



Australian Government

Australian Government response to the
Joint Standing Committee on Foreign Affairs, Defence and
Trade Committee report:

Trading Lives: Modern Day Human Trafficking

July 2014

Introduction

The Australian Government thanks the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade for its Inquiry into and Report on Slavery, Slavery-like Conditions and People Trafficking. The Australian Government's response to the recommendations of the Report is set out below.

Information about Australia's Response to Human Trafficking and Slavery

Australia has been a party to the *United Nations Convention against Transnational Organized Crime* since 2004, and to its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* since 2005.

The Australian Government takes a comprehensive, whole-of-government approach to combating human trafficking and slavery. Australia is committed to working with other governments domestically and internationally, and with intergovernmental and non-government organisations, to prevent human trafficking and slavery, prosecute the perpetrators, and protect and support the victims.

Since the establishment of Australia's strategy to combat human trafficking and slavery in 2003, the Australian Government has provided more than \$150 million to support a range of domestic, regional and international anti-trafficking initiatives. Key measures include:

- specialist teams within the Australian Federal Police to investigate human trafficking and slavery matters, and an *Australian Policing Strategy to Combat Trafficking in Persons*
- legislation to criminalise human trafficking, slavery and slavery-like practices, including forced labour and forced marriage
- legislation to protect vulnerable witnesses giving evidence in Commonwealth criminal proceedings, including victims of human trafficking, slavery and slavery-like offences
- support for the Commonwealth Director of Public Prosecutions to prosecute human trafficking and slavery-related matters, including funding and training
- a victim support program which provides individualised case management support
- visa arrangements to enable suspected victims and witnesses of human trafficking and slavery to remain in Australia and support the investigation and prosecution of offences
- specialist immigration officers posted in Thailand, China and the Philippines, who focus on human trafficking issues and aim to prevent trafficking in source countries
- regional engagement in the Asia-Pacific on human trafficking issues through the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*
- regional activities to deter human trafficking and slavery, train law enforcement officials, and assist victims under Australia's overseas aid program, and
- national and regional research by the Australian Institute of Criminology.

Australia's response to human trafficking and slavery has provided support to victims of sexual exploitation and other forms of exploitative labour, and has seen the successful prosecution and conviction of a number of perpetrators. Information on the Australian Government's initiatives to combat human trafficking and slavery is available at <www.ag.gov.au/humantrafficking>.

Note on Terminology

In this document, 'human trafficking and slavery' is used as a general term that encompasses slavery-like practices including servitude, forced labour, deceptive recruiting for labour or services, debt bondage and forced marriage.

Recommendation 1

The Committee recommends that the Department of Immigration and Citizenship¹, in conjunction with the Interdepartmental Committee on Human Trafficking and Slavery and relevant non-government organisations, develop a fact sheet to provide visa applicants appropriate information on their rights as part of the visa application process. The information should be available in the visa applicant's language.

The Australian Government accepts this recommendation in part.

The Australian Government is committed to the continual improvement of Australia's strategy to combat human trafficking and slavery and is exploring means of raising awareness among non-citizens of their rights and protections. Given the extent of information currently available, the Australian Government does not propose to develop a factsheet on rights for all visa applicants.

However, the Australian Government recognises that certain categories of visa holders may be particularly vulnerable to exploitation. The Australian Government is actively working to address these specific vulnerabilities, including through the development of a *National Action Plan to Combat Human Trafficking and Slavery*. The National Action Plan will cover a five year period and will include specific action items seeking to prevent and address the exploitation of vulnerable groups, such as migrant workers. The National Action Plan will also be accompanied by a revised Communications Awareness Strategy which will include specific materials for categories of visa holders considered vulnerable to exploitation. These materials will provide information about workers' rights and will be distributed in relevant community languages where appropriate.

Other targeted resources developed by the Australian Government to assist visa applicants to understand their rights include online factsheets for foreign workers, subclass 457 visa holders and international students, as well as the website *Study in Australia*. These resources provide information to foreign workers, subclass 457 visa holders and student visa holders about their workplace rights in Australia and are available in several community languages. The factsheets can be accessed online at <<http://www.fairwork.gov.au/resources/fact-sheets/workplace-rights/pages/default.aspx>>. The *Study in Australia* website address is <<http://www.studyinaustralia.gov.au/>>. The Australian Government has also developed information about forced marriage issues to be included in the Partner Migration Booklet.

