



**Griffith Journal**  
of Law & Human Dignity

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GRIFFITH JOURNAL  
OF LAW & HUMAN DIGNITY

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# HUMAN TRAFFICKING AND MODERN DAY SLAVERY — AN AFFRONT TO HUMAN DIGNITY

FIONA MCLEOD SC\*

*While most victims are trafficked into Australia from Asia for the purpose of sexual exploitation, there is growing awareness of persons being trafficked here for the purpose of labour exploitation. On average, about 25 allegations of trafficking in persons are reported to Australian authorities each year, though only very few of those will lead to prosecutions. A major impediment to prosecuting trafficking-related offences is the reluctance of victims to give evidence of the offence, particularly as they (or their families) may have been the subject of violence or threats of violence either in Australia or their country of origin. New legislation passed into law in Australia in 2013 seeks to address the low rate of successful prosecutions by introducing new offences of exploitation and liability for third parties assisting or profiting from the trafficking conduct. It also creates further slavery-like offences and new forced marriage and forced labour offences. This paper considers the legislative and policy response of Australia, internationally and domestically, to these heinous crimes. It also considers where improvements could be made.*

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## I INTRODUCTION

The trafficking and exploitation of human beings is one of the most significant challenges facing the global community. It involves myriad egregious violations of human rights by way of debt bondage, forced and exploitative labour, violence, discrimination against women, and the exploitation of children using coercion, deception, fraud violence and false inducements. It is a multi-dimensional problem driven by complex social and economic factors, flourishing in conditions of poverty, poor governance and cruel indifference, driven by the constant ingenuity of exploiters, criminal enterprise, and the desire of the victims and their families to escape desperate circumstances. The problem affects almost every country in the world, as a source, transit or destination country — or a combination of these.<sup>1</sup>

The US State Department estimates that approximately 800 000 people are trafficked across borders each year.<sup>2</sup> UN Women and the UN High Commissioner for Refugees

<sup>1</sup> OSCE Office for Democratic Institutions and Human Rights 'Conference Report' (Paper presented at Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking, Helsinki, 23–24 September 2004) <<http://www.osce.org/odhr/16201>>.

<sup>2</sup> US Congressional Research Service, *Trafficking in Persons: U.S. Policy and Issues for Congress* (18 February 2010) US Department of State 1 <<http://fpc.state.gov/documents/organization/139278.pdf>>.

estimate that figure to be closer to 2–2.5 million people per year.<sup>3</sup> It is estimated that 32 per cent of trafficking victims are used for forced economic exploitation with 56 per cent of these victims being women and girls.<sup>4</sup> Whilst the majority of trafficking victims are between 18 and 24 years of age, it is estimated that 1.2 million children are trafficked every year.<sup>5</sup>

The social, economic, and moral impact of those numbers are staggering when we realise that it is predominantly the world's women and children who are being exploited on such a massive scale. The Global Slavery Index estimates that 29.8 million people are living in conditions of modern day slavery.<sup>6</sup> Accumulating over decades, these numbers represent tens of millions of displaced and vulnerable individuals subject to abuse, entrenched poverty, and ongoing violation of their human rights.

The nature of human trafficking varies from region to region. Most commonly it involves trafficking in women and children for sexual exploitation. The International Labour Organisation ('ILO') estimates that 43 per cent of trafficking victims are used for forced commercial sexual exploitation with 98 per cent of those victims being women and girls.<sup>7</sup> Men, women and children can also be trafficked for a diverse range of other purposes, including: forced labour in industries such as hospitality, construction, forestry, mining, or agriculture; domestic and sweatshop labour; illicit adoption; street begging; forced recruitment into militia or armed forces; and the harvesting of body organs.<sup>8</sup>

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<sup>3</sup> Joint UN Commentary on the EU Directive — *A Human Rights-Based Approach, Prevent, Combat, Protect: Human Trafficking* (2011) 16 <<http://www.unwomen.org/wp-content/uploads/2011/12/UN-Commentary-EU-Trafficking-Directive-2011.pdf>>.

<sup>4</sup> OSCE 'Conference Report', above n 2.

<sup>5</sup> Ibid.

<sup>6</sup> Walk Free Index, *The Global Slavery Index 2013*, (2013), Global Slavery Index <[www.globalslaveryindex.org](http://www.globalslaveryindex.org)>; 14 million of these are in India, followed by China (3 million) and Pakistan (2 million). These countries and Nigeria, Ethiopia, Russia, Thailand, Democratic Republic of Congo, Burma and Bangladesh together make up 76 per cent of the total number. Current estimates of 3000–3300 are given for Australia.

<sup>7</sup> UN Global Initiative to Fight Human Trafficking, *'Human Trafficking: The Facts'* (Fact Sheet, UN Global Compact, 2008) <[http://www.unglobalcompact.org/docs/issues\\_doc/labour/Forced\\_labour/HUMAN\\_TRAFFICKING\\_-\\_THE\\_FACTS\\_-\\_final.pdf](http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf)>.

<sup>8</sup> Commonwealth Attorney-General's Department, *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections* (2010) 5 <[http://www.ag.gov.au/Documents/TRAFFICKING%20-%20DISCUSSION%20PAPER%20-%20FINAL%20%20The%20Criminal%20Justice%20Response%20to%20Slavery%20and%20People%20Trafficking,%20Repa\\_4703.PDF](http://www.ag.gov.au/Documents/TRAFFICKING%20-%20DISCUSSION%20PAPER%20-%20FINAL%20%20The%20Criminal%20Justice%20Response%20to%20Slavery%20and%20People%20Trafficking,%20Repa_4703.PDF)>.

Trafficking is defined in Article 3 of the UN *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children* ('*Trafficking Protocol*') as:

[t]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>9</sup>

Contrary to common misconception, trafficking does not require movement across national borders. The key requirements are movement, the absence of consent, and the purpose of exploitation. State parties to the *Trafficking Protocol* are required to adopt legislative definitions that are dynamic and flexible so as to empower the legislative framework to respond effectively to trafficking which occurs both across borders and within a country (not just cross-border trafficking); is for a range of exploitative purposes (not just sexual exploitation); victimises children, women and men; and takes place with or without the involvement of organised crime groups.<sup>10</sup>

Furthermore, the United Nation's *Recommended Principles and Guidelines on Human Rights and Human Trafficking* ('*UN Guidelines*') emphasise the need to separately criminalise forced labour as part of a broader legal framework which addresses trafficking.<sup>11</sup> The United Nations Office on Drugs and Crime's ('UNODC') *Model Law against Trafficking in Persons* also criminalises the use of forced labour and services.<sup>12</sup>

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<sup>9</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime* opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003) <[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)>.

