

Inquiry into the
exploitation of people
through trafficking, in
all its forms in NSW



NEW SOUTH WALES GOVERNMENT
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Publishers' Note:

This is a reissued report, which corrects errors and includes some minor formatting changes.

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Community Relations Commission For a multicultural NSW

3 December 2013

Dear Premier and Minister

I have pleasure in submitting the **Inquiry into the exploitation of people through trafficking, in all its forms in NSW** for presentation to Parliament.

The Inquiry is prepared under section 13 of the **Community Relations Commission and Principles of Multiculturalism Act 2000**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stepan Kerkyasharian', written over a light green background.

Stepan Kerkyasharian AO
Chairperson
Community Relations Commission
For a multicultural NSW

Foreword

I am pleased to release this report on the **Inquiry into the exploitation of people through trafficking, in all its forms in NSW** conducted over 2012 and 2013. The Inquiry identified the need for a legal and policy framework in NSW, which fully implements a human rights based response to human trafficking in all its forms, guided by the international principle that 'the human rights of trafficked people shall be at the centre of all efforts to prevent and combat trafficking in and to protect, assist and provide redress to victims' (OHCHR 2002, p.3).

Human trafficking is a complex crime, which is often hidden and difficult to detect. People experiencing human trafficking, slavery and slavery-like conditions can be distrustful of authorities, fearful of deportation and threats of harm and unaware of their legal rights and protections in Australia. The Inquiry found that there is confusion about what 'human trafficking' means and little or no guidance for service providers, who may come into contact with trafficked people to help them respond appropriately.

The key finding from this Inquiry is that the NSW Government policy and service response is lacking. The main recommendations are about creating the high level structures and the front line processes needed to meet the needs of trafficked and enslaved people.

The terms of reference for the Inquiry reflect a request from the Minister for Citizenship and Communities, the Hon Victor Dominello MP, to investigate the issue of human trafficking and the exploitation of women in the sex industry.

The Community Relations Commission was urged by members of the Inquiry with expertise in the area of human trafficking and slavery research, submission writers and participants in the Inquiry's community forums to respond to labour exploitation in the community, and particularly the exploitation of women in intimate partner relationships. The Inquiry has addressed broader forms of exploitation, including slavery and slavery-like practices such as forced labour and forced marriage. Women in forced marriages, for example, may be subject to slavery-like practices and sometimes human trafficking.

The Inquiry also recognised that human trafficking, slavery and exploitation are not exclusive to women and girls, and that boys and men are also subject to these practices internationally and in Australia. The reference to 'human trafficking and slavery' used in this report encompasses all forms of human trafficking, slavery, and slavery-like practices including forced labour, forced marriage, and all forms of servitude.

To fulfil the terms of reference for the Inquiry, the Commission:

- established an expert committee to advise on the policy and service issues
- called for submissions and conducted consultations in major, local, ethnic and specialist press outlets
- met with relevant Commonwealth agencies and identified relevant policies and processes
- conducted a targeted survey to gauge community awareness
- formulated 15 recommendations to help address human trafficking and slavery in NSW.

As Chairperson of the Inquiry, I thank the members of the Committee who gave generously of their time and considerable expertise and the staff who prepared this report. I also extend my sincere thanks to the many organisations, agencies and individuals who contributed their experiences and proposals for positive change.

I urge the NSW Government to play its part in stopping this gross violation of human rights. This involves work on preventative measures, providing support for trafficked people and working with the Commonwealth to identify, investigate and prosecute the perpetrators.

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Stepan Kerkyasharian AO

Chairperson, Community Relations Commission for a multicultural NSW

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Executive Summary

The key findings from the **Inquiry into the exploitation of people through trafficking, in all its forms** are that NSW needs to develop its own policy and service response, in line with a human rights framework, work with the Commonwealth and contribute to the development of Commonwealth and State coordinated efforts.

Australia is a destination country for human trafficking (IDC 2012). However, the Inquiry notes that exploitation can occur before a trafficked person leaves their home country, in transit, at the point of arrival in Australia (or any other country), in the early days of migration settlement or at any time post-arrival, especially when individuals experience financial, social or psychological difficulties. Additionally, the Inquiry observes that slavery and slavery-like practices such as forced labour and forced marriage are conditions of exploitation where immigration or citizenship status may be irrelevant.

The Inquiry notes that elements of complex migration processes or crimes are often misunderstood. For example, a survey conducted by the Australian Institute of Criminology in 2009 confirmed that the general public frequently confuses people trafficking with people smuggling, by placing undue emphasis on the journey rather than the exploitative elements of human trafficking and slavery (AIC 2009).

In 2011-12, the (then) Department of Immigration and Citizenship (DIAC) referred 31 reports of possible people trafficking, involving 26 possible victims, to the Australian Federal Police (AFP) for assessment. The suspected victims had entered Australia on a variety of visa types, including tourist, student and sports visas and some held electronic visas. Some visas had expired by the time their holders were located, making them unlawful over-stayers, while the immigration status of others remained lawful (IDC 2012).

