain in Australia for as long as they are required for law enforcement purposes. CJSV holders are allowed to work, and also receive support under the Justice Support Stream of the Support Program.<sup>3</sup>

- 5.6 At the conclusion of the criminal justice process, suspected victims of trafficking may be eligible for the WPTV. The AGD's submission states:

A suspected victim of trafficking who has made a contribution to an investigation or prosecution of an alleged trafficking offence may be eligible for a WPTV if, as a result of that contribution, they would be in danger upon return to their home country. WPTVs allow holders to remain in Australia permanently. Immediate family members may be included in WPTV applications.<sup>4</sup>

- 5.7 DIAC also noted the need for victims to make a contribution to a prosecution of the slavery and trafficking offences, stating:

To be eligible for a visa, victims need to make a contribution to a prosecution of an offence under Division 270 or 271 of the Criminal Code or to an investigation in relation to such an offence where the Director of Public Prosecutions has decided not to prosecute, and also meet the additional criteria set out in regulation 2.07AK(3) of the regulations. There is no requirement

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2 Attorney-General's Department, *Submission 8*, p. 6.

3 Attorney-General's Department, *Submission 8*, p. 6.

4 Attorney-General's Department, *Submission 8*, p. 6.

for a perpetrator to be in Australia for the grant of a WPTV nor is the grant of a WPTV reliant on a prosecution.<sup>5</sup>

5.8 During a public hearing, DIAC provided some details about the number of visas that had been granted in the last five years noting that:

- between 2009-2012 DIAC granted 56 bridging F visas (33 in 2009-10, 24 in 2010-11 and 12 in 2011-12); and
- between 2008-2012 DIAC granted 99 criminal justice stay visas (30 in 2008-09, 23 in 2009-10, 29 in 2010-11 and 17 in 2011-12).<sup>6</sup>

Table 5.1 People trafficking visas granted between 2003 - 2013

| Year                      | Subclass 060<br>Bridging F Visa | Subclass 951<br>Criminal Justice<br>Stay Visa <sup>7</sup> | Subclass 787<br>Witness Protection<br>(Trafficking)<br>(Temporary) Visa | Subclass 852<br>Witness Protection<br>(Trafficking)<br>(Permanent) Visa |
|---------------------------|---------------------------------|--|---|---|
| <b>2003-04</b>            | Visa framework not in place     |  |   |   |
| <b>2004-05</b>            | 31                              | 23   | 0   | 0   |
| <b>2005-06</b>            | 11                              | 8  | 0   | 0   |
| <b>2006-07</b>            | 16                              | 18   | 4   | 0   |
| <b>2007-08</b>            | 34                              | 18   | 13  | 0   |
| <b>2008-09</b>            | 39                              | 30   | 0   | 5   |
| <b>2009-10</b>            | 33                              | 23   |   | 21  |
| <b>2010-11</b>            | 24                              | 29   |   | 42  |
| <b>2011-12</b>            | 12                              | 17   | Removed by legislative<br>change 1 July 2009                            | 26  |
| <b>2012-<br/>(Mar 31)</b> | 13                              | 17   |   | 8   |

Source Department of Immigration and Citizenship, *Supplementary Submission 74*, p. 1.

5.9 DIAC also advised that since the introduction of the people trafficking visa framework on 1 January 2004, '19 trafficked people had been granted a Witness Protection (Trafficking) (Permanent) Visa before the case they had contributed to was finalised.'<sup>8</sup>

5 Department of Immigration and Citizenship, *Submission 56*, p. 28.

6 Mr Casey, Department of Immigration and Citizenship, *Transcript*, 21 November 2012, p. 25.

7 Note. A criminal Justice Stay Visa may have been issued to the same individual more than once.

8 Department of Immigration and Citizenship, *Supplementary Submission 74*, p. 1.

## Concerns about the trafficking visa framework

### The 45 day 'reflection and recovery' period

- 5.10 A number of groups that provided evidence to the inquiry raised concerns about the current visa trafficking framework including the initial grant of the BVF for 45 days.
- 5.11 The Josephite Counter-Trafficking Project (JCTP) put forward the view that 45 days was not adequate for a trafficked victim to assess their options, stating:
- 45 days do not give a person who has been traumatised by the trafficking process ... adequate time for reflection to make a well informed decision about their options.<sup>9</sup>
- 5.12 The JCTP called on the Australian Government 'to implement the 90 days 'reflection and recovery' period to all trafficked persons regardless of their ability or willingness to assist in an investigation.'<sup>10</sup>
- 5.13 Australian Catholic Religious Against Trafficking in Humans (ACRATH), Law Council of Australia (LCA), Anti-Slavery Australia (ASA), and the Australian Human Rights Commission (AHRC) all agreed with that view.<sup>11</sup>
- 5.14 ASA recommended that:
- ...any person identified by law enforcement as a 'suspected victim of human trafficking' may access a visa and support for 90 days, instead of the current 45 days.<sup>12</sup>
- 5.15 In particular the AHRC pointed out that the 90 day time frame was in line with the United Nations (UN) Trafficking Protocol, stating:
- The Commission supports the Special Rapporteur's recommendation to extend the 45-day period for which a Bridging visa F is available to 90 days for all persons identified or provisionally identified as having been trafficked. The Commission notes that this is a period in which the victim of trafficking will need to make some critical decisions and it would be more appropriate and in accordance with article 6 of the

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9 Josephite Counter-Trafficking Project, *Submission 10*, p. 6.

10 Josephite Counter-Trafficking Project, *Submission 10*, p. 6.

11 Australian Catholic Religious Against Trafficking in Humans, *Submission 21*, p. 6; Law Council of Australia, *Submission 29*, p. 29; Anti-Slavery Australia, *Submission 34*, p. 8; Australian Human Rights Commission, *Supplementary Submission 61*, p. 6.

