



Submission No 16

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

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SUBMISSION:

'INQUIRY INTO SLAVERY, SLAVERY
LIKE CONDITIONS AND PEOPLE
TRAFFICKING'

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EXECUTIVE SUMMARY

I would like to thank the Joint Standing Committee on Foreign Affairs, Defence and Trade Human Rights Sub-Committee for the opportunity to make a submission to the Inquiry into Slavery, Slave like conditions and People Trafficking.

The following are a summary of the recommendations made in this submission:

1. The *Crimes Legislative Amendment (Slavery, Slave-like Conditions and People Trafficking) Bill 2012* be enacted as soon as possible to assist in the identification and support of victims of human trafficking.
2. Victims of human trafficking should receive support and protection as a human right and it should not be made contingent upon their willingness or ability to assist in the criminal justice process.
3. The Australia government should establish a federal compensation scheme for victims of human trafficking.
4. The Australia government should take appropriate steps to ensure that goods being imported and sold in Australia are free of slavery, forced labour and human trafficking.

ABOUT THE AUTHOR

Brianna Lee is a PhD Candidate in the Law School at Murdoch University. The focus of her thesis is barriers to accessing services for victims of human trafficking in Australia. Her honours thesis in Criminology examined Australia's response to human trafficking compared to international best practice - including the United Nations Model Law on Trafficking in Humans.

Brianna is also an active member of ACRATH WA. Part of her role with ACRATH WA includes conducting education and community awareness campaigns, networking with like-minded organisations to advocate for measures to address people trafficking and participating in lobbying efforts.

SUPPORT FOR VICTIMS OF TRAFFICKING IN AUSTRALIA

IDENTIFYING VICTIMS OF TRAFFICKING

The current Australian legislation criminalizing human trafficking, slavery and related offences, Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth), falls far short from the international standards for defining trafficking in persons. It focuses too heavily on trafficking for sexual services and fails to fully encompass exploitation in other industries. One of the results of this very narrow legislative definition of human trafficking is that persons who would be considered trafficking victims under the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Trafficking Protocol) are not recognised as victims of trafficking in Australia. While they may get access to the initial 45 days of support available from the Red Cross (discussed below) they would be forced to exit the program after the 45 days and would not have access to government support and protection. By broadening the scope of the currently legislation the *Crimes Legislative Amendment (Slavery, Slave-like*

Conditions and People Trafficking) Bill 2012 will go a long way towards making it easier for victims of trafficking to be recognised as such under domestic law. The Bill should be enacted as soon as possible to improve identification and support for victims.

SUPPORT FOR TRAFFICKED PERSONS PROGRAM

The Support for Trafficked People Program, currently being administered by the Red Cross, provides health and welfare assistance to victims of human trafficking throughout the legal and judicial process. The program assists victims in accessing accommodation, legal advice, migration support, counselling and skills training.¹

The program is broken up into four different streams:²

- Assessment Stream
- Extended Assessment Stream
- Justice Support Stream
- Temporary Trial Stream

The Assessment stream is up to 45 days of intensive support available to all suspected victims of human trafficking.³ A person does not have to be willing or able to help the police to receive this initial 45 day reflection period. At the end of the 45 days, even if a person is identified as a trafficking victim, if they do not want to assist in the criminal justice process they are moved out of the Support for Trafficked People Program.

The Extended Assessment Stream is an additional 45 days support available to those persons willing but unable to assist with investigation and prosecution.⁴ This may be granted in cases where the victim is suffering from a medical condition or trauma.

Victims who do not have a valid visa can be placed on a Bridging F Visa while they are receiving support on the Assessment Stream and an additional Bridging F Visa can be granted if they continue through to the Extended Assessment Stream.⁵

Past this initial support stream victims of trafficking in Australia who are unwilling or unable to assist in investigation and prosecution are no longer eligible for the government Support for Trafficked People Program.