Through its call for submissions and public consultations, the Inquiry Committee found differences in perception about where the government and the community should focus their attention, and the level of emphasis and prioritisation on the different forms of human trafficking and slavery. The focus of the media is typically on exploitation of women in the sex industry, in particular Asian women migrants working in brothels. In contrast, the Inquiry heard from community groups and service providers that exploitation more frequently occurs in family homes and businesses.

Seeking help can be fraught with complexity for the trafficked and enslaved person. A lack of knowledge of Australian law and the legal system, of what constitutes exploitation and of the support services available, may be barriers to seeking and accessing help. A sense of duty to their spouse and family, shame, the fear of reprisal, fear of deportation and of government officials, loss of livelihood, language and cultural differences, and may also stop a trafficked or enslaved person from seeking help. The Inquiry has identified a number of areas for attention from the NSW Government along the whole spectrum of issues, from education, prevention, service delivery, investigation and enforcement.

Key findings and Recommendations

The results of the Inquiry are grouped into five key findings:

1. Strengthen the NSW response
2. Undertake legal and policy reform
3. Improve outcomes for trafficked people
4. Enhance knowledge and awareness
5. The need for more research.

Finding 1.

Strengthen the NSW Government Response

The Inquiry found that the response to human trafficking and slavery in NSW needs to be strengthened. At present, state and territory governments (with police forces as the occasional exception) are not involved in any national processes for determining policy and strategies.

There are no formal relationships between agencies which should have responsibilities for providing services and information. Nor are there formal relationships with non-government organisations which are active in this area and are most likely to come into contact with trafficked people.

The Committee recommends NSW adopt a human rights based approach focussed on information, education and prevention, as well as enforcement. NSW has a responsibility, as the major provider and funder of relevant services, particularly housing services to ensure that the welfare and rights of trafficked and enslaved people are paramount.

The Inquiry welcomes the use of the NGO Guidelines for Working with Trafficked People (2010) developed by the Australian Government and agencies in conjunction with key community organisations. The NGO Guidelines provide government and non-government agencies with best practice responses, including ethical interviewing, dealing with media inquiries, as well as providing culturally appropriate services.

Recommendations

1 That the NSW Government establish a high-level Human Trafficking Ministerial Advisory Council to coordinate a whole-of government response to human trafficking and slavery in all its forms in NSW and to liaise with the Commonwealth. The Advisory Council:

- should be chaired by the relevant Minister
- membership should be appointed by the Minister and include high level representatives of relevant NSW Government and non-government agencies
- the terms of reference should include advising the Government on policy and program priorities, including identifying and addressing gaps in policy and research
- should establish protocols for comprehensive collaboration between all levels of government, to create clear pathways of responsibility and procedures in identifying and responding to victims of trafficking, slavery and exploitation.

2 That the NSW Government call on the Federal Government to establish a high-level structure of state and territory governments, as part of its formal national response to human trafficking and slavery.

The priority of this representation should be to better coordinate intergovernmental responses to human trafficking and slavery. This includes:

- investigating the gaps in services provided through the Australian Government Support for Trafficked People Program
- developing programs to ensure that the human rights of trafficked and enslaved people are protected and supported
- referring all matters to the proposed NSW Human Trafficking Advisory Council to develop a NSW response that ensures the needs of trafficked and enslaved people are met.

Finding 2.

Undertake legal and policy reform

The Inquiry identified the need for a legal and policy framework which fully implements a human rights based response to human trafficking and slavery. This requires work at both the Commonwealth and NSW Government levels. The Commonwealth, as the signatory to UN Conventions, should take the lead.

While the overall Commonwealth framework provides a holistic approach - from education and prevention to investigation and prosecution - for victims of human trafficking and slavery, the focus remains largely on criminal justice outcomes.

Recommendations

- 3 That the NSW Government urge the Commonwealth to adopt the **ILO Convention Concerning Decent Work for Domestic Workers, No. 189**.
- 4 That the Attorney General of NSW review provisions in the **Victims Rights and Support Act 2013** to ensure that crimes related to human trafficking and slavery are included as an offence category in the recognition payment scheme and other avenues of support provided for in the legislation.

Finding 3.

Improve outcomes for trafficked people

NSW Government agencies and community organisations could improve outcomes for trafficked people by increasing awareness on how to identify human rights abuses.