12 Anti-Slavery Australia, *Submission 34*, p. 8.

Trafficking Protocol to extend the period for a Bridging visa F to 90 days.<sup>13</sup>

5.16 Ms Briana Lee noted another UN article (under the United Nations Model Law against Trafficking in Persons) that victims are ‘provided 90 days of support services regardless of their immigration status or ability and willingness to participate in legal procedures.’<sup>14</sup>

5.17 Professor Andreas Schloenhardt of the University of Queensland commented that victims were less likely to provide evidence under pressure, stating:

Despite the 15-day increase in the duration of the visa, there remain concerns that the initial 45-day reflection period is insufficient. This is particularly so, given that trafficked persons often remain under the influence of their former captors and require a substantial period of re-adjustment in order to make decisions independently of this influence. Indeed, international best practice suggests that a victim is less likely to provide evidence under pressure.<sup>15</sup>

5.18 In the report on her mission to Australia in November 2011, Ms Joy Ngozi Ezeilo OON, the UN Special Rapporteur on Trafficking, recommended extending the reflection and recovery period to 90 days, stating:

...the Special Rapporteur observes that the initial reflection period of 45 days is very short. Although an extended period of reflection is possible, in reality it was reported that a second Bridging Visa F will only be granted in situations where victims can evidence extreme trauma. A 45-day reflection period may not be an adequate time period for persons who have been trafficked to reflect and make critical decisions. An initial automatic reflection period of 90 days for all persons would be more appropriate and in accordance with article 6 of the Trafficking Protocol.<sup>16</sup>

5.19 At a public hearing, DIAC stated that the 45-day reflection and recovery period was sufficient:

The view of government – and I think the view of the departments which administer the policy – has been that that 45-day period has been sufficient to get an indication of engagement from people who have been involved in trafficking and wish to cooperate with

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13 Australian Human Rights Commission, *Supplementary Submission 61*, p. 8.

14 Ms Briana Lee, *Submission 16*, p. 4.

15 Professor Andreas Schloenhardt, *Submission 4*, p. 6.

16 United Nations, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo, 18 May 2012, p. 14 and 20.

the law enforcement agencies. ... But our visa issuing is reflective of the advice we receive from the AFP [Australian Federal Police] about what is an appropriate response. I do not think that there is sufficient evidence, on the basis of the characteristics of the case load or the advice we receive from the AFP, to change the initial visa period from the 45 days to the 90 days.<sup>17</sup>

5.20 The AFP also advised that the 45-day period was sufficient, stating:

In the majority of cases, the 45 days is sufficient for the victim or client to determine whether they are willing and able to assist an investigation. There are some instances where there may be mental health or medical issues where an extension to the 45 days is required, but the vast majority are able to determine whether they are willing to assist within those 45 days.<sup>18</sup>

5.21 The AGD put forward the view that the 45-day period was consistent with the UN High Commission for Human Rights recommended principles and guidelines on human rights and human trafficking.<sup>19</sup>

5.22 The AGD added that:

It is our assessment that that initial period of 45 days is appropriate, in particular, because work rights do not actually attach to the bridging F visa, and accommodation during that initial 45-day period is short-term crisis accommodation. Our experience is that many victims are keen to move on. In particular they are keen to obtain or return to work, and they are keen to move out of the crisis accommodation. So, our perception is that the 45 days is adequate for them to receive initial rehabilitation and then they want to move on.<sup>20</sup>

## **Committee comment**

5.23 The Committee notes the concerns of many groups and individuals that the 45 day 'reflection and recovery' period for victims of trafficking is inadequate.

5.24 The Committee also notes article 30(3) of the UN Model Law against Trafficking in Persons which states:

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17 Mr Casey, Department of Immigration and Citizenship, *Transcript*, 21 November 2012, pp. 21-22.

18 Federal Agent Drake, Australian Federal Police, *Transcript*, 19 March 2013, p. 1.

19 Mr Anderson, Attorney-General's Department, *Transcript*, 14 May 2013, p. 2.

20 Mr Anderson, Attorney-General's Department, *Transcript*, 14 May 2013, p. 2.

Any [natural] person who believes he or she is a victim of trafficking in persons shall have the right to submit a written request to the [competent immigration authority] to be granted a recovery and reflection period of not less than 90 days in order to make an informed decision on whether to cooperate with the competent authorities.<sup>21</sup>

- 5.25 Victims of slavery and people trafficking have had their basic human rights seriously violated. In many cases, they have been exploited physically, emotionally and mentally. The emotional effects this trauma can be persistent and devastating. Trafficking victims need an appropriate time to ‘reflect and recover’ prior to making a decision on whether they are willing and able to assist in an investigation.
- 5.26 The Committee considers that the current automatic reflection period of 45 days is appropriate. At the conclusion of the 45 day period, the suspected victim of trafficking should be able to apply for two additional 45 day periods on the basis of evidence of psychological trauma in order to decide on whether they are willing and able to assist in an investigation.
- 5.27 The suspected victims of trafficking should be provided appropriate support services through the Support for Trafficked People Program (STPP).

#### **Recommendation 4**

**The Committee recommends that suspected victims of trafficking be provided an initial automatic reflection period of 45 days, with relevant agencies given the capability to grant two further extensions of 45 days if required. In addition, the suspected victims of trafficking should be provided appropriate support services through the Support for Trafficked People Program.**

#### **Additional concerns about the trafficking visa framework**

- 5.28 Several groups that provided evidence for this inquiry also raised some additional concerns about the current visa trafficking framework including increasing the access to benefit payments for trafficking victims, delinking the trafficking visa from the criminal justice system, and granting permanent visas for trafficking victims. A few groups also put forward some alternatives to the current visa trafficking framework.

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21 United Nations, *Model Law against Trafficking in Persons*, 2009, p. 60.