Those persons willing and able to contribute to criminal investigations are moved onto the Justice Support Stream of the Program.⁶ The purpose of this stream is the continued recovery of the victim and transition into a more independent life. Victims on this stream can be placed on the corresponding Criminal Justice Stay Visa.⁷ There is potential for a trafficked person to be granted a Witness Protection (Trafficking) (Permanent) visa if they make a contribution to the investigation or prosecution of an alleged trafficker and are in danger if they return to their

¹ Australian Red Cross, *Support for Trafficked People* (2012) <<http://www.redcross.org.au/support-for-trafficked-people.aspx>>

² Anti-People Trafficking Interdepartmental Committee, 'Trafficking in Persons: The Australian Government Response 1 July 2010- 30 June 2011' (Report, Commonwealth of Australia, 2011) 31

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid 28.

home country.⁸ Trafficked persons who return to Australia to give evidence in a prosecution against an alleged trafficker are assisted on the Temporary Trial Stream which supplies similar intensive support to the Assessment Stream.⁹

DE-LINKING VICTIM ASSISTANCE AND PARTICIPATION IN THE CRIMINAL JUSTICE SYSTEM

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.

It has been suggested that providing victims of trafficking with protection and support as a human right helps to build trust between victims and law enforcement and encourages them to participate in criminal proceedings where their evidence is usually vital to prosecution.¹⁰ In the *United Nations Model Law against Trafficking in Person* (UN Model Law) victims are provided 90 days of support services regardless of their immigration status or ability and willingness to participate in legal procedures.¹¹ In their *Recommended Principles on Human Rights and Human Trafficking* the Office of the High Commissioner for Human Rights (2002) state that protection and care should not be conditional to the ability or willingness of a victim to cooperate with the authorities.¹² Making access to assistance and protection conditional on cooperation with law enforcement may result in some short-term benefits for law enforcement however, evidence suggest that it will result in trafficked persons being more suspicious of law enforcement agencies and less willing to talk about their experiences.¹³

In her fact finding visit to Australia last year Dr Joy Ngozi Ezeilo, the UN Special Rapporteur on trafficking in persons, recommended the Australian government "improve support services to suspected victims of trafficking and de-link government support from participation in the criminal justice process".¹⁴ International best practice advocates for a victim centred, human rights approach to the issue of human trafficking. Italy is one country that has de-linked the process of obtaining support from the participating in the criminal justice system. Italian law does not see the trafficked person as an instrument in prosecution but places their rights to social protection on the same level as the states right to punish the perpetrators.¹⁵ Italian law

⁸ Ibid.

⁹ Ibid 32

¹⁰ Home Office & Scottish Executive, *UK Action Plan on Tackling Human Trafficking* (March 2007) The National Archives

<<http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/human-traffick-action-plan2835.pdf?view=Binary>>

¹¹ United Nations Office on Drugs and Crime, *Model Law Against Trafficking in Persons* (September 2009) <http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf>

¹² UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1

<<http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>>

¹³ M. Dottridge, 'Introduction' in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World* (Global Alliance against Traffic in Women, 2007)

¹⁴ Joy Ngozi Ezeilo, *The UN Special Rapporteur in Trafficking in Persons, especially Women and Children Concludes her Country Visit to Australia* (30 November 2011) Office of the High Commissioner for Human Rights <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11664&LangID=E>>

¹⁵ F. Curtol et al, 'Victims of Human Trafficking in Italy: A Judicial Perspective' (2004) 11 *International Review of Victimology* 132-133

allows foreign victims of human trafficking to obtain a six-month stay permit that can be renewed for an additional 12 months in order to "free themselves from the violence and conditioning by criminal organizations and take part in a programme of assistance and social integration".¹⁶ This program can be accessed by the victim or a public prosecutor applying directly to the chief of police or via an NGO who takes action on behalf of the victim. The stay permit is however conditional on the victim participating in support and social integration programs. These measures are thought to provide "the incentive for victims to report their exploitation to the authorities".¹⁷ Italian prosecutors believe the Italian model to be particularly effective not only because it encourages victims to come forward but also because it helps stabilise the victim so that he/she is better equipped to assist in the criminal justice process if they choose to.¹⁸ There have been concerns about illegal immigrants making bogus claims for the Italian stay permit so if Australia was to adopt a similar approach there would need to be checks in place to make sure the system is not being abused.