The two measures identified as critical to improving the outcomes for trafficked people were:

- **building the capacity of government and non-government service providers to improve the initial and ongoing response to people identified as trafficked and enslaved**
- **clarifying the protections and compensations that trafficked people, once identified, are eligible for.**

Recommendations

- 5 That the State Government consider, where appropriate, the appointment of a guardian (state authority) to oversee the care and protection of children and young people who are affected by human trafficking or slavery.
- 6 That the Department of Family and Community Services develop an Action Plan to coordinate and improve services for trafficked and enslaved people, including working with the Commonwealth as needed.
- 7 That Housing NSW examine accommodation provisions for victims of human trafficking and slavery to determine:
 - whether the Commonwealth provisions are sufficient to provide suitable housing for victims of human trafficking and slavery in NSW
 - what provisions ought to be consistent across jurisdictions
 - whether they should reconsider the policy of excluding 'non-residents' [meaning those who are not permanent residents or citizens] from their services, especially trafficked people, recognising that the small numbers have little impact on budgetary constraints or service delivery.
- 8 That the Commonwealth establish a national Victims' Compensation scheme to ensure that victims of human trafficking and slavery are entitled to effective remedies including a financial sum in recognition of their experience as a victim of a Commonwealth crime.
- 9 That the NSW Government make representations to the Commonwealth Department of Social Services that monetary compensation made to victims of slavery, servitude, human trafficking and related crimes not be classified as income for the purposes of assessing eligibility for the Special Benefit payment.
- 10 That the NSW Government urge the Commonwealth, through **Fair Work Australia**, to ensure that there are sufficient resources devoted to assist victims of labour exploitation gain their correct entitlements under Australian law.

Finding 4.

Enhance knowledge and awareness

The Inquiry confirmed that vulnerable people and service providers need information, knowledge, and training to respond appropriately to situations of human trafficking and slavery. Targeted and appropriate information materials are needed within all communities.

While the Commonwealth Government has primary responsibility to develop policies and procedures in response to forced marriage, including the provision of information to people entering Australia, and the development of a national communications strategy, NSW participation is critical in educating young people and communities to promote prevention strategies and to develop support systems for those facing forced marriage in NSW.

Recommendations

- 11 That the Commonwealth Government ensure that information on slavery, slavery-like practices, including forced marriage, forced labour and human trafficking is given to **both** visa applicants and new arrivals in Australia in their own language at the time of application for a visa and on arrival in Australia. The information should:
 - describe exploitation, the law and the support mechanisms available
 - be provided in the first language of applicants both in writing and orally where appropriate.
- 12 That the NSW Government, in consultation with the Commonwealth, develop and fund an education campaign to be delivered by the appropriate agencies and community organisations. This should target:
 - people in the NSW community who might be experiencing exploitation, be aware of exploitation, or might be either knowingly or unknowingly participating in exploitation
 - all members of the NSW community who may come in to contact with people who are experiencing trafficking and slavery, such as those in the service, construction or agricultural industries and students
 - children and young people in the education system, related to forced marriage and family violence.

The education campaign should be developed by a working party set up by the proposed Human Trafficking Advisory Council, be consultative in nature and include evaluated campaigns and initiatives such as:

- radio education campaigns delivered through mainstream and ethnic media, directed to different communities and in community languages
- a specific hotline or inclusion in other government telephone information services with language options, or run by an appropriate NGO, with information on housing and legal advice
- a smartphone application of the style and accessibility of the Aurora domestic violence application.

- 13 That relevant agencies, including NSW Police, the judiciary, frontline workers in government agencies, health and community service workers and community organisations undertake training to:
 - identify victims trafficked and enslaved in any employment or intimate partner relationship
 - protect the human rights and safety of exploited individuals.

- 14 That the Community Relations Commission For a multicultural NSW conduct regular consultations with community members and service providers on human trafficking in all its forms in New South Wales, including forced marriage and forced labour.

The results of the consultation should be reported to the Human Trafficking Advisory Council and be included in the Commission's Community Relations Report, tabled in Parliament annually.

Finding 5.

The need for more research

Many submissions to the Inquiry called for additional research to improve data and knowledge that will lead to better outcomes for trafficked people.

As a starting point, the NSW Government should examine what data and information it can collect to illuminate the issue and help to design an effective service response in NSW.

Recommendation

- 15 That the Human Trafficking Ministerial Advisory Council identifies gaps in research on human trafficking and slavery.
 - The first step is to conduct an audit of existing data collections, which could be enhanced to include trafficking data.

Introduction

This section outlines the background to the Inquiry, the terms of reference, the various forms of consultation, and the structure of the report.

The Community Relations Commission is authorised under s.13 (1)(c) of the **Community Relations Commission and Principles of Multiculturalism Act 2000** 'to research or investigate and report to the Minister on any matter relating to its objectives that the CRC considers appropriate or that the Minister refers to the CRC for research or investigation and report' (The Act 2000).

In mid 2012, the Hon Victor Dominello MP, Minister for Citizenship and Communities, requested the Commission conduct an inquiry into the trafficking and exploitation of women in the sex industry in NSW. The Minister requested that the Commission consider the following aspects as part of its inquiry:

- outline the current situation with regard to the trafficking and exploitation of women for sex industry purposes and identify the key problems
- identify steps being taken by the Commonwealth Government to address the trafficking of women for the sex industry, and how the NSW Government may be able to provide further cooperation
- identify actions that NSW Government agencies may be able to take to further assist women in crisis situations as a result of sex industry exploitation.

