



Submission No 31

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Australian Human Rights Commission



Australian
Human Rights
Commission

Inquiry into Slavery, Slavery- like conditions and People Trafficking

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE JOINT STANDING COMMITTEE
ON FOREIGN AFFAIRS, DEFENCE AND TRADE, HUMAN RIGHTS SUB-COMMITTEE**

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade in its Inquiry into Slavery, Slavery-like conditions and People Trafficking.

2 Summary

2. The Australian Human Rights Commission welcomes the opportunity to make this submission to the Inquiry into Modern Slavery.
3. The Commission notes that a package of legislative reform to address slavery, slavery-like conditions and people trafficking, is currently being considered under the Crimes Legislation Amendment (Slavery, Slavery-like, Conditions and People Trafficking) Bill 2012. This submission will not address the provisions of this Bill. The Commission refers the Committee to the Commission's submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into this Bill (available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=legcon_ctte/slavery_and_people_trafficking/submissions.htm) and to the Commission's submission on the Draft Exposure Bill 2012 (available at http://humanrights.gov.au/legal/submissions/2012/20120120_trafficking.html).
4. This submission will limit itself to consideration of reforms and best practices necessary for protecting and supporting victims of slavery slavery-like conditions and people trafficking.

3 Recommendations

5. The Australian Human Rights Commission recommends:

Recommendation 1: The Australian Government ensure a human rights based approach informs all measures to prevent, protect and redress people who are victims of trafficking, slavery or slavery-like conditions;

Recommendation 2: The Australian Government develop a federal victims' compensation scheme for victims of trafficking, slavery and slavery like conditions.

Recommendation 3: The Australian Government improve support services for victims of trafficking, slavery and slavery-like conditions including through:

- improving coordination among government agencies involved in anti-trafficking responses
- reviewing the return and reintegration of trafficking victims procedures and develop repatriation guidelines for police and other relevant personnel

- improving provision of settlement services, including access to housing, for trafficked women and their dependent children who obtain permanent residence in Australia.

Recommendation 4: The Australian Government continue to provide education and training for community organisations and service providers who assist with victims of trafficking, slavery and slavery-like conditions, using the *Guidelines for Working with Trafficked People* as a resource.

Recommendation 5: In relation to trafficking in children the Australian Government:

- undertake comprehensive data collection and research on the prevalence of child trafficking and sexual exploitation
- implement measures for providing specialist child specific services for child victims of trafficking, non-citizen minors and unaccompanied minors, in accordance with the best interests of the child principle and the UNICEF 'Guidelines on the Protection for Child Victims of Trafficking' (2006)
- ensure that where trafficked people and their dependent children obtain permanent residence in Australia, these families receive access to adequate settlement services
- 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
- develop clear guidelines for agencies on how to deal with child victims of trafficking on issues including guardianship, housing, access to education, confidentiality and privacy, access to independent lawyers and protecting the best interests of child.

Recommendation 6: The Australian Government provide accessible and appropriate awareness raising programs to affected communities, including culturally aware and linguistically appropriate information and age-appropriate material for young victims of forced marriage; and provide cultural competency training to service providers, the Australian Federal Police and legal services dealing with forced marriage cases.

4 Human rights based approach

6. Australia has ratified the United Nations *Convention against Transnational Organized Crime* (UNTOC) and 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) and is signatory to the *Convention Against Slavery* (1926).
7. The UNTOC and related Trafficking Protocol, outline an international framework for combating trafficking and assisting victims of trafficking.

UNTOC Article 25(2)

Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

Trafficking Protocol Article 6(6)

Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.¹

8. Australia has also ratified other conventions that prohibit different forms of exploitation that may occur in trafficking or slavery and slavery-like situations including debt bondage, forced labour, child labour and forced marriage. These include the *International Covenant on Civil and Political Rights* (ICCPR), the *Convention on the Rights of Elimination of All forms of Discrimination Against Women* (CEDAW), the *Convention on the Rights of the Child* (CRC) and the *Optional Protocol to the the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (CRC Optional Protocol). As a state party to these conventions the Australian Government has an obligation to prevent trafficking and slavery and protect the rights of people who are victims of trafficking, slavery and slavery-like conditions, particularly women and children.²
9. The CEDAW Committee in its review of Australia in 2010 commended Australia for:
 - implementing a national plan to eradicate trafficking in persons mirroring the objectives of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the Palermo Convention against Transnational Organized Crime
 - introducing the Support for Victims of People Trafficking Programme and the People Trafficking Visa Framework since 1 July 2009.³
10. However the Committee recommended Australia adopt a human rights framework in its revised action plan and consider complementary approaches to the current criminal justice approach. In particular the Committee recommended the Australian Government:
 - improve coordination among government agencies involved in anti-trafficking responses
 - review the return and reintegration of trafficking victims procedures and develop guidelines for repatriation for police and other relevant personnel
 - review the accommodation available for women trafficked into Australia with a view to offering more options and reducing stress on the victims
 - undertake an impact assessment of the Bali Process in order to ensure the sustainability of its networking among the countries under this project