<sup>10</sup> UN Office on Drugs and Crime, *Human Trafficking* (2014) United Nations Office on Drugs and Crime <<http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>>.

<sup>11</sup> *United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1 (2002) Office of the High Commissioner for Human Rights <<http://www.ohchr.org/Documents/Press/OHCHR%20Recommended%20Guidelines.pdf>>.

<sup>12</sup> UNODC, *Model Law against Trafficking in Persons* (United Nations, 2009) 32–34 <[http://www.unodc.org/documents/humantrafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/humantrafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf)>.

The *Trafficking Protocol* is the first global legally binding instrument to contain an agreed definition of trafficking in persons. The intention behind this definition is to 'facilitate convergence in national approaches with regards to the establishment of domestic criminal offences that support efficient international cooperation in investigating and prosecuting trafficking cases'.<sup>13</sup> An additional objective of the *Trafficking Protocol* is to protect and assist the victims of trafficking with full respect for their human rights.<sup>14</sup>

Human trafficking is a serious problem in the Asia-Pacific region, with many of the countries in this region being widely recognised as origin and destination countries for trafficking.<sup>15</sup> Of the 600 000 to 800 000 people trafficked annually in the region, about 250 000 are estimated to be from South-East Asia and 150 000 from South Asia.<sup>16</sup> The majority of Asian victims are identified as having been trafficked for the purpose of sexual exploitation. However, the ILO has noted a recent increase in persons being identified as trafficked for the purpose of labour exploitation. Poorly regulated industries, as well as an increase in the numbers of 'labour recruiters, agents, immigration officials, document forgers, [and] travel providers' willing to facilitate labour migration, are just some of the factors that have been attributed to such an increase.<sup>17</sup> The introduction of the *Trafficking Protocol* itself may have spurred a growing international awareness of labour exploitation as a human rights violation.

It is also useful to understand what is meant by "slavery" in the modern age. Slavery is defined in Article 1 of the UN *International Convention to Suppress the Slavery Trade and Slavery 1926* ('*Slavery Convention*') as 'the status or condition of a person over whom any

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<sup>13</sup> UN Office on Drugs and Crime, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, (2014) United Nations Office on Drugs and Crime  
<<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>>.

<sup>14</sup> *Trafficking Protocol* art 2.

<sup>15</sup> Jacqueline Joudo Larsen, 'Migration and People Trafficking in South East Asia' (Research Paper No 401, Australian Institute of Criminology, November 2010) 3  
<[http://www.aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi401.pdf](http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi401.pdf)>.

<sup>16</sup> 'Policy Brief — Human Trafficking in Asia', World Vision Australia (November 2007) 1  
<[http://www.worldvision.com.au/Libraries/3\\_3\\_1\\_Human\\_rights\\_and\\_trafficking\\_PDF\\_reports/People\\_Trafficking\\_in\\_the\\_Asia\\_Region.pdf](http://www.worldvision.com.au/Libraries/3_3_1_Human_rights_and_trafficking_PDF_reports/People_Trafficking_in_the_Asia_Region.pdf)>.

<sup>17</sup> *Ibid.* Although the estimates of overall numbers of children in forced labour has dropped: 'Making Progress against child labour, global estimates and trends 2000-2012' (Report, International Labour Office, International Programme on the Elimination of Child Labour (IPEC), 2013)  
<[http://www.ilo.org/ipecc/Informationresources/WCMS\\_221513/lang--en/index.htm](http://www.ilo.org/ipecc/Informationresources/WCMS_221513/lang--en/index.htm)>.



or all of the powers attaching to the right of ownership are exercised'.<sup>18</sup> Forced labour is defined in Article 2 of the ILO's *Forced Labour Convention 1930* as 'work or service extracted from any person under the menace of any penalty and for which the person has not offered himself or herself voluntarily'.<sup>19</sup> In addition to these international instruments, the *International Covenant on Civil and Political Rights* ('ICCPR') provides that no one shall be required to perform compulsory or forced labour, or shall be held in slavery or servitude;<sup>20</sup> and the *International Covenant on Economic, Social and Cultural Rights* protects the right to freely choose one's work, and to just and favourable conditions of work.<sup>21</sup> According to the ILO, some 12 million people are enslaved worldwide for the purpose of forced labour. Of these 12 million people, 55 per cent are in South-East Asia, and 40–50 per cent are children.<sup>22</sup>

There are a number of challenges that impact on the Asia-Pacific region's capacity to effectively respond to trafficking and slavery. A lack of familiarity and awareness of people trafficking and related offences, and differences in trafficking legislation between countries are examples of such barriers.<sup>23</sup> Other impediments include the fact that very few Asian countries are a party to the *Trafficking Protocol*. Amongst Commonwealth countries, it appears that only Australia, India, Kiribati, Malaysia, Nauru, and New Zealand are parties. The absence of national legislation in many Asian countries which specifically targets people trafficking further limits the effectiveness of these countries' efforts to combat trafficking practices. Moreover, even in countries where such

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<sup>18</sup> *International Convention to Suppress the Slavery Trade and Slavery 1926*, opened for signature 25 September 1926, 60 UNTS 254 (entered into force 9 March 1927) art 1.

<sup>19</sup> *Convention Concerning Forced or Compulsory Labour ('Forced Labour Convention')* signed 28 June 1930, 29 ILO, entered into force 1 May 1932 art 2.

<sup>20</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force generally 23 March 1976 and for Australia 13 November 1980) arts 8(1)–8(3).

<sup>21</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force generally 3 January 1976 and for Australia 10 March 1976) arts 6(1) and 7.

<sup>22</sup> *ILO Action Against Trafficking in Human Beings* (Discussion Paper, International Labour Office, 2008) <[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090356.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf)>.