Terms of Reference

A full Commission meeting considered the Minister's request and resolved to undertake the Inquiry and determined the following Terms of Reference:

That the Community Relations Commission, under Section 13(c) of its Act:

1. investigate the current issues surrounding the trafficking and exploitation of people in the sex industry and in other forms of employment
2. identify the Commonwealth Government initiatives and policies to address the trafficking of people and their effectiveness
3. identify NSW State and Local Government policies and activities concerning the trafficking of people and their effectiveness
4. assess the level of community awareness of people trafficking
5. identify practical measures to address the trafficking of people in NSW.

Committee

The Commission also resolved to establish a committee to oversee the investigation consisting of:

Dr Stepan Kerkyasharian AO
Chairperson and Chief Executive Officer of the Community Relations Commission (Committee Chair)

Associate Professor Jennifer Burn
Faculty of Law University of Technology, Sydney; Director, Anti-Slavery Australia

Dr Sverre Molland
School of Archaeology and Anthropology, Australian National University (ANU), Canberra

Dr Eman Sharobeem
CRC Commissioner; Manager, Immigrant Women's Health Service; Statutory Board Members, Anti-Discrimination Board NSW; Convener, Immigrant and Refugee Women's Network; Chairwoman, Non English Speaking Housing for Women; Chairperson, Macarthur/Liverpool Regional Advisory Council

Ms Patricia Azarias, CRC Commissioner, was part of the Committee until the completion of her term as Deputy Chair of the CRC on 23 November 2012.



Public Authorities must assist the Inquiry

Section 15 of the Act requires public authorities to assist the CRC:

1. This section applies to any investigation conducted by the Commission under this Act that affects the functions of a public authority.
2. The public authority is to give the Commission all such assistance and make available all such information with respect to any such function as the Commission may require for the purposes of that investigation.
3. Public authorities may, at the request of the Commission, provide officers of the public authority to be members or to advise members of committees of the Commission established to advise and report on any issue for the purposes of that investigation.

Public Submissions

The Community Relations Commission encouraged public participation in the Inquiry and called for submissions from interested individuals and organisations. Submissions could be made anonymously. The CRC also requested information from public authorities in NSW and invited public authorities in other jurisdictions, and non-government organisations to make submissions.

Nineteen NSW Government agencies were invited to respond to the Inquiry. These were chosen based on their roles in providing services and developing policy relevant to trafficked people. Sixteen responses were received, though a number of central departments provided information on behalf of multiple line agencies. The responses confirmed that agencies in NSW were doing very little to assist and support trafficked and enslaved people.

A further seven Commonwealth Government organisations were invited to respond to the Inquiry. Four responses were received from the Commonwealth, including a short response from the Commonwealth Attorney-General's Department (AGD). The AGD is the lead agency in coordinating Australia's Strategy to Combat Human Trafficking and Slavery, and chairs the Interdepartmental Committee on Human Trafficking and Slavery (IDC). The IDC is comprised of 13 agencies that provide oversight of Australia's response to human trafficking and slavery.

The Committee received submissions from 23 non-government entities, including seven private citizens. Many of these submissions focussed on the sex industry.

Key points relevant to this Inquiry are included under the pertinent findings, with specific organisations identified where appropriate.

Appendix 1 is a full list of individuals, agencies and organisations that participated in the Inquiry.

Discussion Forum

The Community Relations Commission encouraged further participation through a Discussion Forum held in the Jubilee Room at Parliament House in Sydney on 19 December 2012.

The Committee invited a number of organisations to expand on their written submissions at the Discussion Forum. A number of organisations that had not made a submission but had a potentially relevant contribution to make, were also invited to meet with the Committee.

The Hon Phillip Ruddock, MP, Deputy Chair, Human Rights Sub-Committee, joined the Committee overseeing the Inquiry at the Discussion Forum. The Human Rights Sub-Committee convened the Commonwealth Parliament **Inquiry into Slavery, Slavery-like conditions and People Trafficking** (JSCFADT 2013).

Community Consultation

Following the submission process and discussion forum, the Inquiry held community consultations to facilitate further participation by community leaders and representatives.

Two community consultations were held in February 2013. Participants included members of various ethnic communities, staff of multicultural organisations, media personnel, policy makers, academics, students, members of advocacy organisations, and representatives from the non-government and local government sectors. State and Commonwealth agencies were also represented, including the NSW Police Force, the NSW Department of Attorney General and Justice, and the (then) Department of Immigration and Citizenship.

Representative members from the following communities were present at the consultations: Thai, Vietnamese, Filipino, Indian, Egyptian, Iraqi, Korean, Chinese, Sudanese, Pakistani and Liberian (**Appendix 1**).

The consultations canvassed issues focussed on six questions:

1. Before you came to this session were you aware of trafficking, forced labour or forced marriage?
2. marriage?
3. Do you know of anyone who may have experienced trafficking, forced labour, or forced marriage?
4. Do you think that people in your community know about these forms of exploitation?
5. What can be done to prevent such exploitation and to support those who are in these situations?
6. situations?
7. What advice or support can be given to a person who may be in such situations?
8. Do you know of anyone who may like to speak with us confidentially about their experiences?

These questions helped assess the level of community awareness of trafficking, forced labour and forced marriage. The attendees were invited to propose practical strategies on prevention and support mechanisms to assist trafficked people.