## Benefit payments for trafficking victims

- 5.29 The Australian Red Cross (ARC) highlighted some issues for trafficked visa holders' access to services, stating:
- Access to and eligibility for most services is tied to the visas under the Framework and not to initial referral to the STPP;
  - The temporary nature of the Criminal Justice Stay Visa (CJSV) means that holders are ineligible for many services in the community;
  - Witness Protection Trafficking Visa (WPTV) holders are ineligible for a number of supports and face restrictions in accessing services provided to other Australian Permanent Residents.
  - CJSV and WPTV holders are only eligible for one type of Centrelink payment, namely the Special Benefit payment, which has many restrictions.<sup>22</sup>
- 5.30 The ARC recommended holders of a WPTV have greater access to benefit payments, stating:
- Clients eligible to access Centrelink Special Benefit are eligible to access other Centrelink payments and services in order to support their work and study opportunities without any waiting period.<sup>23</sup>
- 5.31 ACRATH suggested that individuals who have been granted a WPTV be provided the same entitlements as individuals on protection visas:
- This would improve access to Social Security payments and remove the requirement that the Witness Protection Trafficking visa holders are subject to the 2 year waiting period; it would also reduce the length of time on the low paid Special Benefits.<sup>24</sup>
- 5.32 ASA agreed that the individuals on a WPTV should have access to social security payments:
- A better framework would be to reclassify the Witness Protection (Trafficking) (Permanent) visa for social security payments, in the same way that a Protection visa is classified.<sup>25</sup>
- 5.33 The Salvation Army also agreed that individuals on a WPTV should be able to access more appropriate benefit payments.<sup>26</sup>

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22 Australian Red Cross, *Submission 47*, p. 8.

23 Australian Red Cross, *Submission 47*, p. 15.

24 Australian Catholic Religious Against Trafficking in Humans, *Submission 21*, p. 6.

25 Anti-Slavery Australia, *Submission 34*, p. 35.

26 Salvation Army, *Submission 37*, p. 11.



- 5.34 ASA commented that individuals on a WPTV were disadvantaged compared with holders of other visas granted on refugee or protection grounds:

In light of the link between visa status and social security entitlement, we observe that while victim-witnesses who hold the Criminal Justice Stay visa or who are granted the Witness Protection (Trafficking) (Permanent) visa are eligible to access Medicare and limited social security payments, they are disadvantaged in comparison with holders of other visas granted on refugee or protection grounds. If a victim-witness is certified by the Attorney-General as having made a contribution to a police investigation or criminal prosecution they may be granted the permanent visa, but the visa type is restricted and they are subject to the 2 year waiting period for more favourable Centrelink payments.<sup>27</sup>

- 5.35 ASA added that:

...if a victim-witness holds a Witness Protection (Trafficking) (Permanent) visa and is in receipt of Special Benefit social security payments, then any compensation that they receive, for example, through a statutory victims' compensation scheme, will be treated as income and the Special Benefit will cease during the time that the compensation award is exhausted through day to day living expenses.<sup>28</sup>

- 5.36 The JCTP recommended re-categorising the WPTV as a humanitarian visa to increase the access to humanitarian services:

The Witness Protection Trafficking Permanent Visa is not categorised as a humanitarian visa and this limits access to humanitarian services. These settlement services are particularly important with Trafficked people who have children offshore who are all granted permanent residency in Australia.<sup>29</sup>

### Delinking the trafficking visa from the criminal justice system

- 5.37 The Law Council of Australia (LCA) commented that the visa framework was too closely tied to the criminal justice system:

...members of [the Law Council's] Constituent Bodies note the limited eligibility for visas for victims of trafficking under the People Trafficking Visa Framework (the Framework). ...to become

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27 Anti-Slavery Australia, *Submission 34*, p. 35.

28 Anti-Slavery Australia, *Submission 34*, p. 35.

29 Josephite Counter-Trafficking Project, *Submission 10*, p. 8.

eligible for visas, victims are generally still obliged under the Framework to contribute to a police investigation against the persons who trafficked them. As observed by one of the Law Council's Constituent Bodies, the New South Wales Bar Association (NSW Bar), this not only makes a victim's ability to stay in Australia and access services dependant on the discretion of police and prosecutors, but also on arbitrary factors such as whether their traffickers are still in Australia. A Human Rights based approach would provide victims with a right to stay in Australia based on their need to access services. It would also enable them to stay as long as they need those services or if they are at risk of harm if deported.<sup>30</sup>

- 5.38 The LCA also voiced concerns that victims may be discouraged from seeking a visa if required to contribute to an investigation and the eligibility of applying for a WPTV:

Members of the NSW Bar are also concerned that the requirement that victims must contribute to an investigation may discourage victims from seeking a visa, as they may fear reprisals against themselves or against their families. They also note that, even if a victim does give evidence, to be eligible for a Witness Protection (Trafficking) (Permanent) Visa it must be demonstrated that he or she would be in danger upon returning home. This may be difficult to establish, and may not take into account the possibility that the victim will be ultimately re-trafficked due to socio-economic factors.<sup>31</sup>

- 5.39 Ms Brianna Lee also commented about the requirement for victims to contribute to a criminal investigation:

One issue with the current support program is the requirement for victims to contribute to criminal investigations and prosecutions in order to qualify for temporary and permanent visas or access the government funded support service.<sup>32</sup>

- 5.40 Professor Schloenhardt advised the Committee that the criminal justice approach of the trafficking visa framework was problematic for three main reasons:

- victims continue to be seen ultimately as tools for investigations and prosecutions, and not as victims of a serious crime;

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30 Law Council of Australia, *Submission 29*, p. 28.