<sup>23</sup> Pauline David, Fiona David and Ann Gallagher, *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases* (Handbook, Association of Southeast Asian Nations, August 2010) iii <<http://www.aseansec.org/publications/ASEAN%20Handbook%20on%20International%20Legal%20Cooperation%20in%20TIP%20Cases.pdf>>.

legislation does exist, there is often insufficient law enforcement capacity to effectively enforce such laws.<sup>24</sup>

## II TRAFFICKING AND SLAVERY IN AUSTRALIA

The extent to which slavery and human trafficking exists in Australia is unclear. Estimates and other reported figures on trafficking in persons vary significantly depending on the source of the information, and obtaining reliable and detailed statistics from relevant agencies is challenging. Reports of trafficking remain relatively low with growing awareness amongst immigration and law enforcement officers and increasingly, industrial regulators and unions. Australia ratified the *Trafficking Protocol* on 14 September 2005 and under successive governments, we have seen more than a decade of attention to policy and legislation, resourcing of research, domestic and foreign programs, and the work of committed NGOs dedicated to assisting victims.<sup>25</sup> However, some programs are now at risk of cuts due to a dramatic shift in Australia's foreign aid commitments and budgetary restraint.<sup>26</sup>

On average, about 25 allegations of trafficking in persons are reported to Australian authorities each year, although only very few of those will lead to prosecutions. Almost all victims that have been reported and identified by official sources are adult females of Asian background who were trafficked from Thailand, South Korea, Malaysia, and the Philippines to Australia for the purpose of commercial (rather than in-the-home) sexual exploitation. Instances involving other forms of trafficking in persons or involving men or minors are extremely rare or not otherwise known to Australian authorities.<sup>27</sup>

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<sup>24</sup> World Vision Australia, above n 16.

<sup>25</sup> Anti-People Trafficking Interdepartmental Committee, *Interdepartmental Committee on Human Trafficking and Slavery* (Annual Report, Attorney General's Department, January 2004 – June 2012) 20; Also informed by personal communications, National Roundtable on Human Trafficking and Slavery discussion with participants; See also Frances Simmons, Brynn O'Brien, Fiona David and Laura Beacroft, *Human trafficking and slavery offenders in Australia* (Research Paper No 648, Australian Institute Of Criminology, 2003) <<http://www.aic.gov.au/publications/current%20series/tandi/461-480/tandi464.html>>.

<sup>26</sup> 'Federal Government confirms \$100m out to foreign aid budget, focus on recipients in Asia-Pacific region' ABC News (online) 19 January 2014 <[www.abc.net.au/2014-01-18/federal-government-announces-details-of-foreign-aid-cuts/5206594](http://www.abc.net.au/2014-01-18/federal-government-announces-details-of-foreign-aid-cuts/5206594)>; The risk has been tempered by recent commitment of Australian Government funds in ASEAN Secretariat News, *The Government of the Union of Myanmar and the Government of Australia Sign the Cooperation Agreement on Anti-trafficking in Persons* (13 March, 2014) Association of South-East Asian Nations <<http://www.asean.org/news/asean-secretariat-news/item/issued-by-the-government-of-the-union-of-myanmar-and-the-government-of-australia>>.

<sup>27</sup> Anti-People Trafficking Interdepartmental Committee, *Interdepartmental Committee on Human Trafficking and Slavery* (Annual Report, Attorney General's Department, January 2004 – June 2012) 20; TC

Between January 2004 and June 2012, the Australian Federal Police ('AFP') undertook 346 investigations and assessments of slavery and people trafficking-related offences.<sup>28</sup> As at November 2012, there had been 15 convictions for people trafficking-related offences.<sup>29</sup>

The cooperation of victims is essential to intelligence gathering and the investigation and prosecution of human trafficking. A major impediment to prosecuting trafficking-related offences appears, anecdotally, to be the reluctance of victims to give evidence of the offence, particularly as they (or their families) may have been the subject of violence or threats of violence and death either in Australia or their country of origin.<sup>30</sup> Other possible impairments are the lack of awareness of criminality of the offending conduct and availability of protection for victims, despite their participation potentially, in migration offences.<sup>31</sup> Because the evidence of individual victims is critical to people trafficking prosecutions, corroborating testimony is sought in order to meet the criminal standard of proof required in criminal proceedings. This can often be challenging. However, there have been some very poignant cases where successful legal outcomes have been obtained.

### III RELEVANT CASES

#### *A R v Wei Tang*

One of these cases, *R v Wei Tang*,<sup>32</sup> involved the owner of a brothel in Victoria who employed five women from Thailand under a "purchase" arrangement with recruiters. Each woman came to Australia voluntarily, on visas obtained illegally, expecting to perform paid sex work. Tang told each of the women that they had to work six days a

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Bernie School of Law Human Trafficking Working Group, *Statistics and Other Data* (1 January 2013) The University of Queensland <<http://www.law.uq.edu.au/human-trafficking-statistics>>.

<sup>28</sup> Anti-People Trafficking Interdepartmental Committee, *Interdepartmental Committee on Human Trafficking and Slavery* (Annual Report, Attorney General's Department, January 2004 – June 2012) 20 <<http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australiasresponsetohumantrafficking>>.

<sup>29</sup> Commonwealth, *Joint Standing Committee on Foreign Affairs, Defence and Trade: Slavery, Slavery-like conditions and People Trafficking* (2012) 6 <[http://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/fc342003-774a-4aad-820c-aeee40ea89dd/toc\\_pdf/Parliamentary%20Joint%20Committee%20on%20Foreign%20Affairs,%20Defence%20and%20Trade\\_2012\\_11\\_21\\_1557\\_Official.pdf;fileType=application%2Fpdf#search=%22committee%20s/commjnt/fc342003-774a-4aad-820c-aeee40ea89dd/0000%22](http://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/fc342003-774a-4aad-820c-aeee40ea89dd/toc_pdf/Parliamentary%20Joint%20Committee%20on%20Foreign%20Affairs,%20Defence%20and%20Trade_2012_11_21_1557_Official.pdf;fileType=application%2Fpdf#search=%22committee%20s/commjnt/fc342003-774a-4aad-820c-aeee40ea89dd/0000%22)>.

<sup>30</sup> The author has received this information from her personal communications with victims of trafficking.