Confidential Interviews

The Commission also provided the opportunity for community members to participate in confidential hearings with the Chairperson of the Community Relations Commission, members of the Committee overseeing the Inquiry, and Commission staff members.

During the Inquiry, the Commission was made aware of one woman who had been trafficked who was willing to speak on a confidential basis about her experiences. A further five people who were working in the community shared confidential accounts of the exploitation of women they had encountered during their work.

The content of these discussions cannot be reported for privacy reasons. However, these meetings revealed that trafficking and exploitation crosses many communities in NSW, and confirmed that individuals were reluctant to come forward for fear of the consequences.

Private briefing to the Inquiry into Modern Day Slavery

On 27 November 2012, the Committee participated in a private briefing with the Federal Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade Sub-Committee for Inquiry into Modern Slavery in Australia. The Chatham House Rule applied to the meeting.

The purpose of the briefing was to ensure that both Inquiries complemented each other and to reduce any overlaps. The **Inquiry into Slavery, Slavery-like conditions and People Trafficking** produced its report in June 2013. It heard from many of the same organisations that submitted to the NSW Inquiry. It came to similar conclusions on several points, including the need to consider a national Victims' Compensation Scheme and to provide temporary and permanent entrants to Australia with information in their language as part of the visa process.

Telephone attitudes survey

In August 2013, the CRC commissioned a short telephone survey of three ethnic communities to gauge their attitudes to trafficked people, compared with the broader population. This survey was based on the Australian Institute of Criminology's (AIC) larger survey conducted in mid-2009. As part of its research program, the AIC developed an online survey of respondents to gain a better understanding of awareness and attitudes to victims of trafficking including people who are in Australia unlawfully, labour exploitation, sex work and the notion of 'deserving victims' (AIC 2009).

Following AIC advice, the CRC selected five key questions to compare attitudes about 'deserving' victims. The CRC interviewed people from the Thai, Chinese and Korean communities. A brief description of the results is at [Appendix 2](#).

The results show that, overall, there is little difference between the attitudes and knowledge of specific ethnic groups and the general population. However, they also confirmed that many people did not have an opinion, suggesting they lack knowledge and awareness. The results are discussed in more detail under [Finding 4](#).

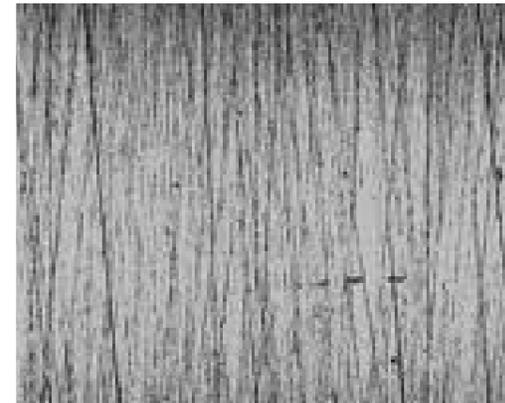
Structure of this report

The Report begins with an overview of the current context, focusing particularly on the Commonwealth response. This reflects the Commonwealth's major responsibilities for migration and addresses the requirement of the **NSW Inquiry into the exploitation of people through trafficking, in all its forms** to 'identify the Commonwealth Government initiatives and policies to address the trafficking of people and their effectiveness.'

The results of the consultation and research undertaken within the Inquiry are grouped into five key findings:

1. Strengthen the NSW response
2. Undertake legal and policy reform
3. Improve outcomes for trafficked people
4. Enhance knowledge and awareness
5. The need for more research

These findings fulfil the terms of reference; identifying current initiatives and gaps at the Commonwealth and NSW levels. They demonstrate the need for a NSW response encompassing Commonwealth level engagement, high-level, state-based structures, education, training, coordinated services and further research.



Summary

This section outlines the policy context for this Inquiry, largely set by international and Commonwealth law. It shows that since signing relevant International Labour Organisation (ILO) and United Nations (UN) conventions and protocols on slavery, human trafficking and forced labour, the Commonwealth has established a legal, policy, program, investigation, enforcement and research response to human trafficking and slavery in Australia.

In the course of this Inquiry, the Commonwealth introduced new offences of servitude, forced labour, forced marriage, organ trafficking and harbouring a victim into the **Criminal Code Act 1995**.

In 2004, the Commonwealth established a major program to support potential victims who are prepared to participate in an investigation. However, the response has a strong focus on the criminal justice process. To access visa status and support, victims must cooperate with law enforcement. To date, there is no published evaluation of the effectiveness of the program response, including outcomes for trafficked victims (Gallagher et al. 2012, JSCFADT 2013).

Information provided to the Inquiry established that there are gaps in the current support framework for trafficked and enslaved people. This Inquiry supports the continued development of the **National Action Plan** (AGD 2013) with a strong focus on education, prevention and support, and include participation and accountability from all tiers of government and other relevant stakeholders.



Outline

- defining the scope - what is human trafficking, slavery, forced labour ?
- extent of human trafficking globally
- the Commonwealth Government response.