¹ The Australian Government notes that, following machinery of government changes, on 18 September 2013 the Department of Immigration and Citizenship became the Department of Immigration and Border Protection.

Recommendation 2

The Committee recommends that the Australian Government continue to use international mechanisms including, but not limited to, the United Nations Human Rights Council's Universal Periodic Review to combat people trafficking.

The Australian Government accepts this recommendation and will continue to use appropriate international mechanisms, including the Human Rights Council's Universal Periodic Review process, to build international support to help combat human trafficking and slavery.

Recommendation 3

The Committee recommends that the Australian Government negotiate re-funding of contracts for non-government organisations one year ahead of the current contracts' conclusion.

The Australian Government accepts this recommendation in part.

The not-for-profit sector in Australia is heavily engaged in responding to human trafficking and slavery and plays a vital role in Australia's strategy to combat these crimes.

The Support for Trafficked People Program (Support Program) is an Australian Government program administered by the Department of Social Services (DSS) and delivered by Australian Red Cross under a funding agreement with DSS. The current funding agreement commenced on 1 July 2012 and will cease on 30 June 2015. DSS manages its funding agreements in line with the principles and requirements of the Commonwealth Grant Guidelines. Future funding arrangements in relation to the Support Program will be a decision for government.

The Australian Government also funds non-government organisations (NGOs) to undertake specific anti-trafficking projects under the *Proceeds of Crime Act 2002* (POCA). This funding is committed under section 298 of the POCA and is sourced from the Confiscated Assets Account, using assets and other money confiscated under the POCA. POCA funding is not available on an ongoing basis and is generally provided for specific projects through competitive and transparent grants processes. Due to the nature and source of this funding, it is not possible for these contracts to be renegotiated.

In addition, the Australian Government also provides grant funding to NGOs through the Department of Foreign Affairs and Trade (DFAT). Funding from DFAT is available through the following mechanisms:

- a) the provision of core funding to support the day-to-day work and ongoing activities of organisations,
- b) the provision of activity based funding for specific activities. This type of funding generally includes a specific set of activities and the associated expected outcomes, as well as a defined activity budget to report and acquit against, and
- c) the provision of program based funding with other donors (joint donor program funding). This type of funding also includes a specific set of activities for the program, and a defined budget for reporting against.

Due to the nature of this funding, it is normally not possible for DFAT to negotiate refinancing of these contracts. Core funding is provided by DFAT where it identifies a shared value and it promotes the government and program's aid agenda. Core funding supports not-for-profit organisations to undertake their work so no contract extensions are required. NGOs can also apply for grant funding from DFAT themselves for support of a specific activity; and they can also be invited to apply for grant funding in competitive grant processes DFAT runs. A defined activity grant/s with a set budget and timeframe will be the result of this process. For activity grant funding, the activity occurs over an agreed time frame, so extending the agreement one year before it ends would not normally be required. If any extensions are needed to complete activities they would be granted for minimal time to ensure outcomes are obtained, with appropriate approvals.

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.

The Australian Government accepts this recommendation in part.

All eligible victims of human trafficking and slavery may be referred to the Support for Trafficked People Program (Support Program) by the Australian Federal Police (AFP). Eligibility for the Support Program is determined by the AFP and is based on whether a person is suspected of being a victim of a human trafficking, slavery or slavery-like offence under Division 270 or 271 of the *Commonwealth Criminal Code Act 1995*. Additionally, the victim must be an Australian citizen or else hold a valid visa. If the victim does not hold a valid visa, a Bridging F visa (BVF) may be obtained under the Human Trafficking Visa Framework.

The Support Program provides individualised, case managed assistance to access a range of support services, including suitable accommodation that meets the AFP's security requirements; financial support; medical treatment and counselling; legal and migration advice; and social support. The Support Program is administered by the Department of Social Services (DSS) and delivered by Australian Red Cross under a funding agreement with DSS.