<sup>31</sup> *Ibid.*

<sup>32</sup> *R v Wei Tang* [2008] HCA 39; (2008) 237 CLR 1.

week to pay off a debt of \$45 000, approximating to 800 clients each, before they were free of debt. Clients paid \$110 for their services. Of that fee, \$50 went to the brothel and \$60 to pay off the debt. On each seventh day the women could keep \$50 per client “pocket money” although sundry expenses were sometimes deducted from this sum. Tang exercised almost complete control over the women’s lives. She was convicted of slavery offences and sentenced to nine years imprisonment. After an unsuccessful challenge the convictions were upheld by the High Court. In a message to the Justices of the High Court following the decision, the women described the conditions under which they had worked: ‘Sometimes we worked until we couldn’t walk. We had to work until we were very sick and the customers refused to take us. Only then were we allowed to rest, for one day!’<sup>33</sup>

The *Tang* case established that a broad interpretation of the definition of slavery was appropriate, consistent with Article 1 of the *Slavery Convention*. The essence of slavery is the exercise of rights of ownership over another person. The inequality of their relative bargaining position and inability to assert control over their working environment amounted to slavery-type conditions and thus the offences had been made out.<sup>34</sup>

### *B Ning’s Case*

The first claim for victims of crime compensation in Australia was made on behalf of a young woman known as “Ning” who, in 1995, was trafficked to Australia at the age of 13 from Thailand. She was put to work in a Sydney brothel. Before she arrived, she was physically and emotionally abused by her traffickers in Malaysia. This involved repeated rapes and imprisonment, deprivation of basics and her passport. Upon arrival in Australia, Ning was told that she owed a “debt” to her traffickers of \$35 000 which she would pay off by having sex with 650 clients. She could then earn money for herself. She was not permitted to leave the brothel, had little money of her own, spoke no English and had no contacts in Australia. She was told to lie about her age and circumstances if

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<sup>33</sup> Victoria Law Foundation, ‘Open message of thanks to the Justices of the High Court of Australia’, in *R v Wei Tang* [2008] HCA 39, 14 November 2008 <[http://projectrespect.org.au/system/files/PR-Womens-statement-2008\\_0.pdf](http://projectrespect.org.au/system/files/PR-Womens-statement-2008_0.pdf)>.

<sup>34</sup> Anti-People Trafficking Interdepartmental Committee, above n 28; TC Bernie School of Law Human Trafficking Working Group, above n 28. See also, for eg, *R v Mclvor & Tanuchit* [2010] NSWDC 310 and *R v Sieders & Yotchomchin* [2006] NSWDC 184; (2008) 72 NSWLR 417. In the first, the defendants were convicted of offences of intentionally possessing a slave and five offences of using a slave in relation to the debt bondage and prostitution of five Thai women. In the second the offences were of exploiting women in conditions of sexual servitude.

questioned, was threatened to “behave” and could not leave the brothel. Ten days later she was discovered during a joint AFP and Immigration raid. In that time she had been required to have sex with more than 100 men. Ning was promptly deported back to Thailand and found her way to a shelter. Eventually she was found by the AFP officer involved in the raid.<sup>35</sup> She was ultimately awarded the maximum compensation available under the scheme for the abuse she suffered — including multiple statutory rapes of a child — and she became the first person in Australia to be compensated as a victim of trafficking and slavery.<sup>36</sup> Since that time, a number of claims have proceeded to an award of compensation and there are other claims underway in Victoria and NSW.

### *C R v Rasalingham*

*R v Rasalingham* was the first labour exploitation trafficking matter prosecuted in Australia.<sup>37</sup> The defendant was an Australian citizen who owned and operated four Indian restaurants. The victim was introduced to the defendant in India. It was alleged that during this meeting, the defendant offered the victim employment in his restaurants in Australia. The employment arrangement involved the victim working 365 days a year, without payment for the first year, but during this time the defendant would provide money to the employee’s family each time he returned to India. When the victim arrived in Australia, the defendant took possession of his passport, ticket, and other documents. The employee was required to work long hours at the restaurants owned by the defendant and was not allowed any days off. He did not receive any payment for his work and there was no evidence to suggest any payments were made to his family in India. By the time the victim was located, he had been working for the defendant for approximately one month. The defendant was charged with one offence of organising or facilitating the entry or receipt of a person into Australia, being reckless as to whether that person would be exploited after entry into Australia contrary to the *Criminal Code*, and one offence of submitting to the Department of Immigration and Citizenship (‘DIAC’) a document with the intention of dishonestly influencing a Commonwealth public official contrary to the *Criminal Code*. The defendant was found guilty of dishonestly influencing

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<sup>35</sup> *Trafficked*, and *Trafficked, the Reckoning* by Abracadabra (Directed by Luigi Acquisto, Film Australia Ltd, 2011).

<sup>36</sup> The author represented Ning. Her claim was supported by the work of Luigi Acquisto and Stella Zammataro, film makers, former AFP officer Chris Payne and local interpreter Sumalee Milne. Her claim and outcomes are featured in the films *Trafficked*, and *Trafficked, the Reckoning*, above n 35.

<sup>37</sup> (Unreported, NSWDC, 2007).

a Commonwealth public official and received a suspended sentence of four months imprisonment. Proceedings were also taken under workplace laws for failure to meet minimum award standards of pay and entitlement. The defendant was fined for eight breaches of the applicable award and required to pay the victim \$11 500 in wages.<sup>38</sup>

#### *D R v Kovacs*

In *R v Kovacs*,<sup>39</sup> a married couple, Mr and Mrs Kovacs, were charged with offences relating to a sham marriage under the *Migration Act 1958* (Cth) and slavery under the *Criminal Code Act 1995* (Cth). They arranged and paid for a male friend to travel to the Philippines to marry and return with a Filipino woman with the intention that she would work in their take-away shop and home. Once the woman was in Australia she was effectively enslaved. She was sexually assaulted, threatened and abused. She worked up to 18 hours a day, seven days a week for a pittance. Her ability to flee was constrained by coercion, manipulation, lack of funds, and the confiscation of her passport. Mr Kovacs was convicted of slavery and sentenced to eight years imprisonment and Mrs Kovacs to four years.