Defining the scope - what is human trafficking, slavery and forced labour?

A threshold issue for this Inquiry was to define human trafficking. As many contributors to this Inquiry pointed out, there is a tendency to associate human trafficking with the sex industry and not recognise that it can also include other forms of exploitation and servitude, such as forced labour and domestic servitude.

In conducting this Inquiry, the Committee adopted the United Nations definition of trafficking as set out in Article (3)(a) of the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children** (Trafficking Protocol), which supplements the **Convention against Transnational Organized Crime**.

The Committee accepts the global understanding that human trafficking is a form of modern day slavery and a gross violation of human rights, which infringes upon individual right to freedom, autonomy and human dignity (Kempadoo et al 2005, p.1, Gallagher et al 2012).

In December 2000, Australia became signatory to the Trafficking Protocol. The Commonwealth ratified the Protocol into domestic law in September 2005.

The Trafficking Protocol provides the first comprehensive and internationally recognised definition of trafficking. Under Article 3 (a), Trafficking in People is defined as:

'...the recruitment, transportation, transfer, harbouring or receipt of people, 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.'

Human trafficking is different from the smuggling of migrants. The two key differences are **consent** and **exploitation**. In a situation of migrant smuggling, the person being smuggled generally consents to being smuggled and on arrival there is generally no exploitation. A person who is trafficked often does not consent, or the coercion experienced negates that consent, and on arrival (or at any point in time) there is exploitation.

The Protocol references three elements that constitute trafficking. They are referred to as the 'act', 'means' and 'purpose' (UNGA 2000 p.28).

1. Act: including the recruitment, transportation, transfer, harbouring or receipt of people.

2. Means: The threat or use of:

- force or other forms of coercion
- abduction
- fraud or deception
- the abuse of a position of vulnerability
- the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

3. Purpose: Exploitation, which includes at a minimum:

- the exploitation of the prostitution of other or other forms of sexual exploitation
- forced labour or services
- slavery or practices similar to slavery
- servitude
- the removal of organs.

The **Trafficking Protocol** states in Article 3(c) and (d) that when a **child** (being a person under the age of 18) is the subject of trafficking, there is no need to establish any of the 'means' identified in the Protocol, as the 'act' of 'recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be [sufficient to be] considered 'trafficking in persons' (UNGA 2000).

The use of the phrase the 'abuse of a position of vulnerability' ('means' in the Protocol definition) is broad enough to capture situations involving non-violent coercion by generating fear or dependence because of the person's illegal or uncertain immigration or residency status, or conditions such as illness, pregnancy, or physical or mental disability. Individuals in these situations may be vulnerable to exploitation if they perceive that they have 'no real and acceptable alternative but to submit to the abuse involved' (UNODC 2009 p.9).

The terms 'slavery or practices similar to slavery', are defined within the **International Convention to Suppress the Slave Trade and Slavery 1926**: Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (UN 1926).

Article 1 of the **Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3**, includes slavery like practices such as debt bondage, serfdom, forced marriage, inheriting women on the death of the husband and selling children (UN 1956).

In the International Labour Organisation Convention No.29 on Forced or Compulsory Labour 193, 'The term forced or compulsory labour shall mean all work or services which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily...' (ILO 1932).

See **Appendix 3** for the relevant extracts from the Conventions.

Coercion and Consent: refining the definition of Trafficking within the Palermo Protocol

The Trafficking Protocol reflects a key tension between the different interests on the subject of trafficking and exploitation. Polarised positions were most apparent around prostitution and sex work (Outshoorn 2005 p.141) where the notions of coercion and consent had to be balanced in the drafting of the Protocol (Munro 2006 p.325).

Essentially, the differences were that one faction argued that the movement of people for sex work is inherently exploitative and ameliorates consent. The opposing position argued that only when there is a coercive factor or an absence of explicit consent, should sex work be equated with trafficking.

In light of these polarised views, 'the Palermo Protocol adopted a middle ground position' (Segrave 2009) by defining trafficking in such a way as to enable signatory nation states to apply the Protocol irrespective of their domestic laws on prostitution. This allows nation states to decide whether sex work is recognised as a legitimate form of labour, or 'as a form of sexual exploitation and thereby a form of trafficking' (Jordan 2002 p.17, Segrave 2009 p.32, Gallagher 2012).

These polarised views were reflected in the submissions to this Inquiry and also to the Federal Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade Sub-Committee for **Inquiry into Modern Slavery in Australia**. (See **Finding 2**).

Extent of trafficking globally

Human trafficking is complex and difficult to estimate. The full extent of trafficking globally and in our region is unknown. The United Nations Office on Drugs and Crime produces a report every two years, based on information from member states. The

most recent report (UNODC 2012) contains data on the number of reported victims (55,000) and offenders (50,000), while the ILO estimates that globally there are 2,440,000 people who are currently in forced labour as a result of trafficking (ILO 2011). The US Department of State Trafficking in Persons Report 2013 shows that in 2012, 46,570 victims were identified globally, with 7,705 prosecutions and 4,746 convictions (USADS 2013 p.46).