- evaluate and monitor the Asia Regional Trafficking in Persons Project (ARTIP)
 - continue providing assistance to member States of the Association of Southeast Asian Nations (ASEAN) for improving investigation and judicial process in cases of trafficking in human beings.⁴
11. The Human Rights Committee in its review of Australia in 2009 noted that, despite the positive measures adopted by the State party, trafficking in human beings, especially women, persists on the territory of Australia. The Committee recommended the Australian Government strengthen its measures to prevent and eradicate trafficking in human beings, including by adopting a comprehensive strategy, and providing equal assistance and protection to all victims identified regardless of their participation or otherwise in criminal proceedings against perpetrators.⁵
 12. The CRC Committee in its concluding observations for the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography welcomed; the National Plan of Action to Combat Trafficking in Persons; the Australian Policing Strategy to Combat Trafficking in Persons 2011-2013; and the support extended to eliminate offences under the Optional Protocol in the Asia Pacific region, through development cooperation and inter-governmental cooperation.
 13. However, the Committee recommended the Australian government undertake awareness-raising programs, particularly for children vulnerable to being victims of offences under the CRC Optional Protocol, and comprehensive training programs for all relevant professional groups, ministries and institutions at federal and State/Territory working with and for children.⁶
 14. The United Nations High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking* recommend that the promotion and protection of human rights should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.⁷
 15. **Recommendation 1:** The Australian Government ensure a human rights based approach informs all measures to prevent, protect and redress people who are victims of trafficking, slavery or slavery-like conditions.

5 Federal compensation scheme

16. Access to appropriate compensation and restitution is an important component of a human rights based approach to addressing trafficking, slavery and slavery-like conditions. Currently, there are significant practical obstacles that may prevent a trafficked person from making compensation claims, including obstacles to obtaining legal advice about claiming compensation, a lack of visa options to stay in Australia to pursue compensation claims, and the limited legal avenues to pursue compensation claims.

17. There is also a need to improve access for victims to information and legal services for assistance with making compensation claims. The Commission considers that more work could also be done to set out the rights of trafficking victims during court proceedings. For example, it would be useful to develop a comprehensive code on possible witness protection measures suitable for use in trafficking trials. This code could then be referred to judges hearing trafficking trials to guide them in the exercise of their discretion to control court proceedings. This code should have an emphasis on the special needs of children. There could also be benefit in investing in mental health professionals providing counselling support services for victims making claims.
18. The Special Rapporteur on trafficking in persons, especially women and children, in her Australian mission report also recommended the Australian Government establish, at the federal level, a comprehensive compensation scheme for victims of trafficking.
19. **Recommendation 2:** The Australian Government develop a federal victims' compensation scheme for victims of trafficking, slavery and slavery-like conditions.
20. With regards to redress for forced labour, the Special Rapporteur positively commented on the provision for recovery of unpaid wages under the *Fair Work Act 2009 (Cth)*. Under this Act, civil penalties can be imposed on top of orders for the reimbursement of unpaid wages.⁸

6 Supporting and protecting victims

21. Victims of trafficking, slavery and slavery-like conditions have short-term and long-term needs including for interpreters; housing; food and clothing; medical care; health education; health care; legal and immigration services; safety planning; English language classes; and assistance in finding employment and education and information about the Australian legal system, their human rights and legal entitlements including to compensation and financial assistance.
22. Currently trafficked persons are unable to access many of these services. For example they are not able to undertake study, have no access to English-language classes; receive only minimal Centrelink benefits and often have inadequate access to appropriate housing. There is a need for trafficked women and their dependent children who obtain permanent residence in Australia to have access to improved settlement services, including access to housing.
23. The Special Rapporteur on trafficking in persons, especially women and children, in her Australian mission report also noted the need for improved service provision. In particular she noted the need to extend the 'reflection and recovery' period to 90 days for all persons identified or provisionally identified as having been trafficked; and to clearly delink government support for victims from participation in criminal justice processes.⁹
24. She further recommended the Australian Government:

- (b) Reconsider visa titles to avoid stigmatization and to ensure confidentiality and respect for the privacy and dignity of victims of trafficking
- (c) Improve support services for victims of trafficking and persons vulnerable to trafficking-related exploitation
- (d) Reduce the length of time for the processing of permanent residence visas for trafficked persons
- (e) Provide support services for dependents and relatives of victims of trafficking who migrate to Australia
- (f) Increase funding assistance for service providers and civil society organizations to provide support services, especially housing, for victims of trafficking, including those who do not immediately wish their matter to come before the authorities
- (h) Strengthen criminal justice capacity to identify and confiscate assets and proceeds of trafficking-related crimes, and develop mechanisms and procedures to enable assets and proceeds to be used for continuing support to victims of trafficking.¹⁰

25. **Recommendation 3:** The Australian Government improve support services for victims of trafficking, slavery and slavery-like conditions including:

- improve coordination among government agencies involved in anti-trafficking responses
- review the return and reintegration of trafficking victims procedures and develop repatriation guidelines for police and other relevant personnel
- Improve provision of settlement services, including access to housing, for trafficked women and their dependent children who obtain permanent residence in Australia.