31 Law Council of Australia, *Submission 29*, p. 28.

32 Ms Briana Lee, *Submission 16*, p. 4.

- the ability of victims to cooperate will often be limited by the trauma they have experienced, mistrust or misunderstanding of law enforcement, and a fear of reprisals against them or their family if they are returned to their country of origin; and
- the criminal justice approach risks further traumatising victims by making permanent protection largely contingent on involvement in investigations and prosecutions exposing them to the risk of painful courtroom experiences and putting victims and their families at risk of reprisal if they testify against their traffickers.<sup>33</sup>

5.41 Christian Faith and Freedom also recommended delinking the current visa trafficking framework:

Reform the current visa regime to protect all victims of trafficking and slavery, seeking to prevent re-enslavement and re-trafficking of victims, regardless of their cooperation with authorities.<sup>34</sup>

5.42 The ARC advised that there were limitations to the criminal justice framework:

This means that people who have been trafficked who are unable or do not wish to participate in the justice process beyond the Assessment phase of the program lose access to the specialised support service and to the People Trafficking Visa Framework. This therefore also limits the migration options available to such people to remain in Australia.<sup>35</sup>

5.43 The ARC added:

However, there are other trafficked people in Australia for whom the protection visa process is not an option and whose support opportunities are even more limited. These people may obtain no support, or not even be identified as a trafficked person when coming into contact with the authorities.<sup>36</sup>

5.44 Project Respect suggested continuing the criminal justice approach in addition to establishing a parallel process:

We would suggest retaining the current model, which is attached to the criminal justice process, where women are referred on by the police but also having a model running alongside that where women are identified by accredited NGOs. They would then be entitled to the same sort of support and a visa with the idea of

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33 Professor Andreas Schloenhardt, *Submission 4*, pp. 8-9.

34 Christian Faith and Freedom – *Supplementary Submission 46*, p. 49.

35 Australian Red Cross, *Submission 47*, p. 7.

36 Australian Red Cross, *Submission 47*, p. 7.

developing the trust and becoming settled enough to decide if they want to participate in the criminal justice process, recognising that this is a crime that has happened to women, in this case, on our soil and that we should protect them whether they are willing to engage in the criminal justice process or not.<sup>37</sup>

5.45 At a public hearing, DIAC commented that a departmental review in 2009 found that the visa 'framework should still stay linked to the criminal justice nature of Australia's efforts on people trafficking.'<sup>38</sup>

5.46 DIAC added:

I am aware of the special rapporteur's commentary on this and also the Senate committee's recommendation, but I think it is fair to say that has only recently been made and there has been no formal response from government to that.<sup>39</sup>

5.47 The AFP, in response to a question on whether threshold for access to the criminal justice stay visa be lowered to 'willing to assist', advised that was appropriate:

I think a willingness to do so is enough. There is a whole range of circumstances we need to look at here. Whilst it may be that they are willing to assist in the first instance, and we are happy to work with them in that regard, it may be because of ... health issues or a change of heart down the track that they may change their mind. We accept that because we understand some of the conditions they have been subject to. From our perspective, willingness to assist is a good starting point and we can work with that.<sup>40</sup>

5.48 The AGD did not believe that the criminal justice framework should be completely separated from the trafficking visa:

Human trafficking and slavery prosecutions rely heavily on witness assistance and testimony, and the complete de-linking of witness assistance and visa provisions from the criminal justice framework may affect the success of prosecutions.<sup>41</sup>

### Granting permanent visas for trafficking victims

5.49 The JCTP indicated that it would be helpful to grant permanent visas to suspected victims of trafficking, stating:

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37 Ms Hinton, Project Respect, *Transcript*, 8 May 2013, p. 3.

38 Mr Casey, Department of Immigration and Citizenship, *Transcript*, 21 November 2012, p. 21.

39 Mr Casey, Department of Immigration and Citizenship, *Transcript*, 21 November 2012, p. 21.

40 Commander Hurst, Australian Federal Police, *Transcript*, 19 March 2013, p. 2.

41 Attorney-General's Department, *Supplementary Submission 76*, p. 7.

It would be helpful if a permanent visa is given within 6 months after the CJSV is issued and that those who are unable to participate in a criminal investigation be eligible for this visa on compassionate grounds.<sup>42</sup>

- 5.50 The Salvation Army agreed with the JCTP's view commenting that 'the Australian Federal Police/Department of Immigration and Citizenship commence permanent visas as soon as victims sign their witness statements.'<sup>43</sup>
- 5.51 ASA also recommended reviewing the timing of when a permanent visa is issued to trafficking victims:
- Witnesses who have made a contribution to the criminal justice process and who would be in danger if they return to their home country may be offered a permanent visa. Investigations of complex crimes can be time-consuming, involve multiple jurisdictions and require translation and interpretation of foreign language material. An unforeseen consequence is that victims may experience uncertainty about their long-term security and face continued separation from their family members, often young children, for long periods of time. We recommend that the currently operating informal policy about the timing of a recommendation to consider offering a permanent visa, (usually within three months of a decision to charge or not to charge a person with a criminal offence) should be reviewed.<sup>44</sup>
- 5.52 ASA also recommended granting a permanent visa in some circumstances when a trafficking victim is either unwilling or unable to provide a contribution to a police investigation or a criminal prosecution.<sup>45</sup>
- 5.53 Professor Schloenhardt suggested allowing victims to initiate the application for a protection visa, stating:
- ...allowing victims to initiate the application process for a Witness Protection (Trafficking) (Permanent) visa (as opposed to waiting for an invitation) or implementing standard and regular reviews of the status of the victim with a view to whether a protection visa is required should also be considered.<sup>46</sup>
- 5.54 The Australian Lawyers for Human Rights (ALHR) recommended that all trafficking victims be given access to permanent visas:

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42 Josephite Counter-Trafficking Project, *Submission 10*, p. 8.