The Australian Government notes that an initial, automatic period of 45 days' reflection and intensive support is provided through the Assessment Stream of the Support Program to all eligible victims of human trafficking or slavery, regardless of whether they are willing or able to assist police. The Extended Assessment Stream, which provides access to a further 45 days' intensive support, may be offered to victims who are willing, but unable, to assist police, due to reasons including ill health or trauma. Longer-term support for victims who are willing and able to assist police is available through the Justice Support Stream of the Support Program.

Under the Human Trafficking Visa Framework (Visa Framework), suspected victims who are not Australian citizens and do not already have a valid visa can be granted a BVF. A BVF is valid for up to 45 days and enables suspected victims without a valid visa to access the Assessment Stream of the Support Program. Suspected victims who are willing, but unable for such reasons as ill health or trauma, to assist police may be granted a BVF for an additional 45 days to enable access to the Extended Assessment Stream. The offer of a second BVF is considered on a case-by-case basis. Victims on the Justice Support Stream may be granted a Criminal Justice Stay visa to allow them to remain in Australia for the duration of the criminal justice process. A Witness Protection (Trafficking) (Permanent) visa (WPTV) may be offered to allow a victim, and their immediate family members, to remain permanently in Australia if they have made a contribution to an investigation or prosecution and would be in danger if returned home.

The Australian Government is committed to the continuous improvement of the Support Program and Visa Framework with the aim of creating a flexible, victim-focused response that meets the individual needs of each victim. The Operational Working Group (OWG), which is comprised of the AFP, the Attorney-General's Department (AGD), the Office of the Commonwealth Director of Public Prosecutions, DSS, and the Department of Immigration and Border Protection (DIBP), continues to explore ideas for the enhancement of Australia's strategy to combat human trafficking and slavery.

Following the passage of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act* on 27 February 2013, members of the OWG agreed it would be appropriate to consider whether the Support Program and Visa Framework continue to be sufficiently flexible and responsive to meet the needs of victims. AGD and DIBP are currently examining the structure and operation of the Visa Framework, and will give consideration to the appropriateness of granting two 45 day extensions as part of that process. DSS will be consulted in respect of any potential changes to the Support Program.

Since their establishment in 2004, significant enhancements have been made to the Support Program and Visa Framework in response to community sector feedback. In particular, a number of changes were made in 2009 following extensive consultation with the community. The changes, which are in line with international best practice and the UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, include:

- enabling identified suspected victims of human trafficking and slavery who are unlawful non-citizens to access the BVF irrespective of whether they are assisting police, and extending the validity of that visa from 30 days to 45 days
- increasing the initial period of support under the Support Program from 30 to 45 days
- allowing for the grant of a second BVF and extended period of initial support for victims who are willing, but unable, to assist with an investigation or prosecution
- reducing the WPTV process from two stages to one stage by removing the Witness Protection (Trafficking) (Temporary) visa
- including offshore immediate family members in the offer of a WPTV
- lowering the certification threshold for the Attorney-General to issue a Witness Protection (Trafficking) certificate from a 'significant contribution' to a 'contribution', and
- providing an additional 20 days of transitional support for all victims as they leave the Support Program.

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.

The Australian Government accepts this recommendation in part.

Recommendation 3 of the Senate Legal and Constitutional Affairs report recommended that the Australian Government review the Human Trafficking Visa Framework (Visa Framework) and the Support for Trafficked People Program (Support Program). The Senate Legal and Constitutional Affairs report also recommended that the Australian Government consider establishing an ongoing visa and access to a victim support mechanism that is not conditional on a victim of human trafficking or slavery providing assistance in the criminal justice process.