It is quite clear that international best practice relating to victim support does not link assistance to participating in the criminal justice process. In order to place the human rights of the victim first Australia needs to provide support for trafficked persons regardless of their willingness to assist in investigation and prosecution.

COMPENSATION

Article 6(6) of the Trafficking Protocol requires countries to ensure victims have access to measures which offer the possibility of obtaining compensation. Compensation is a way for victims to ease their financial burdens which can in turn prevent re-trafficking.¹⁹ However the benefits of compensation are more than just financial. Compensation acknowledges the seriousness of human trafficking as a crime and it can be a helpful first step for victims to overcome the harms they have suffered and rebuild their lives.²⁰ Dr Joy Ngozi Ezeilo, the UN Special Rapporteur on trafficking in persons, said that while compensation is "the most widely recognised form of remedy...[it] is often not readily accessible to trafficked persons".²¹ She also emphasised the fact that trafficked persons are rarely known to have received compensation.

Victims of human trafficking in Australia currently have to access compensation through domestic systems such as reparation orders, the *Fair Work Act 2009* (Cth) and state based victims of crime compensation schemes. The *Crimes Legislative Amendment (Slavery, Slave-like Conditions and People Trafficking) Bill 2012* is stated to increase the access to reparation for

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid 133, 135

¹⁹ U.S Department of State, 'Trafficking in Persons Report' (Report, 2009)

<<http://www.state.gov/j/tip/rls/tiprpt/2009/>>

²⁰ UN.GIFT, 'The Effectiveness of Legal Frameworks and Anti-Trafficking Legislation' (Paper presented at The Vienna Forum to Fight Human Trafficking, Vienna, 13-15 February 2008) <

<http://www.unodc.org/documents/human-trafficking/2008/BP023TheEffectivenessofLegalFrameworks.pdf>>

²¹ Joy Ngozi Ezeilo, *Helping Victims of Trafficking Access Effective Remedies* (15 June 2011) Office of the High Commissioner for Human Rights <

<http://www.ohchr.org/EN/NewsEvents/Pages/Helpingvictimsotraffickingaccesseffectiveremedies.aspx>>

victims of trafficking²² but the amendment the Bill makes does not address the fundamental issues with reparation orders as a means of compensating victims of trafficking. The courts can order a person convicted of a federal offence to pay reparations to the victims of that crime.²³ There have only been 14 convictions for human trafficking, slavery and sexual servitude offences. Prosecution can be a long drawn out process and victims have to wait until their trafficker is conviction for only the possibility of a reparation order. Whether or not to make a reparation orders is at the courts discretion²⁴ and so far none have been made. Reparation orders require that the offender not only be identified and successfully prosecuted but also have the means to pay the reparation order. If the offender does not comply with the reparation order the victim must then pursue the matter through the civil courts at their own expense.²⁵ The Bill seeks to make it easier for a reparation order to be made by the courts but will not be effective in providing reasonable access to remedies in the form of compensation.

Victims of trafficking who have not been paid their proper wage entitlements while they were trafficked may also pursue compensation under the *Fair Work Act* (Cth) 2009. There are reports of exploited migrants claiming unpaid wages and penalties through the Fair Work Ombudsman.²⁶ However, this particular route for compensation still relies on the trafficker having the means to pay. It also does not compensate the victim 'pain and suffering'. One Fair Work case reported on by the media was that of Kentwood Industries.²⁷ The company had employed five Chinese workers in exploitative conditions. The case included a number of indicators of human trafficking including threats made to the workers, a debt-bondage type situation and poor living conditions. While Fair Work calculated the amount owed to the five Chinese men and had issued fines to the company it was considered very unlikely that the workers would ever see the money because the company could not pay.