43 Salvation Army, *Submission 37*, p. 7.

44 Anti-Slavery Australia, *Submission 34*, p. 8.

45 Anti-Slavery Australia, *Submission 34*, p. 8.

46 Professor Andreas Schloenhardt, *Submission 4*, p. 11.

ALHR recommends that all victims of trafficking be able to access permanent visa options, regardless of whether they are identified by the AFP and/or decide to participate in the criminal justice process.<sup>47</sup>

5.55 The ALHR also recommended:

...that permanent visa options be accessible for those victims of slavery, forced marriage, forced labour and other offences identified in the Bill where appropriate. This would reflect their status as a victim pursuant to the Trafficking Protocol, in particular, under Articles 6 and 7 of the Protocol.<sup>48</sup>

### Alternatives to the current visa trafficking framework

5.56 The Salvation Army recommended that an alternative to the current visa trafficking framework be considered:

The Salvation Army recommends that the Australian government consider a self-petitioning visa process within the migration system for victims of trafficking/slavery and review how similar visas are provided in the United States, Italy, Belgium and other countries.<sup>49</sup>

5.57 Project Respect also proposed an alternative to the current visa trafficking framework calling on:

...the creation of a 'Social Protection Visa' particularly fashioned for victims of trafficking would function independently from the judicial path that is based on willingness to 'contribute' to police investigations. It shall be the role of accredited NGOs to identify and determine the eligibility of the individuals for a Protection Visa, which should have a fixed duration of 12 months.<sup>50</sup>

5.58 The Australian Human Rights Commission recommended that the visa framework be amended to provide victims of child trafficking with a permanent visa, stating:

... amend the visa framework for victims of trafficking to ensure every person who is identified as a victim of child trafficking and who would face danger if returned to their country of origin is eligible for a permanent visa, regardless of whether they participate in law enforcement processes.<sup>51</sup>

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47 Australian Lawyers for Human Rights, *Submission 44*, p. 5.

48 Australian Lawyers for Human Rights, *Submission 44*, p. 5.

49 Salvation Army, *Submission 37*, p. 7.

50 Project Respect, *Submission 38*, p. 11.

51 Australian Human Rights Commission, *Submission 31*, p. 4.

## Delay in processing of trafficking visas

5.59 The Salvation Army advised that it was their experience that there are substantial delays, of over two years in some cases, in the granting of a trafficking visa. The Salvation Army added:

The process is quite simple in comparison to other migration pathways that individuals undertake; and, as a result of the delay, clients are less inclined to proceed down that pathway. ... They are more inclined to proceed under the protection visa pathway.<sup>52</sup>

5.60 DIAC provided some details on how long it takes to grant a trafficking visa:

- The BVF is usually granted on the same day that a valid application is made.
- The CJSV is usually granted on the same day as the Criminal Justice Stay Certificate (CJSC) is issued.
- The Witness Protection (Trafficking) (Permanent) visa is usually granted within one week of the department receiving all of the documentation required for grant.<sup>53</sup>

5.61 DIAC added that there are some external factors that influence the visa processing timeframe:

As applicants are victims of trafficking the department takes a flexible approach to timeframes for provision of documents. However, some factors in processing the visa are outside the department's control and influence the processing timeframe. This includes obtaining information from overseas, such as offshore police certificates, evidence of name changes, custody documentation, health information and translation of documentation. In some countries obtaining documentation can take significant time.<sup>54</sup>

## Other recommendations

5.62 The ARC also made a number of recommendations focussed on increasing access to services for individuals on a trafficking visa. The ARC recommended that:

- the names of the Criminal Justice Stay and Witness Protection Trafficking Visas be changed to address identified concerns; including

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52 Mr Geary, The Salvation Army, *Transcript*, 23 April 2013, p. 6 and 8.

53 Department of Immigration and Citizenship, *Supplementary Submission 74*, p. 2.

54 Department of Immigration and Citizenship, *Supplementary Submission 74*, p. 2.

avoiding stigmatisation and to ensure confidentiality and respect for the privacy and integrity of victims of trafficking;

- State and Territory Government Housing support services across the country allow people who have been trafficked and are on temporary visas to access their services via an exemption criteria;
- trafficked people be charged local student rates at higher education and training institutions regardless of visa status;
- access to the Adult Migrant Education Program be available to all trafficked people, regardless of visa type;
- DIAC-funded settlement support services be made available to people who have been trafficked and their dependents once they receive a Witness Protection Trafficking Visa; and
- access to services including Centrelink, Housing and Education be de-linked from the visa sub-class for trafficked people.<sup>55</sup>

## Committee comment

5.63 The Committee acknowledges the concerns raised by the many NGOs, civil society organisations, and individuals that provided evidence for this inquiry into the current visa trafficking framework.

5.64 The Committee notes that in its inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012 the Senate Legal and Constitutional Affairs Committee considered the establishment of a visa and support stream which is not dependent on a victim assisting in the criminal justice system.<sup>56</sup>

5.65 The Committee notes the Senate Legal and Constitutional Affairs Committee's recommendation that:

...the Australian Government review the People Trafficking Visa Framework and the Support for Victims of People Trafficking Program, and consider establishing an ongoing visa and access to victim support mechanism which is not conditional on a victim of people trafficking providing assistance in the criminal justice process.<sup>57</sup>

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55 Australian Red Cross, *Submission 47*, p. 23.

56 Senate Legal and Constitutional Affairs Committee, *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, September 2012, p. 36.

57 Senate Legal and Constitutional Affairs Committee, *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, September 2012, p. vii.



- 5.66 The Committee recommends that the Australian Government review the People Trafficking Visa Framework and the Support for Victims of People Trafficking Program, and consider establishing an ongoing visa and access to victim support mechanism that is conditional upon victim assistance in the criminal justice process but not on securing a conviction.

### **Recommendation 5**

**The Committee recommends that the Australian Government consider Recommendation 3 of the Senate Legal and Constitutional Affairs report on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, having regard to the need to ensure that even if assistance does not lead to a conviction, it is still substantial in terms of giving assistance to authorities.**

## **Support for trafficked people program**

- 5.67 The STPP is administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). Between 2004 and 2009 the delivery of the STPP was initially provided by Southern Edge Training. In March 2009 the ARC was engaged by FaHCSIA to deliver the program.<sup>58</sup>
- 5.68 The STPP has an annual appropriation of \$0.755 million and 'will receive an addition \$1.2 million in funding from 2011-12 to 2014-15, bringing the annual amount to \$1.055 million per year between 2011-12 to 2014-15.'<sup>59</sup>
- 5.69 At a public hearing, FaHCSIA provided some additional details about the funding for the program, stating:

Since 2009 the government has committed additional funding to the support program for the Women's Safety Agenda. This is on top of the annual appropriation of \$755,000. The government provided an additional \$120,000 in 2009-10 and an additional \$300,000 in 2010-11. In March 2012 the Minister for the Status of Women announced an additional \$300,000 per year to 2014-15.