The Australian Government has considered Recommendation 3 of the Senate Legal and Constitutional Affairs report on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012. While the Australian Government does not intend to formally review the Visa Framework and the Support Program at this time, the Australian Government is committed to the continuous improvement of Australia's strategy to combat human trafficking and slavery. Following the passage of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act* on 27 February 2013, members of the Operational Working Group, which is comprised of the Australian Federal Police, the Attorney-General's Department (AGD), the Office of the Commonwealth Director of Public Prosecutions, the Department of Social Services, and the Department of Immigration and Border Protection (DIBP), agreed it would be appropriate to consider whether the Support Program and Visa Framework continue to be sufficiently flexible and responsive to meet the needs of victims. AGD and DIBP are currently examining the structure and operation of the Visa Framework as part of this process.

The Australian Government notes the Senate Legal and Constitutional Affairs Committee's recommendation to consider establishing an ongoing visa and access to a victim support mechanism that is not conditional on a victim of human trafficking and slavery providing assistance in the criminal justice process. The Visa Framework and the Support Program are designed to ensure a balance between victim welfare and criminal justice processes. Prosecutions for human trafficking, slavery and slavery-like offences 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 human trafficking and slavery related prosecutions. The Visa Framework is designed to protect and support victims of human trafficking and slavery before, during and after the criminal justice process. Other support, migration and visa options may be available to victims of human trafficking and slavery who do not wish to provide assistance to authorities.

The Australian Government also notes the Committee's comment about 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. Under the Visa Framework, a victim of human trafficking or slavery may be invited to apply for a Witness Protection (Trafficking) (Permanent) visa (WPTV) to allow them, and their immediate family members, to remain permanently in Australia if they have made a contribution to an investigation or prosecution and would be in danger if returned home. A WPTV can only be granted

to a victim of human trafficking or slavery if the conditions specified in regulation 2.07AK of the *Migration Regulations 1994* are met. One of the conditions is that the Attorney-General, or a person authorised by the Attorney-General, must have issued a Witness Protection (Trafficking) certificate (WPTC) to the effect that the victim has made a contribution to and cooperated closely with an investigation or prosecution into alleged human trafficking or slavery offences (whether or not a conviction is obtained). The Australian Federal Police must provide a detailed assessment of a victim's contribution to the Attorney-General's Department before a WPTC is issued. The role of the Attorney-General in this process ensures that the assessment of the victim's contribution is independent and impartial. The Australian Government also notes that applications for a WPTV may only be made after an invitation to do so from DIBP. These controls contribute to the integrity of the WPTV process.

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.

The Australian Government accepts this recommendation in principle.

While the Australian Government does not intend to establish a federal compensation scheme for victims of human trafficking and slavery at this time, it continually monitors and reviews Australia's strategy to combat human trafficking and slavery, including to ensure that it meets the needs of victims.

The Australian Government notes that the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* states that each 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'. Under Australia's domestic legal system, compensation for victims of crime is generally a matter for States and Territories. Each State and Territory has a victims' compensation scheme, which may be available to victims of human trafficking and slavery. A number of victims have accessed compensation from these State and Territory schemes.

By contrast to the State and Territory victims' compensation schemes, a reparation order is made by a judicial officer when sentencing an offender. A reparation order is in addition to the sentence imposed and is enforced by way of a civil action such as the seizure and sale of property, registration of a charge on land, or garnishing of wages.

The Australian Government notes that reparation orders for victims of human trafficking and slavery may be made under the *Crimes Act 1914* (Crimes Act). Under Section 21B of the Crimes Act, the Court may order a person convicted of a Commonwealth offence to make reparation to a victim for any loss suffered, or any expense incurred, by the victim by reason of the offence. Reparation orders may be made in connection with Commonwealth offences including those under Division 270 (Slavery and slavery-like conditions) and Division 271 (Trafficking in persons and debt bondage) of the *Criminal Code Act 1995*.

Recommendation 7

The Committee recommends that the Australian Government, in consultation with relevant stakeholders, undertake a review to establish anti-trafficking and anti-slavery mechanisms appropriate for the Australian context. The review should be conducted with a view to:

- **introducing legislation to improve transparency in supply chains;**
- **the development of a labelling and certification strategy for products and services that have been produced ethically; and**
- **increasing the prominence of fair trade in Australia.**

The Australian Government accepts this recommendation in principle.