6.1 Guidelines for working with trafficked people

26. In 2008, the Working Group of the National Roundtable on People Trafficking to assist Non-Government Organisations (NGOs) working with trafficked people,¹¹ which the Commission was a member of, developed the *2008 Guidelines for Working with Trafficked People*.¹²
27. These Guidelines represent a comprehensive resource, both for well-established NGOs and organisations supporting trafficked persons for the first time. The Guidelines promote the best interests of victims of trafficking including the importance of informed consent, privacy protection and culturally appropriate services. They provide practical advice to NGOs dealing with victims of all forms of trafficking, including sexual servitude and labour exploitation.
28. NGOs have a vital role in supporting trafficked people and improving public understanding of trafficking. NGOs might come into contact with trafficked people through the services they provide to migrant workers or because they offer specialised services to trafficking victims. These Guidelines aim to help

NGOs provide services for trafficked people in a way that is safe, ethical and respects the human rights of trafficked people.

29. In addition to the Guidelines, the Government prepared an accompanying two-page *Know Your Rights* fact sheet which gives trafficked people information about how they can get advice about their visa status, contact police and access support services. It has been translated into Thai, Vietnamese, Korean, Chinese and Tagalog. The Guidelines were also subsequently updated and re-released in 2010.
30. **Recommendation 4:** The Australian Government continue to provide education and training for community organisations and service providers who assist with victims of trafficking, slavery and slavery-like conditions, using the *Guidelines for Working with Trafficked People* as a resource.

7. Support and protecting children

31. A child trafficking victim who has been identified as an unaccompanied minor will generally have access to the same range of government services as all Australians – including education or language classes.¹³
32. The Commission remains concerned that:
 - There continues to be a lack of data and research on the prevalence of child trafficking and sexual exploitation in Australia;
 - Where a child trafficking victim is not officially identified as an unaccompanied minor, he or she may not have access to the same level of government services as a child trafficking victims who is identified as an unaccompanied minor;
 - There is a need for specific policy guidelines to be developed on protecting the rights of child victims of trafficking in Australia, especially during police investigations and prosecutions;
 - Ongoing support services should be available to child victims of trafficking even where they are unwilling or unable to assist police investigations or prosecutions;
 - The victim support program is insufficiently funded to provide specific services and support that respond to (a) the specific needs of child victims of trafficking and (b) the needs of adult victims of trafficking with dependent children either in Australia or offshore; and
 - The process of reunifying adult victims of trafficking with dependent children offshore often takes years. This is distressing for families and can leave the children of trafficking victims exposed to dangers in the country of origin. When trafficked people are reunited with their children (under the people trafficking visa framework) it is essential that appropriate settlement services are made available to help trafficked people and their families build a new life in the Australian community.

33. There are also concerns that State and Territory child protection and other agencies need to be better resourced and skilled in meeting the needs of child trafficking victims who remain in Australia.
34. **Recommendation 5:** In relation to trafficking in children the Australian Government:
- undertake comprehensive data collection and research on the prevalence of child trafficking and sexual exploitation
 - implement measures for providing specialist child specific services for child victims of trafficking, non-citizen minors and unaccompanied minors, in accordance with the best interests of the child principle and the UNICEF 'Guidelines on the Protection for Child Victims of Trafficking' (2006)
 - ensure that where trafficked people and their dependent children obtain permanent residence in Australia, these families receive access to adequate settlement services
 - 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
 - develop clear guidelines for agencies on how to deal with child victims of trafficking on issues including guardianship, housing, access to education, confidentiality and privacy, access to independent lawyers and protecting the best interests of child.

8. Implementation of legislative reforms

35. The Commission has welcomed the Crimes Legislation Amendment (Slavery, Slavery-like, Conditions and People Trafficking) Bill 2012, as an important measure towards bringing Australian laws on trafficking and slavery into line with Australia's human rights obligations.
36. However, to ensure full and proper implementation of the proposed amendments to the Criminal Code, the Commission notes the importance of the government providing appropriate and accessible information on the amendments for victims of exploitation, law enforcers, judiciary and court officials, employer and industry groups, unions, and community organisations and service providers who may have contact with people who have been exploited.
37. The Commission notes the importance of undertaking culturally appropriate forms of engagement with communities within which forced marriage may be occurring. It is necessary for accessible and appropriate awareness raising programs to be undertaken with affected communities, including provision of culturally aware and linguistically appropriate information. This should include some age-appropriate material for young victims of forced marriage. There would also be value in ensuring cultural competency training to service

providers, Australian Federal Police and legal services dealing with forced marriage cases; and in ensuring that any victims of forced marriage are able to access culturally appropriate support services and accommodation.