58 Attorney-General's Department, *Submission 8*, p. 5 and Josephite Counter-Trafficking Project, *Submission 10*, p. 7.

59 Attorney-General's Department, *Supplementary Submission 48*, p. 20.

This brings the annual funding of the support program to \$1,055,000, or \$4.22 million for the four years from 2011-12.<sup>60</sup>

- 5.70 Suspected victims of trafficking obtain entry to the STPP through a referral by the AFP.<sup>61</sup>
- 5.71 The AGD commented that entry into the STPP was not dependent upon participation in a criminal justice process adding that individuals who were not willing to provide assistance to law enforcement could leave the STPP.<sup>62</sup>
- 5.72 In a submission, the AGD noted that suspected victims had been identified through a number of avenues:
- Possible victims may be identified through a number of avenues, including immigration officials, law enforcement agencies, NGOs, hospitals, medical practitioners, consulates and government departments. Possible victims are referred to the AFP for assessment and, where appropriate, entry to the Support Program.<sup>63</sup>
- 5.73 The AGD added that:
- The Support Program seeks to ensure that clients have access to accommodation, income support, counselling, medical treatment, legal and migration advice, skills development training and interpreter services as required.<sup>64</sup>
- 5.74 The AGD pointed out that people who are going to be in Australia for a long time, and are participating in or assisting a criminal justice process, will be more likely to access housing and English-language classes.<sup>65</sup>
- 5.75 The AGD advised that suspected victims of trafficking may access support through the following streams:
- Assessment Stream - up to 45 days of intensive support for all clients referred by the AFP, irrespective of whether they are willing and/or able to assist with an investigation and prosecution of a people trafficking offence;
  - Extended Intensive Support Stream - an additional 45 days of intensive support for clients who are willing but not able to

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60 Ms McKenzie, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript*, 21 November 2012, p. 30.

61 Attorney-General's Department, *Supplementary Submission 48*, p. 20.

62 Mr Anderson, Attorney-General's Department, *Transcript*, 14 May 2013, p. 3.

63 Attorney-General's Department, *Supplementary Submission 48*, p. 20.

64 Attorney-General's Department, *Supplementary Submission 48*, p. 20. A Summary of assistance under the Support for Trafficked People Program is at Appendix I.

65 Mr Anderson, Attorney-General's Department, *Transcript*, 14 May 2013, p. 3.

- assist with an investigation and/or prosecution because of trauma or health issues;
- Justice Support Stream – support while the client participates in the criminal justice process;
  - Transitional Period – a 20 day transition period for clients leaving the Support Program; and
  - Temporary Trial Support Stream – temporary support for victims who return to Australia to participate in a trial.<sup>66</sup>
- 5.76 As of 14 May 2013, 209 suspected victims of trafficking had been identified and referred to the STPP since it was established in 2004.<sup>67</sup> Of the 209 suspected victims:
- 188 were female and 21 were male;
  - 164 were trafficking into the sex industry and 45 were trafficked into other industries;
  - 82 were from Thailand, 35 from South Korea, 33 from Malaysia, 10 from the Philippines, 12 from China, 8 from Indonesia, and 21 from other countries.<sup>68</sup>
- 5.77 As noted above, the ARC stated that it had ‘been managing the Program since March 2009 and recently signed a Funding Agreement with the Australian Government to continue service provision until 2015.’<sup>69</sup>
- 5.78 The ARC provided some details about the number of people it had supported as part of the STPP since its engagement, stating:
- Since March 2009 Red Cross has supported 114 people that have been referred to the Program and who have remained for periods ranging from one week to seven years.<sup>70</sup>
- 5.79 The ARC added:
- One hundred and one of our clients have been women but in the last eighteen months, the majority of new referrals have been men. As of August 2012, there were sixty-four clients on the Program.<sup>71</sup>
- 5.80 The AFP advised that some trafficked individuals have chosen not to enter the STPP, stating:
- There are a range of reasons why a suspected victim of trafficking may not want to enter the full support program. In some circumstances they have been in the country for quite some time
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66 Attorney-General’s Department, *Supplementary Submission 48*, p. 21.

67 Attorney-General’s Department, *Supplementary Submission 67*, p. 1.

68 Attorney-General’s Department, *Supplementary Submission 67*, p. 2.

69 Australian Red Cross, *Submission 47*, p. 2.

70 Australian Red Cross, *Submission 47*, p. 5.

71 Australian Red Cross, *Submission 47*, p. 5.

and have established other networks in which, for example, they may have a spousal visa and not require the support of the program. In other circumstances they would rather not use the program but they have established networks with perhaps a local NGO who is providing a range of support services. They may have obtained a migration adviser and come to other arrangements for themselves and they do not require it. Obviously, there are others who simply do not want to participate.<sup>72</sup>

5.81 The AFP also pointed out that it was providing assistance to other trafficking victims who were not part of the STPP, stating:

...the AFP has a number of victims with whom it is currently engaged and who are not part of the support program, but are still willing and able to assist the investigation into their particular circumstances.<sup>73</sup>

5.82 FaHCSIA highlighted that the administrative arrangements of the STPP were reviewed in 2011 by FaHCSIA and the Red Cross.<sup>74</sup>

## **Suggested additional support for victims of trafficking**

### **Compensation scheme for victims of trafficking**

5.83 During the course of this inquiry a number of groups recommended establishing a compensation scheme for victims of trafficking.

5.84 The JCTP commented that trafficking victims are unable to access compensation:

Human Trafficking is an offence in Federal Legislation but is not part of the States' Legislative Framework. This is a problem for Trafficked persons who cannot access compensation for the crime that has been committed against them. They have to seek the closest appropriate parameters and use surrounding circumstances to determine under which crime in State legislation they can apply for compensation.<sup>75</sup>

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72 Federal Agent Drake, Australian Federal Police, *Transcript*, 19 March 2013, pp. 4-5.