The Kovacs appealed, challenging the findings of slavery, arguing the victim in this case had a 'degree of personal freedom' inconsistent with the existence of slavery as defined in the Code.<sup>40</sup> She was not prevented from leaving the shop or house, she was not locked in her room, was able to send and receive letters, and was able to use the telephone.<sup>41</sup> The Queensland Court of Appeal rejected this argument, finding that the alleged freedom was 'illusory or non-existent'.<sup>42</sup> However, it set aside a number of the verdicts and retrials were ordered resulting in Mr Kovacs being sentenced to nine years and Mrs Kovacs to four years imprisonment.<sup>43</sup> The case is important because it highlighted the issue of trafficking for domestic servitude and sham marriages in Australia and the need to expand the legislative and policy framework to respond to

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<sup>38</sup> [2008] FMCA 208.

<sup>39</sup> [2009] 2 Qd R 51; (2009) 192 A Crim R 345; See also Human Trafficking Working Group, *Case Report (Criminal)*, (2011), The University of Queensland <<http://www.law.uq.edu.au/documents/humantraffic/case-reports/kovacs.pdf>>.

<sup>40</sup> *R v Kovacs* [2008] QCA 417 [46].

<sup>41</sup> *Ibid* [44].

<sup>42</sup> *Ibid* [46].

<sup>43</sup> See also *R v Trivedi* (2011) NSWDC unreported, involving labour trafficking outside the sex industry. The victim was coerced into exploitative working conditions by a restaurant owner having sponsored him to travel to Australia on a temporary work visa (457 Visa).

cases that did not feature sexual exploitation.<sup>44</sup> Reports continue in recent times of the trafficking and prostitution of children by family members and forced marriage of young girls in Australia.<sup>45</sup>

#### IV THE AUSTRALIAN GOVERNMENT'S RESPONSE

The Australian Government has taken a number of steps to address slavery and human trafficking both in Australia and in the Asia-Pacific region in accordance with its obligations under Article 9 of the *Trafficking Protocol*.

The *Trafficking Protocol* is primarily a criminalisation instrument,<sup>46</sup> and as such Australia's response to trafficking and exploitation has been to address the problem as an issue of criminal justice, rather than as an issue of labour, migration or human rights violations. This approach has been criticised by those arguing that sex work is, like any other form of work, a matter of choice or agency by the participants and that human rights violations of the participants is best addressed, absent moralising about prostitution, through regulation, labour rights and freedom of movement generally.<sup>47</sup> The competing claim is that trafficking, and especially trafficking for prostitution, is inherently exploitative, a form of gender-based violence condoned by international law,<sup>48</sup> and depriving participants of genuine choice.<sup>49</sup>

<sup>44</sup> See Andreas Schloenhardt and Jarrod Jolly, 'Honeymoon from hell: human trafficking and domestic servitude in Australia' (2010) 32 Sydney LR 671.

<sup>45</sup> Sarah Elks, 'Brisbane Mother jailed for Child Trafficking of Daughter, Nine' The Australian (online), 16 April 2013 <<http://www.theaustralian.com.au/news/nation/brisbane-mother-jailed-for-child-trafficking-of-daughter-nine/story-e6frg6nf-1226621533056>>; 'Tasmanian child prostitute report damning' *News.com.au* (online), 15 December 2011 <<http://www.news.com.au/breaking-news/tasmanian-child-prostitute-report-damning/story-e6frfku0-1226223220589>>; Erdem Koc, 'Focus on child marriage in Australia', SBS (online), 11 February 2014 <<http://www.sbs.com.au/news/article/2014/02/11/focus-child-marriage-australia>>.

<sup>46</sup> Embedded within the *UN Convention against Transnational Organized Crime* rather than the Slavery Convention.

<sup>47</sup> See, eg, Fiona David, *Trafficking of Women for Sexual Purposes* (Australian Institute of Criminology: Research and Public Policy Series, 2008), 5; Miriam Cullen and Bernadette McSherry, cited in Andreas Schloenhardt and Jarrod Jolly, *Trafficking in Persons in Australia: Myths and Realities* (LexisNexis Butterworths Australia, 2013), 45; Elaine Jeffreys 'Anti-trafficking Measures and Migrant Sex Workers in Australia Intersections: Gender and Sexuality in Asia and the Pacific' (2009) 19 *Intersections*; James Hathaway, 'The Human Rights Quagmire of "Human Trafficking"' (2008) 49 *Virginia Journal of International Law* 1, 35; Jyoti Sanghera, 'Unpacking the Trafficking Discourse' in Kempadoo K (ed), *Trafficking and Prostitution Reconsidered: New perspectives on Migration, Sex Work and Human Rights* (Paradigm Publishers, 2005), 4.

<sup>48</sup> *Convention of All Forms of Discrimination Against Women*, signed 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 6; *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into

This ideological tension and the resulting disagreement about appropriate responses continue to challenge the policy debate.<sup>50</sup> Even the language used to describe participants (as “victims”, “sex workers”, “the prostituted” for example) inevitably impacts upon the policy response. In part, the tension continues because the serious focus by governments on these issues in Australia commenced with an awareness of trafficking for sexual exploitation and has thus encountered countervailing views about the role or agency of the women involved. While the tension remains, the assumption of the *Trafficking Protocol* is that trafficking contemplates an abuse of vulnerability and absence of genuine choice, leaving State parties to interpret their own appropriate responses.<sup>51</sup>

At a domestic level, the Australian Government has implemented a number of programs and legislative reforms to assist victims of slavery, slavery-like conditions, and people trafficking. In 1999, the Commonwealth Government introduced offences relating to slavery, sexual servitude, and deceptive recruiting for sexual services into the *Criminal Code*.<sup>52</sup> In 2003, the Australian Government announced a whole-of-government package to address crimes committed against humanity, specifically human trafficking including AFP funding to strengthen its capacity to detect, investigate, and provide specialist training in relation to slavery, trafficking, and related offences.

The Support for Victims of People Trafficking Program managed by the Australian Red Cross in conjunction with the Office for Women is a significant initiative. It provides access to accommodation, financial assistance, and access to health care and legal advice for

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force 3 September 1981) General Recommendation 19

<<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>.