38. The Commission notes the positive value of the annual National Roundtable on People Trafficking, convened by Ministers since 2008 and the Senior Officials' meetings. The Commission regularly attends the Roundtable and meetings and finds them to be constructive forums for sharing information on current measures and identifying any gaps. The Commission also welcomes the regular reports on the Australian Government Anti-People Trafficking Strategy. The Special Rapporteur on trafficking in persons, especially women and children also noted that the National Roundtable has 'helped cultivate a robust working relationship between the Government and civil society, where issues can be discussed, commitments made, and results achieved'.¹⁴
39. **Recommendation 6:** The Australian Government provide accessible and appropriate awareness raising programs with affected communities, including provision of culturally aware and linguistically appropriate information and age-appropriate material for young victims of forced marriage; and provide cultural competency training to service providers, Australian Federal Police and legal services dealing with forced marriage cases.

¹ *United Nations Convention and Transnational Organized Crime*, General Assembly resolution 55/25 (2000); *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, General Assembly resolution 55/25 (2003).

² Article 6, *Convention on the Elimination of Discrimination against Women*, opened for signature 18 December 1979, (entered into force 3 August 1981); Article 8, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966 (entered into force 23 March 1976).

³ CEDAW Committee *Concluding Observations Australia*, UN Doc CEDAW/C/AUL/CO/7, at 30 and 31 (2010).

⁴ CEDAW Committee *Concluding Observations Australia*, UN Doc CEDAW/C/AUL/CO/7, at 30 and 31 (2010).

⁵ Human Rights Committee *Concluding Observations Australia* UN Doc CCPR/C/AUS/CO/5, at 22 (2009).

⁶ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1).

⁷ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1).

⁸ Special Rapporteur on trafficking in persons, especially women and children, *Mission to Australia*, (2012), UN Doc A/HRC/20/18/Add.1, para 65. At <http://www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx> (viewed 24 September 2012).

⁹ Article 7 of the Trafficking Protocol requires states to give appropriate consideration to humanitarian and compassionate factors when considering measures to permit trafficked persons to remain in their territory. The Special Rapporteur notes that this should be reflected in States providing, at minimum, a 'reflection and recovery' period that allows trafficking persons to regain physical and psychological stability and to reflect on available options. The Special Rapporteur notes that there is empirical evidence to suggest that a 'reflection and recovery' period should be a minimum of 90 days to ensure recovery of victims to a level where they may thoughtfully make these decisions, and provide more reliable information to police investigations. Special Rapporteur on trafficking in persons, especially women and children, *Mission to Australia*, (2012), UN Doc A/HRC/20/18/Add.1,

para 50, 82. At <http://www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx> (viewed 24 September 2012).

¹⁰ Special Rapporteur on trafficking in persons, especially women and children, *Mission to Australia*, (2012), UN Doc A/HRC/20/18/Add.1, para 82. At

<http://www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx> (viewed 24 September 2012).

¹¹ The National Roundtable on People Trafficking Working Group comprises Commonwealth Government agencies and nine NGOs, and was chaired by the Australian Human Rights Commission. The members included:

<ul style="list-style-type: none">• Anti-Slavery Project, University of Technology, Sydney• Australian Catholic Religious Against Trafficking in Humans• Scarlet Alliance• Project Respect• Salvation Army• Victim Support Australasia	<ul style="list-style-type: none">• NSW Rape Crisis Centre• Josephite Counter Trafficking Project• Attorney-General's Department• Australian Government Office for Women• Department of Immigration and Citizenship• Workplace Ombudsman• Australian Human Rights Commission.
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¹² *2008 Guidelines for Working with Trafficked People* (2008). At http://www.hreoc.gov.au/sex_discrimination/publication/traffic_NGO/index.html (viewed 24 September 2012).

¹³ For further information about services available to unaccompanied minors, see Department of Immigration and Citizenship, 'Fact Sheet 69 - Caring for Unaccompanied Minors', <http://www.immi.gov.au/media/fact-sheets/69unaccompanied.htm> (viewed 24 September 2012).

¹⁴ Special Rapporteur on trafficking in persons, especially women and children, *Mission to Australia*, (2012), UN Doc A/HRC/20/18/Add.1, para 74. At <http://www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx> (viewed 24 September 2012).