73 Federal Agent Drake, Australian Federal Police, *Transcript*, 19 March 2013, p. 5.

74 Ms McKenzie, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript*, 21 November 2012, p. 30.

75 Josephite Counter-Trafficking Project, *Submission 10*, p. 9.

- 5.85 The JCTP, Project Respect, Ms Lee, the LCA, ASA, and ACRATH noted that compensation claims vary in each State and Territory, ranging from \$7,500 to \$50,000.<sup>76</sup>
- 5.86 ACRATH highlighted that it had provided assistance to several victims of trafficking to make compensation claims through the Victorian Victims of Crime Assistance Tribunal (the Tribunal). ACRATH noted that while the claimants were awarded the full amount by the Tribunal (\$7,500 or \$10,000 depending on when they were trafficked), the Tribunal's magistrate commented that it was not compensation money.<sup>77</sup>
- 5.87 ACRATH indicated its preference for a 'nationally uniform state-based scheme of compensation.'<sup>78</sup>
- 5.88 The LCA also put forward its views on how a compensation scheme might be established:
- We could introduce a pilot Commonwealth scheme for the payment which is linked to the protection and trafficking visa framework at this stage. Our goal, however, is to press for a federal compensation scheme which addresses those federal crimes that have direct impact upon victims, particularly victims of violence.<sup>79</sup>
- 5.89 The National Tertiary Education Union recommended that 'the Australian government make efforts to improve the access of trafficking victims to opportunities to seek financial compensation and civil remedies.'<sup>80</sup>
- 5.90 The Scarlet Alliance also called on the Australian government to increase avenues for statutory compensation.<sup>81</sup>
- 5.91 Project Respect suggested establishing a national compensation scheme for victims of sex trafficking.<sup>82</sup>
- 5.92 Professor Schloenhardt and the AHRC highlighted Australia's obligations under article 25(2) of the *United Nations Convention against Transnational Organized Crime* as well as protocol article 6(6) *United Nations Protocol to*

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76 Josephite Counter-Trafficking Project, *Submission 10*, p. 9; Ms Hinton, Project Respect, *Transcript*, 8 May 2013, p. 1; Ms Brianna Lee, *Submission 16*, p. 6; Law Council of Australia, *Submission 29*, p. 23; Associate Professor Burn, Anti-Slavery Australia, *Transcript*, 22 April 2013, p. 25; Ms Carolan, Australian Catholic Religious Against Trafficking in Humans, *Transcript*, 8 May 2013, p. 12.

77 Ms Carolan, Australian Catholic Religious Against Trafficking in Humans, *Transcript*, 8 May 2013, p. 12.

78 Australian Catholic Religious Against Trafficking in Humans, *Submission 21*, p. 7.

79 Ms McLeod, Law Council of Australia, *Transcript*, 20 November 2012, p. 18.

80 National Tertiary Education Union, *Submission 15*, p. 4.

81 Scarlet Alliance, *Submission 26*, p. 7.

82 Project Respect, *Submission 38*, p. 13.

*Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention on Transnational Crime*, which require state parties to establish appropriate procedures to provide access to compensation.<sup>83</sup>

5.93 The AHRC also noted some obstacles preventing trafficking victims from making a compensation claim, including:

- obtaining legal advice about claiming compensation;
- a lack of visa options to stay in Australia to pursue compensation claims;
- limited legal avenues to pursue compensation claims; and
- a need to improve access for victims to information and legal services for assistance with making compensation claims.<sup>84</sup>

5.94 The AHRC recommended that Australian Government develop a federal victims' compensation scheme for victims of trafficking, slavery and slavery like conditions.<sup>85</sup>

5.95 In addition to Australia's international obligations, ASA highlighted the view of the Australian Law Reform Commission on the effectiveness of compensation schemes, that:

Like restitution orders, victims' compensation schemes provide a more informal and efficient forum than civil litigation. They are also more effective in that victims have access to a pool of dedicated funds, whereas restitution from an offender depends upon the offender's capacity to pay.<sup>86</sup>

5.96 ASA pointed out some practical problems associated with trafficking victims apply for compensation, stating:

- Slavery and human trafficking are Commonwealth offences and, (with the exception of sexual servitude offences), there are no State or Territory offences which correspond precisely to the criminal acts envisaged in the Commonwealth legislation;

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83 Professor Andreas Schloenhardt, University of Queensland, *Submission 4*, p. 34; Australian Human Rights Commission, *Submission 31*, p. 5. Australia ratified the *United Nations Convention against Transnational Organized Crime* on 27 May 2004. The *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention on Transnational Crime* was ratified by Australia on 14 September 2005.

84 Australian Human Rights Commission, *Submission 31*, pp. 6-7.

85 Australian Human Rights Commission, *Submission 31*, p. 3.

86 Anti-Slavery Australia, *Submission 34*, p. 19.

- the breadth of the elements of the offences as set out in the relevant Divisions of the Criminal Code Act 1995 (Cth) are not reflected in the State/Territory schemes, especially where there is an absence of physical violence;
  - in situations where there may be a claim under a State/Territory scheme, it is usually the case that only certain elements of the crime, such as the sexual assault element are compensable under those schemes; and
  - they risk failure because the various schemes either do not contain an appropriate category under which a person can apply or do not reflect the breadth of criminality as set out in the Commonwealth offences.<sup>87</sup>
- 5.97 ASA also highlighted concerns with jurisdictional victim compensation legislation noting that under the recent legislation passed by the NSW Government, the Victims Rights and Support Bill 2013:
- slavery and slavery-like offences are possibly included in the below definition of a 'Category B recognition payment' there are likely to be instances where violence was not involved and therefore a NSW victim may fall outside the ambit of the new Scheme; and
  - the proposed maximum 'recognition payment' of \$10,000 falls well below the \$50,000 available under the previous NSW scheme and even further below the \$75,000 available to victims in Queensland, and Western Australia.<sup>88</sup>
- 5.98 ASA recommend establishing a national compensation scheme for victims of slavery, trafficking and related crimes, suggesting four possible models:
- Model 1: the establishment of a new Federal tribunal to administer a Federal victims' compensation scheme or increasing the jurisdiction of a current Federal tribunal or other administrative body to determine compensation claims by victims of Federal crimes.
  - Model 2: ex-gratia payments are made available to victims of crime where their circumstances would exclude them from claiming under the state victims' compensation scheme.
  - Model 3: that the Commonwealth nominate one State or Territory compensation scheme and legislate for that particular scheme to exercise Federal jurisdiction.
  - Model 4: compensation payments to be made to victims from the Consolidated Revenue Fund through appropriation by the Parliament.<sup>89</sup>