<sup>49</sup> Anne Gallagher, ‘Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway’ (2009) 49 *Virginia Journal of International Law* 789, 792; Melissa Farley, ‘Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order To Keep the Business of Sexual Exploitation Running Smoothly’ (2006) 18 *Yale Journal of Law & Feminism* 109; Melissa Farley et al, ‘Prostitution & Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder’ (2003) *Journal of Trauma Practice* 33, 37; Seo-Young Cho, Axel Dreher, Eric Neumayer, ‘Does Legalised Prostitution Increase Human Trafficking? Courant Research Centre: Poverty, Equity and Growth in Developing and Transition Countries, Statistical Methods of Empirical Analysis’ (Georg-August-Universität Göttingen, Discussion Paper No. 96, 2011, updated January 2012) 1.

<sup>50</sup> Parliament of Victoria, Drugs and Crime Prevention Committee, ‘*Inquiry into People Trafficking for Sex Work: Final Report*’ (Parliament of Victoria, Government Printer for State of Victoria, 2010) 28.

<sup>51</sup> United Nations (2000) *Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime*, 347.

<sup>52</sup> *The Criminal Code Act 1995* (Cth) ch 8.



victims of trafficking.<sup>53</sup> It provides additional ongoing support to those victims who are willing and able to assist in criminal investigations of trafficking cases. As of 30 June 2012, a total of 193 clients had been referred to the Support Program since its inception.<sup>54</sup>

One well-founded criticism of the current Support Program is that it links ongoing support for trafficked people to their assistance to the criminal justice process,<sup>55</sup> thus “incentivising” cooperation by victims with law enforcement agencies. This approach appears to be an instinctive policy response to drive cooperation with law enforcement agencies rather than an evidence-based approach, and is contrary to the human rights approach encouraged by the *Trafficking Protocol*.<sup>56</sup> Perhaps it reflects the frustration of prosecutors when victims are threatened and refuse to testify, resulting in the collapse of prosecutions;<sup>57</sup> but it may in fact discourage reporting by victims. Further, the program operates in accordance with arbitrary factors, such as the requirement of the physical presence of traffickers in Australia, or an ad hoc assessment of the usefulness of the victim’s support, thus involving an unscrutinised exercise of discretion of police and prosecutors. Eligibility criteria should be founded instead upon respect for the victim’s human rights without the requirement of ‘willing and able to assist’, and with permanent visas being granted on compassionate grounds, rather than the present potentially counterproductive attempt to drive criminal justice outcomes.<sup>58</sup>

The Australian Government has failed to ensure adequate compensation for victims, as required by the *Trafficking Protocol*.<sup>59</sup> While State and Territory victims of crime compensation schemes provide some assistance and redress to trafficked persons, such

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<sup>53</sup> Anti Slavery Australia, Fact Sheet No 15: *Where Can Trafficked and Exploited People Get Help* (2014) Anti Slavery Australia <<http://www.antislavery.org.au/resources/fact-sheets/209-fact-sheet-15-where-can-trafficked-and-exploited-people-get-help.html>>; *Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Australia ('Report of Special Rapporteur')* (17–30 November 2011), UN Doc A/HRC/20/18/Add.1 (18 May 2012) 14 <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1\\_En.PDF](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1_En.PDF)>.

<sup>54</sup> Anti-People Trafficking Interdepartmental Committee, above n 27.

<sup>55</sup> The author, Anti-Slavery Australia, and others have consistently argued for the delinking of a requirement of co-operation by the victim with the criminal justice system for admission to the Support Program.

<sup>56</sup> *The Trafficking Protocol* art 2, see also arts 6(3) and 7.

<sup>57</sup> As in the 2004 case of JEON and OH, 50 victims were deported following joint AFP and DIMIA raids on three brothels. Charges were dropped after victims’ families received death threats and they refused to testify: AFP personal communications.

<sup>58</sup> See, eg, Anti-Slavery Australia paper Senior Officials Meeting 22 November, 2013; personal communications at National Roundtables and Law Council of Australia submissions available at <http://www.lawcouncil.asn.au/lawcouncil/index.php/10-divisions/141-people-trafficking>.

<sup>59</sup> *The Trafficking Protocol* art 6(6).

as Ning, in Australia, they are not ideal. Different thresholds for different awards under the various State and Territory schemes suggest that a uniform federal scheme for victims of federal crimes is needed,<sup>60</sup> tailored to meet the particular vulnerabilities of this group of victims. Applications are often characterised, for example, by a delay or failure to report to police due to fear of retribution by traffickers or fear of adverse outcomes in interactions with police and immigration authorities. A national scheme could be administered by arrangement with existing State and Territory tribunals or through federal courts such as the Federal Circuit Court with the advantages of uniformity of approach. This could obviate the need for victims to establish a prerequisite act of violence — sometimes difficult to prove in exploitation cases — and with the benefit of special procedures to avoid the risk of retraumatisation through confrontation with the offender.<sup>61</sup> In one recent claim involving the rape of a trafficking victim, a Victorian Magistrate decided to invite the offender to attend the hearing of the application, over the AFP and the victim's objections. The victim was required to make an election to withdraw her claim or face the probability of having to confront her abuser in court, despite the fact that her claim of trafficking had been accepted as well-founded by the AFP and Victoria Police.<sup>62</sup>

Australia is also a co-chair and founder of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime ('*Bali Process*').<sup>63</sup> The *Bali Process* involves 46 member countries from the Asia-Pacific region and a number of international organisations. As part of the *Bali Process*, the AFP provides training to law enforcement agencies in the Asia-Pacific region to combat people trafficking and related offences.

Prior to its abolition, AusAID facilitated several programs relating to trafficking in persons. These included:

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<sup>60</sup> Fiona McLeod, 'Compensation for Trafficked and Enslaved Persons' (Speech delivered at the Anti-Slavery Project Seminar on Remedies for Trafficked and Enslaved People, Sydney, 8 October 2011); Law Council of Australia various submissions available at <<http://www.lawcouncil.asn.au/lawcouncil/index.php/10-divisions/141-people-trafficking>>; *Report of the Special Rapporteur*, above n 54, 27.

<sup>61</sup> *Ibid*, *Report of Special Rapporteur*.

<sup>62</sup> Application of RG: Victims of Crime Assistance Tribunal 2010/1373 decision 22 August, 2012; Contrary to *Frost v VOCAT* (2002) VCAT 1390 per Bowman J.