The Australian Government continually reviews Australia's strategy to combat human trafficking and slavery to ensure that existing anti-trafficking mechanisms are appropriate for the Australian context. As part of this process, the Australian Government is working collaboratively with relevant stakeholders to consider ways to combat exploitation in supply chains.

The Australian Government recognises it is a significant contributor to the national economy and has an important role to play in leading by example with respect to ethical procurement. In 2013, the Attorney-General's Department (AGD) and Department of Finance, which is responsible for the Commonwealth Procurement Rules, focused on raising awareness of indicators of exploitation in supply chains, including by creating an ethical procurement fact sheet for Commonwealth Government procurement officers and updating relevant internet-based procurement guidance materials.

The Australian Government has established a Supply Chains Working Group to examine ways to address human trafficking and related exploitative practices in supply chains. The Supply Chains Working Group is a subset of the National Roundtable on Human Trafficking and Slavery and is chaired by AGD. Working Group participants are expected to include representatives from government, peak industry bodies, business, unions, academic practitioners and other non-government organisations.

The Australian Government is also aware of a number of overseas initiatives to address exploitation in product supply chains, including the development of legislative mechanisms. The Australian Government will continue to closely monitor the effectiveness of these initiatives.

Recommendation 8

The Committee recommends that the Australian Government utilise the UK Internet Watch Foundation's URL list to block access to child abuse sites in Australia

The Australian Government notes this recommendation.

The Australian Government has always maintained there is no place in society for child abuse material. The *Broadcasting Services Act 1992* sets in place clear legal mechanisms for the Australian Communications and Media Authority (ACMA) to investigate and enforce the rapid take-down of child abuse content hosted in Australia. The United Kingdom's Internet Watch Foundation (IWF) notes that the ACMA '... operates under a highly-developed regulatory scheme that enables take-down of illegal content within very short timeframes—with an impressive 100 per cent compliance from industry.'²

However, over 99 per cent of online child abuse content investigated by the ACMA is hosted outside Australia. The ACMA is unable to enforce the take-down of such content. This is why the ACMA is a member of the International Association of Internet Hotlines (INHOPE), which represents 44 internet hotlines globally, including the IWF. INHOPE acts as a 'fast lane' across international borders to support rapid law enforcement and Internet Service Provider (ISP) action in the host country. The ACMA is the member agency for Australia and administers an online reporting mechanism through which the public – and law enforcement – can lodge complaints (www.acma.gov.au/hotline). In this context, the ACMA has a long-established and highly effective relationship with the IWF and other INHOPE members, with regular exchanges of information taking place. For example, in February 2012, collaboration between the ACMA, the IWF, and the Queensland Police led to the arrest of a man in Molendinar, Queensland.

The Australian Federal Police (AFP) and the ACMA operate within the terms of a Memorandum of Understanding governing arrangements related to notifications of prohibited or potential prohibited online content of a serious nature.

In an additional effort to tackle overseas-hosted child abuse content, the Government announced on 9 November 2012 that Australia's major ISPs will block content on the INTERPOL "Worst of" list under an arrangement with the AFP. The AFP is working with the ISP community to see wider implementation of this blocking. The INTERPOL list is a highly reputable, targeted list compiled with the assistance of law enforcement agencies globally and assessed by two independent INTERPOL member agencies. It operates by blocking content that it is a criminal offence in Australia to produce, access, possess or distribute, at a domain level and thereby captures all URLs made available through the identified domain. This is an effective method for ISPs to block illegal content, pursuant to Australian law, which is often hidden or moved within a domain to avoid detection. In April 2013 there were approximately 1200 domains on the INTERPOL list. This number will change significantly as domains are added or removed. By comparison, the IWF list typically holds between 500 – 800 URLs at any one time.

A primary purpose of the INTERPOL list is crime prevention. INTERPOL, in conjunction with other relevant law enforcement agencies, investigates all content that is lodged on the list. The AFP considers that blocking the INTERPOL list is an effective strategy to disrupt the distribution of child abuse material, including via commercial operators. The AFP will continue to monitor the effectiveness of the blocking, with particular regard to comparable international approaches.

² Fred Langford, Director for IWF: International, Correspondence providing comment on draft case study, 8 August 2012.