The third option for seeking compensation that is being pursued by victims of trafficking is state based victims of crime compensation schemes. These schemes do have the advantage that the state itself pays the compensation and so the victim does not have to rely on whether their trafficker has the means to pay. In many of the states the perpetrator of the crime does not even have to be identified, the assessor just has to be satisfied that a crime occurred and resulted in injury. However, there are a number of problems associated with using the state schemes. Victims of trafficking in Australia have often been trafficking across a number of states and each state scheme can only compensate for crimes and injuries that occurred within the state. Each state and territory in Australia has its own victims of crime compensation scheme with different eligibility criteria, rules and maximum payouts. This means while a person trafficked in NSW may receive the maximum \$50,000 payout, the victim of an identical crime could receive nothing in another state. The inconsistencies between the different state and territory schemes result in inconsistent justice for victims of trafficking in Australia. Trying to frame the crime of human trafficking under a state system that is not designed to meet the needs of trafficking

²² Attorney General's Department, Australian Government, *Exposure Draft - Legislative Amendments to Australia's People Trafficking and Slavery Offences* (20/01/2012) < <http://www.ag.gov.au/Peopletrafficking/Pages/Exposure-draft---legislative-amendments-to-Australia%27s-people-trafficking-and-slavery-offences.aspx>>

²³ *Crimes Act 1914* (Cth) s21B (1)

²⁴ *Ibid* "the courts may"

²⁵ *Ibid* (3)(c)

²⁶ See Human Trafficking Working Group *Cases of Labour Trafficking in Australia* (2011) The University of Queensland TC Beirne School of Law < <http://www.law.uq.edu.au/cases-of-labour-trafficking-in-australia>>

²⁷ Kim Macdonald, 'Record fine for firm that paid workers\$3', *The West Australian* (Perth), 1 June 2011

victims means that access to an effective remedy is not guaranteed. This was one of the points made by Dr Joy Ngozi Ezeilo in her fact finding mission to Australia November 2011.²⁸

In her report on her visit to Australia Dr Ezeilo recommended a national compensation scheme be created for victims of human trafficking and that Australia "target criminal wealth and confiscate assets and proceeds from trafficking-related crimes, ensuring that such funds are used to compensate victims as well as for victim support and assistance".²⁹ This is something that anti-trafficking NGOs have been suggesting for a long time. It makes sense now that we have victims of federal crime that we should have a corresponding federal compensation scheme.

SLAVERY, FORCED LABOUR AND HUMAN TRAFFICKING IN SUPPLY CHAINS

Part of Australia's obligations under the Trafficking Protocol is to establish measures to prevent and combat trafficking in persons. The Trafficking Protocol requires states to take measures which "alleviate the factors that make persons, especially women and children, vulnerable to trafficking".³⁰ A driving force behind the global trafficking industry is demand for cheap goods and labour. While Australia has demonstrated good leadership in combating human trafficking many countries we import goods from and/or outsource labour to have inadequate measures in place to combat slavery and human trafficking. Part of the way to address the issue of human trafficking is to reduce the demand for goods produced with slavery, forced labour or human trafficking.

The US Department of Labor and various UN bodies have identified goods being brought into Australia which have been produced with forced labour or slavery. These high risk goods are things like cocoa, seafood, clothing (especially cotton), bricks and rugs.³¹ Media reports have recently surfaced that iconic Australian football brands Sherrin and Canterbury as well as other Australia sports balls are made in India using banned child labour.³² According to the report India's poorest children are "working in appalling, dangerous and illegal conditions to earn as little as seven cents a ball".³³ The article reports that children were being pulled out of school to stitch the sporting goods and most children earned as little as \$1 per day for hours of work.