<sup>63</sup> The Bali Process, *About the Bali Process* (2014) The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crimes <<http://www.baliprocess.net/>>.

- The Asia Regional Trafficking in Persons ('ARTIP') Project which operated from 2006–2011 and supported criminal justice systems of participating governments in the Asian region by strengthening national law enforcement and judicial and prosecutorial functions,<sup>64</sup> bilateral and regional cooperation, and enhancing regional and national legal, policy, and research capacity;
- Project Childhood, established in 2010 to prevent and respond to child sex tourism in the Mekong subregion;<sup>65</sup>
- Funding of the ILO implementation of the Tripartite Action to Protect Migrants in the Greater Mekong Sub-Region from Labour Exploitation project to promote safe labour migration and prevent labour exploitation;
- And, partnering with USAID to support the End Exploitation and Trafficking campaign to raise awareness of human trafficking in South East Asian countries.<sup>66</sup>

With the recent dismantling of AusAID and recent deep cuts to Australia's foreign aid program, it would be disappointing to see these programs and those supporting the education, training, and economic empowerment of women in the region generally fail to receive ongoing support and funding.<sup>67</sup>

The Attorney-General's Department and DIAC work together with other Australian agencies to facilitate capacity-building activities and provide a number of countries with technical assistance to support their efforts to address irregular migration, with a strong focus on trafficking.<sup>68</sup> Bilateral agreements made directly with source countries regarding the identification and repatriation of victims and perpetrators are also instrumental in

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<sup>64</sup> See generally ASIA Regional Trafficking in Persons Project, *Securing Justice for Victims and Ending Impunity for Traffickers* (2014) ASIA Regional Trafficking in Persons Project <<http://www.artipproject.org/>>.

<sup>65</sup> Australian Government, *East ASIA Regional Project Childhood* (1 November 2013) Australian Government Department of Foreign Affairs and Trade <<http://aid.dfat.gov.au/countries/eastasia/regional/Pages/initiative-project-childhood.aspx>>.

<sup>66</sup> Australian Government, *East ASIA Regional MTV EXIT (End Exploitation and Trafficking) Phase III* (1 November 2013) Australian Government Department of Foreign Affairs and Trade <<http://aid.dfat.gov.au/countries/eastasia/regional/Pages/initiative-mtv-exit-phase-3.aspx>>.

<sup>67</sup> above n 26.

<sup>68</sup> Attorney-General's Department, *Human Trafficking* (2013) Australian Government Attorney-General's Department <<http://www.ag.gov.au/Peoplettrafficking/Pages/default.aspx>>.

providing a strong framework to deal with both victims of trafficking (for return and repatriation) and perpetrators (for prosecution and extradition) across borders.<sup>69</sup>

In addition to these initiatives, the Australian Government has recently taken steps to strengthen Australia's legislative response to slavery and people trafficking. On 7 March 2013, the *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Act 2013* (Cth) came into force. This Act is designed to improve the criminal justice response to slavery, people trafficking, and related activities. The Act introduces a number of new offences relating to forced labour, organ trafficking, forced marriage,<sup>70</sup> and harbouring a victim of slavery or trafficking into Australian criminal law. A new aggravated offence provision applies to offences involving a child, inhuman or degrading treatment, or a risk of death or serious harm.<sup>71</sup> The Act introduces a new definition of servitude and related offences which are designed to capture slavery-like and exploitative conduct offences.<sup>72</sup> These amendments recognise that a victim may be in a condition of servitude whether or not escaping from that condition is possible and whether or not an attempt at escape has been made. These provisions clarify the effect of recent case law,<sup>73</sup> and recognise the reality of the situation for many victims who, due to the threats, deception, and coercion in place, do not have the wherewithal to escape or to attempt to do so.

The Act also clarifies existing offences relating to exploitative behaviour and enhances the operational effectiveness of the offences. For example, a new definition of 'coercion' was introduced in relation to slavery, trafficking, and related offences to reflect the fact that these offences can be committed where offenders use force, duress, detention, psychological oppression, abuse of power, or take advantage of a person's vulnerability.<sup>74</sup> The inclusion of 'coercion' in the relevant definitions acknowledges the

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<sup>69</sup> *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Mission to Australia, 18 May 2012, A/HRC/20/18/Add.1, 15 <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1\\_En.PDF](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1_En.PDF)>.

<sup>70</sup> *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Act 2013* (Cth) s 270.6A, 270.7B.

<sup>71</sup> Convention on the Rights of the Child ('CRC'), opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 4 <<http://www.2.ohchr.org/english/law/crc.htm>>.

<sup>72</sup> *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Act 2013* (Cth) s 270.5.

<sup>73</sup> See *R v Wei Tang* [2008] HCA 39; see also *R v Kovacs* [2008] QCA 417.

<sup>74</sup> *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Act 2013* (Cth) s 270.1A.

fact that, whilst some people may initially enter a situation of their own accord, this is usually due to forms of coercive behaviour on the part of the perpetrator.<sup>75</sup>

As a Commonwealth enactment, the Act does not attempt to weigh into the criminalisation of prostitution by the State and Territories, preferring to leave this to each individual jurisdiction and the current state of discordant regulation. Federal jurisdiction to do so is enlivened by s 51(xxix) of the *Constitution*, but there appears to be no desire to intervene, no doubt reflecting the ongoing debate discussed earlier. The time will soon come, however, when a national approach must be considered in order to combat exploitation with a robust examination of the success of other models in reducing criminality around prostitution.<sup>76</sup>

There are also offences under the *Migration Act* where an employer, labour hire company, employment agency, or other person knowingly or recklessly allows an unlawful non-citizen or a non-citizen without work rights to work, or refers them for work.<sup>77</sup> Circumstances of aggravation for such offences include the prospective worker being exploited, which is currently defined as being in a condition of forced labour, sexual servitude, or slavery. The *Migration Amendment (Reform of Employer Sanctions) Act 2013* (Cth) came into force on 14 March 2013 and contains a number of amendments to the employer sanction provisions of the *Migration Act*, including amendments to the current criminal offences and the introduction of new civil penalty provisions. These provisions mean that employers who engage in exploitative behaviour involving migrant workers will face criminal or civil sanctions.