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87 Anti-Slavery Australia, *Supplementary Submission 79*, p. 3.

88 Anti-Slavery Australia, *Supplementary Submission 79*, pp. 3-4.

89 Anti-Slavery Australia, *Submission 34*, pp. 29-31.

5.99 The Salvation Army recommended mandatory compensation in cases where trafficking offenders have been convicted, stating:

The Salvation Army recommends that the Commonwealth establish a compensation scheme for all victims of trafficking, slavery and related offences. In cases where there is a conviction, such compensation should be mandatory.<sup>90</sup>

5.100 The ALHR also supported the introduction of a federal compensation scheme.<sup>91</sup>

5.101 Dr Anne Gallagher AO, provided an international law perspective on compensation, advising that:

...the victims of crime and human rights violations, the people have been trafficked or people who have subject to this kind of exploitation have an internationally recognised legal right to a remedy the damages, including unpaid wages and damages for the harm committed against them.<sup>92</sup>

5.102 Dr Gallagher put forward the view that a federally funded compensation scheme might be appropriate but recommended a review of the current arrangements:

What I do see in Australia is a need to do a thorough review, a rigorous assessment of the current arrangements, to figure out what is working and what is not working, why certain victims have not received the support they may in fact have been legally entitled to, how other aspects of Australia's response to trafficking—for example, issues related to return of victims, issues related to victims as witnesses—impact on the capacity of victims to access remedies and for them to move on from there.<sup>93</sup>

5.103 The Commonwealth Director of Public Prosecutions (CDPP) pointed out that the recent amendment to the *Crimes Act*, in particular paragraph 21B(1)(d), 'allows an individual victim to be awarded reparations for any loss suffered or any expense incurred by reason of the offence.'<sup>94</sup>

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90 Salvation Army, *Submission 37*, p. 19

91 Australian Lawyers for Human Rights, *Submission 44*, p. 5.

92 Dr Anne Gallagher AO, *Transcript*, 8 May 2013, p. 11.

93 Dr Anne Gallagher AO, *Transcript*, 8 May 2013, p. 11.

94 Commonwealth Director of Public Prosecutions, *Submission 54*, p. 1.



5.104 However, the AGD in its response to questions on notice from the Senate Standing Committee on Legal and Constitutional Affairs, as part of its inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, stated that section 21B(1) of the Crimes Act deals with reparations, not compensation.<sup>95</sup>

5.105 AGD acknowledged the differences in State/Territory compensation schemes but advised that there was no intention to establish a national scheme:

At this stage there is no intention to go beyond that to erect a national compensation scheme. There is a range of different considerations that would go into that – for example, whether it should be limited to particular classes of victims and the amount of compensation which should be established. Traditionally, it has been a matter for states and territories because they deal so much more with individual human victims. At this stage, there has not been any decision to move to a national compensation scheme.<sup>96</sup>

5.106 AGD did note that a ‘national approach to victims’ compensation was considered by the former Standing Committee of Attorneys-General’, adding:

In March 2008, Ministers agreed that an officers’ working group should report back to Ministers on a comparison of victims’ rights schemes in jurisdictions, considering best practice approaches including a national approach to victims’ compensation. The working group determined that a national approach to victims of crime compensation is not feasible.<sup>97</sup>

5.107 AGD also highlighted that steps had been taken to provide greater consistency for victims’ rights across jurisdictions:

All Australian jurisdictions have recently agreed to the National Framework of Rights and Services for Victims of Crime 2013-2016. Ministers endorsed this framework on 4 April 2013. The framework aims to ensure greater consistency between jurisdictions in support of victims’ rights, and will allow better coordination of services across the Commonwealth, States and Territories.<sup>98</sup>

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95 Senate Legal and Constitutional Affairs Committee, *Response to questions on notice provided by Attorney-General's Department*, received 4 September 2012, p. 16.

96 Mr Anderson, Attorney-General's Department, *Transcript*, 14 May 2013, p. 5.

97 Attorney-General's Department, *Supplementary Submission 76*, p. 10.

98 Attorney-General's Department, *Supplementary Submission 76*, p. 10.

## Committee comment

- 5.108 The Committee notes that, in its inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012, the Senate Legal and Constitutional Affairs Committee considered reparations for victims of trafficking and slavery as well as establishing a federal compensation scheme.
- 5.109 The Senate Legal and Constitutional Affairs Committee recommended, that:
- ...the Australian Government further investigate the establishment of a federal compensation scheme for victims of slavery and people trafficking.<sup>99</sup>
- 5.110 The Committee recommends that the Australian Government further investigate the establishment of a federal compensation scheme for proven victims of slavery and people trafficking. The Committee is of the view that the compensation fund should be funded by persons convicted of these crimes. The Committee also recommends that the Australian Government review the current rates of compensation.

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### Recommendation 6

**The Committee recommends that the Australian Government further investigate the establishment of a federal compensation scheme for proven victims of slavery and people trafficking. The compensation fund should be funded by persons convicted of these crimes. The Committee also recommends that the Australian Government review the current rates of compensation.**

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<sup>99</sup> Senate Legal and Constitutional Affairs Committee, *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, September 2012, p. vii.