There is wide recognition that estimates of human trafficking are very difficult to determine. In an attempt to define the dimension of human trafficking, UNODC states that human trafficking is the third most profitable illicit trade after drugs and arms trafficking and also the fastest growing of international crimes (Sekhon 2011).

In its most recent report, UNODC indicates that more than 10,000 cases of trafficked persons were detected and up to 50 percent of these were children, the majority of whom were girls (UNODC 2012 p.7).

The UNODC report indicates that since 2010, labour trafficking has overtaken sexual exploitation as the main type of trafficking in cases assisted by the International Organisation for Migration (IOM). The UN reported that of the victims detected between 2007 and 2010 in South and East Asia and the Pacific:

- 47 per cent were trafficked for forced labour
- 58 per cent were trafficked for sexual exploitation
- 9 percent were trafficked for other purposes, more frequently exploitation in domestic servitude (UNODC 2012).

The 2012 report includes trafficking for forced marriage amongst the nine percent of trafficking for 'other purposes'. These figures do not necessarily reflect the situation in Australia.

Interestingly, the proportion of reported cases of forced labour globally had doubled in the reporting period between 2007 - 2010, but sexual exploitation remained the highest at 58 per cent (UNODC 2012 p.12)

Australian prosecution rates and types of crimes are discussed further as part of the next section on the Commonwealth Response.

The Commonwealth Government Response

The terms of reference required the Inquiry to 'identify the Commonwealth Government initiatives and policies to address the trafficking of people and their effectiveness'.

As a signatory to the Trafficking Protocol, Australia has obligations to criminalise all forms of human trafficking, and to develop effective strategies to address human trafficking including providing protection and support for victims.

Australia is classified as a destination country for human trafficking and slavery. To date, the majority of people identified as victims have been trafficked from South-East Asia into the sex industry in Sydney and Melbourne. However, there is a growing number of identified cases of exploitation outside of main city hubs, as well as in other industries such as agriculture, hospitality and construction (UNGA 2012).

Since adopting the key ILO and UN Conventions and Protocols, the Commonwealth has developed the **Strategy to Combat Human Trafficking and Slavery** (DSS 2013). It is described as consisting of four pillars addressing the full cycle of trafficking from recruitment to repatriation:

- prevention
- detection and investigation
- criminal prosecution
- victim support and rehabilitation.

Context

The IDC Report July 2011 – June 2012 details the Commonwealth strategy including a range of actions, many of which have been implemented:

- **specialist teams** within the Australian Federal Police (AFP) to investigate human trafficking and slavery-related matters and an Australian Policing Strategy to Combat Trafficking in People
- **legislation** to criminalise human trafficking, slavery and slavery-like practices, including forced labour and forced marriage and to protect vulnerable witnesses in commonwealth prosecutions
- **a victim support** program that provides individual case-managed assistance to eligible trafficked people, including access to accommodation, financial assistance, legal and migration advice, training and social support
- **visa arrangements** to enable suspected victims and witnesses of human trafficking and slavery to remain in Australia to 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
- support for the Commonwealth Director of Public Prosecutions to **prosecute human trafficking** and slavery-related matters, including funding and training
- **regional activities to deter** human trafficking and slavery, train law enforcement officials and assist the victims under Australia's overseas aid program
- **research** into national and regional trafficking activities by the Australian Institute of Criminology (IDC 2012, DSS 2013 p.3).

In November 2011, the Australian Government hosted the United Nations Special Rapporteur on Trafficking in People Especially Women and Children, Dr Joy Ngozi Ezeilo, on her Mission to Australia. The Special Rapporteur's report, tabled during the 20th Session of the United Nations Human Rights Council in June 2012, recognised Australia as a regional leader in combating trafficking. The Report included 31 recommendations (UNGA 2012).

Legislation

The Commonwealth **Criminal Code Act 1995** was amended in 1999 to codify slavery and include the offence of sexual servitude. In 2005 the Criminal Code was expanded to criminalise human trafficking by means of force or the use of threats or deception. The amendments also criminalised domestic trafficking and trafficking in children.

The Criminal Code was again amended in March 2013 to introduce, with the already existing offence of slavery, a hierarchy of criminal offences related to slavery and slavery-like practices including the offences of servitude forced labour, forced marriage, organ trafficking and harbouring a victim. The amendments to the Criminal Code fulfil Australia's international obligations to criminalise human trafficking, and the types of exploitation listed under Article 3 of the Trafficking Protocol.

Division 270 of the Criminal Code contains offences of slavery, and slavery-like conditions, which are listed as servitude, forced labour, deceptive recruiting for labour, forced marriage, and an aggravated offence for slavery-like offences. The amendments made in March 2013 expanded the definition of coercion to include the variety of overt and subtle means used by offenders, including force, duress, detention, psychological oppression, abuse of power, and taking advantage of a person's vulnerability.

Context

The slavery offences in Division 270 apply to all persons, regardless of whether the conduct occurs within or outside of Australia.