The Australian Stop the Traffik coalition has been campaigning around this issue by targeting individual companies where slavery, forced labour and human trafficking is known to be an issue in the supply chain.³⁴ The coalition asks companies to ensure their products are ethically

²⁸ Joy Ngozi Ezeilo, *The UN Special Rapporteur in Trafficking in Persons, especially Women and Children Concludes her Country Visit to Australia* (30 November 2011) Office of the High Commissioner for Human Rights < <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11664&LangID=E>>

²⁹ Ibid

³⁰ *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, GA Res 55/25, UN GAOR, 55th sess, Supp No 49, UN Doc A/55/49 (15 November 2000, entered into force 25 December 2003) [Article 9(4)]

³¹ Rebecca Apostolopoulos et al, 'Unshackling the Laws Against Slavery: Legal Options for Addressing Goods Produced with Trafficked and Slave Labour' (Stop the Traffik Australia, October 2011)

³² Ben Doherty, 'Poor Children Made to Stitch Sports Balls in Sweatshops', *The Sydney Morning Herald*, (Sydney), 22 September 2012

³³ Ibid

³⁴ *Unshackling the Laws Against Slavery*(2012) Stop the Traffik Australia < <http://www.stophetraffik.org/australia/campaign/26>>

produced. Companies targeted have responded to the overwhelming support of the Australian community. Companies that have made significant undertakings in Australia include: Cadbury, Mars, Nestle, Ferrero and Cotton On. However NGOs can only do so much by approaching companies one by one. It is preferable that the federal government steps in to tackle this issue across the board.

On the 25th of September 2012 in his address to the United Nations General Assembly, US President Barak Obama announced that the United States would be taking steps to tackle slavery in supply chains.³⁵ The US already has measures in place to ensure government contractors do not engage in forced labour. August 2012 the US "required companies to disclose information on the sourcing of conflict minerals".³⁶ The new executive orders also require all federal contractors and subcontractors contracting work for more than \$500,000 to put compliance procedures in place; including certifying that any of their subcontractors haven't engaged in an trafficking related activity.³⁷ The State of California have enacted their own legislation, the *Transparency in Supply Chains Act 2010*. The act requires retailers and manufacturer doing business in California who generate more than \$100 million annual worldwide gross receipts to "disclose their efforts to eradicate slavery and human trafficking from their direct supply chains".³⁸

The Australia Government needs to take steps to ensure that good being imported and sold in Australia are free of slavery, forced labour and human trafficking. Stop the Traffik have produced a document which outlines a number of ways the Federal Government could take action against slavery, forced labour and human trafficking in supply chains. This comprehensive document 'Unshackling Laws Against Slavery: Legal Options for Addressing Goods Produced with Trafficked and Slave Labour' is included as an attachment to this submission. I recommended that the Joint Standing Committee on Foreign Affairs, Defence and Trade Human Rights Sub-Committee read this document and consider the feasibility of the options it outlines that are available to the Australian Government to tackle this issue.

CONCLUSION

Australia has made great progress in combating human trafficking. This is in large part thanks to the Government's willingness to engage in research on the issue and consult with community stakeholder and NGOs. I encourage the government to continue in its engagement with these groups in developing effective measures to tackle human trafficking. I also encourage the government to continue to consider the problem of human trafficking, slavery and forced labour as a human rights issue, one which promotes the protection and assistance of victims.

³⁵ Samuel Rubinfeld, 'Obama Orders Government Contractors to Combat Human Trafficking' on Wall Street Journal Blogs, *Corruption Currents* (25 September 2012) < <http://blogs.wsj.com/corruption-currents/2012/09/25/obama-orders-government-contractors-to-combat-human-trafficking/> >

³⁶ Ibid

³⁷ Ibid

³⁸ *Transparency in Supply Chain Act of 2010* SB 657 (2010)