Key workplace relations and migration reforms such as the *Fair Work Act 2009* (Cth)<sup>78</sup> and visa changes also improve protections for vulnerable workers, including migrant

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<sup>75</sup> International Labour Organisation Director General, 'A Global Alliance Against Forced Labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005' (Paper presented at International Labour Conference, Geneva, May June 2005), 5–6 <<http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>>.

<sup>76</sup> For example, recent consideration by Canada and the European parliament of the merits of the "Nordic" model, implemented in Sweden, Norway and Iceland, which criminalises the purchase of sex rather than the conduct of the seller: Diane Taylor, 'If Europe votes for the 'Swedish model' on prostitution, women will be at risk', *The Guardian*, 24 February 2014 <<http://www.theguardian.com/commentisfree/2014/feb/24/europe-vote-swedish-model-prostitution>>; Joy Smith, *The Tipping Point: Tackling the Demand for Prostituted/Trafficked Women and Youth*, 13 February 2014, <<http://rcav.org/wp-content/uploads/Article-by-Joy-Smith.pdf>>.

<sup>77</sup> *Migration Act 1958* (Cth), ss 245AA – 245AK.

<sup>78</sup> The *Fair Work Act 2009* (Cth) contains 10 National Employment standards that apply to all Federal employees. These standards guarantee the rights of all employees to certain employment conditions

workers.<sup>79</sup> These provisions may be used to assist workers who are subject to slavery, slavery-like conditions, or trafficking. There is also a provision in the *Fair Work Act* for orders to be made for monetary payment to be paid directly to the victim.<sup>80</sup> The Act requires an “employment” relationship, which may inadvertently give legitimacy to an exploitative relationship, and expose those victims working illegally to deportation or penalty.

On 8 March 2013, the Australian Government also announced a new whole-of-government strategy to reinforce ethical behaviour in procurement so that no firm providing goods or services to the Australian Government is tainted by slavery or people-trafficking anywhere in the supply chain.<sup>81</sup> This work and the development of a National Action Plan to Combat Human Trafficking and Slavery are on hold pending consideration by the new Minister for Justice, but they are clearly needed. The critical role of the supply chain has been recognised, for example, by the creation of the Global Freedom Network, an organisation led by religious leaders, which aims to abolish slavery.<sup>82</sup>

## V CONCLUSION

Human trafficking and slavery are amongst the most heinous crimes that humans can perpetrate. The callous disregard that the perpetrators of such crimes display towards their often very vulnerable victims, and the massive and escalating scale of the problem, reinforces the need for this conduct to be addressed through well-resourced international and domestic programs.

In 2008, the Vienna Forum to Fight Human Trafficking considered the drivers of human trafficking at length. These drivers include the vulnerabilities of the exploited, the demand for labour and sexual exploitation, communities in crisis, corruption, and the failure of

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including leave, public holidays, termination notice, and maximum weekly hours of work. In addition, the general protections scheme in Parts 3-1 of the Act enhances the range of options available to exploited workers and job applicants.

<sup>79</sup> The *Migration Legislation Amendment (Worker Protection) Act 2008* (Cth) introduced a greater level of protection for migrant workers who hold subclass 457 visas.

<sup>80</sup> *Fair Work Act 2009* (Cth) s 546(3) with penalties up to \$33 000 for each individual contravention of the Act.

<sup>81</sup> Former Prime Minister Julia Gillard, *‘International Women’s Day Speech’*, (Speech delivered at the UN Women National Committee Australia, Australia, 8 March 2013) <<http://www.pm.gov.au/press-office/international-women%E2%80%99s-day-breakfast>>.

<sup>82</sup> Nick Miller, *‘Andrew Forrest’s dream to stop all slavery’*, *The Age* (online), 18 March 2014, <<http://www.theage.com.au/national/andrew-forrests-dream-to-stop-all-slavery-20140317-34y2g.html>>.

local and international law enforcement responses.<sup>83</sup> The Forum also discussed and considered appropriate action and agreed that legislation alone was inadequate to address the scope of the problem. A suite of responses, ranging from the protection and empowerment of potential victims, policing and prosecution, national and regional responses, and the repatriation and reintegration of victims were all recommended.<sup>84</sup>

Federally, governments on both sides of politics in Australia have taken significant steps in the past to address these important human rights issues both domestically and in the Asia-Pacific region, especially over the last decade. Those programs that aim to reduce entrenched poverty and improve the education and social standing of women and children abroad are critical, and support for these programs must continue if we are to have any hope of making inroads into this pandemic of human misery. As consumers of cheap goods and services, we contribute to the perpetuation of exploitation and should be mindful of the impact of our decisions as consumers.

Australia's response in the last decade or so has been to improve law enforcement and immigration responses to victims, and provide funding for research and front line programs. The policy response to date has been relatively encouraging, but is not yet centrally focused on the needs of victims, and recent gains will be squandered if deep cuts to foreign aid eventuate.

In time, Australia will need to review the success of its programs and grapple with the unresolved tensions and competing narratives about the causes of exploitative practices and the best way to respond to them. The momentum is moving towards hybrid approaches that maintain the criminality of trafficking and slavery-like conduct, but also criminalise the purchasing of services that exploit others, especially sex. These moves have been boosted by recent developments overseas to implement the "Nordic" model.<sup>85</sup>

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<sup>83</sup> United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), *The Vienna Forum report: a way forward to combat human trafficking* (United Nations, 2008) 43 <<http://www.un.org/ga/president/62/ThematicDebates/humantrafficking/ebook.pdf>>; The failure of states to treat trafficking and exploitation as human rights violations, rather than an immigration problem driven by the demand for unskilled labour, was raised by the OHCHR delegate at the time.

<sup>84</sup> *Ibid.*

<sup>85</sup> 'Nordic Model', above n 76; For eg, recent consideration by Canada and the European parliament of the merits of the "Swedish" model, implemented in Sweden, Norway and Iceland, which criminalises the purchase of sex rather than the conduct of the seller: Diane Taylor 'If Europe votes for the 'Swedish model' on prostitution, women will be at risk', *The Guardian* (online), 24 February 2014 <<http://www.theguardian.com/commentisfree/2014/feb/24/europe-vote-swedish-model-prostitution>>; Smith, above n 76.

However, if these competing views are to be resolved, the protection of human rights of victims of trafficking and slavery-like offences must remain at the forefront of our response.



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