Division 271 of the Criminal Code provides for:

- people trafficking offences, in which the trafficker organises or facilitates the entry, exit or receipt of the victim into, out of, or within Australia, by using coercion, threat or deception, which results in the exploitation of the victim, or they are reckless as to the exploitation of the victim
- specific offences for trafficking in children, which criminalise organising or facilitating the entry, exist or receipt of a child into, out of or within Australia, where there is intention for the child to be used, or recklessness as to whether the child will be used, to provide sexual services or will be otherwise exploited
- offences of organ trafficking where the trafficker organises or facilitates the entry, exit or receipt of the victim and is reckless as to whether their conduct will result in the removal of an organ of the victim
- where a person harbours, receives or conceals a victim and assists in the commission of an offence in Division 270
- debt bondage offences, to prevent traffickers from using unfair debt contracts or other similar arrangements to force victims into providing services to pay off large debts.

With the exception of offences related to domestic trafficking, all these provisions have extended geographic jurisdiction, and can cover circumstances in which the crime has taken place in Australia and overseas, or in where the crime has been committed outside Australia by an Australian company, citizen or resident.

The 2013 amendments were also designed to:

- ensure that the slavery offence applies to conduct which renders a person a slave, as well as conduct involving a person who is already a slave
- extend the application of existing offences of deceptive recruiting and sexual servitude to non-sexual servitude and all forms of deceptive recruiting
- increase penalties for debt bondage offences
- broaden the definition of exploitation to include all slavery-like practices; and amends existing definitions to provide that the broadest range of exploitative conduct is criminalised.

To achieve these objectives, it also makes consequential amendments to related legislation such as the **Crimes Act 1914**, **Migration Act 1958**, **Proceeds of Crime Act 2002** and **Telecommunications (Interception and Access) Act 1979** (AGD 2013, ASA 2013).

The Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013 also made important amendments to the **Crimes Act 1914** and the **Criminal Code Act 1995** in relation to the protection of vulnerable witnesses during criminal proceedings. These changes have the effect of better protecting the rights of victims of human trafficking and slavery.

Other offences and regulatory framework related to forced labour

It is an offence under the Commonwealth **Migration Act 1958** to allow an unlawful non citizen or a non-citizen with work limitations (for which working would constitute a breach in visa conditions) to work, or to refer that person for work. The penalty for committing such an offence is a fine currently prescribed at up to \$15,300. The Migration Act escalates these offences to aggravated offences if the worker is being exploited and the person knows of, or is reckless to, that circumstance. The penalty for committing an aggravated offence is five years' imprisonment.

The **Fair Work Act 2009**, the National Employment Standards, and relevant Awards apply in most occupations where labour exploitation occurs, except some award free areas, including domestic work in a private home. Signing the **ILO Convention Concerning Decent Work for Domestic Workers, No. 189** (Domestic Workers Convention) by the Commonwealth is a first step towards legal coverage of this type of work.

The Fair Work Ombudsman has prosecuted employers of migrant workers for contravening Australian Workplace Laws (IDC 2012 p.2). The Federal Minister for Home Affairs and Justice has funded several non-government agencies, unions and employer organisations to develop responses to labour exploitation (IDC 2012 p.1). It will be important to assess the impact of these projects in identifying the extent and nature of labour exploitation of trafficked people and the appropriate response.

The Fair Work Ombudsman and Fair Work Building and Construction are represented on the Interdepartmental Committee on Human Trafficking and Slavery (IDC).

Prospective marriage visas for fiancés of Australians

Information provided to the Inquiry drew a connection between Prospective Marriage Visas granted to fiancés of Australians and exploitation in Australia. Relevant to the issue of forced marriage is that on 23 November 2011, the Senate referred questions about the Prospective Marriage (Subclass 300) visa to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report.

The Commonwealth Government responded to the recommendations in June 2013 accepting that:

- applicants and sponsors under the age of 18 be interviewed by visa decision makers
- the minimum age of visa holders be increased to 18
- the non-consent of one party to a visa application be investigated and recorded
- 'real consent' of applicants and sponsors to a visa application be investigated and assessed (Parliament 2013).

It also noted and accepted a number of recommendations in principle.

On 1 July 2013, the Government made the following changes to incorporate the recommendations:

- Both applicants and sponsors must be at least 18 years of age when the visa application is made. For undecided applications, it is the practice to interview all persons under the age of 18.
- Visa holders are required to be 18, and amended the legislation to require applicants and sponsors to be at least 18 when the application is made. This came into effect on 1 July 2013.

- The visa application forms (form 40SP and 47SP) were amended to insert a question that requires the applicant and sponsor to respond on whether they were forced or coerced to enter into the relationship. Where it is found that the consent of one party was not given, the information is recorded in the departmental systems. Where the officer is satisfied that, due to the non-consent, the relationship is not genuine a decision is made to refuse the application.

Law enforcement

The Australian Federal Police (AFP) has charged its Human Trafficking Teams (HTTs) to investigate people trafficking matters, both proactively and through referrals from other Commonwealth or state and territory government agencies, industry or non-government organisations (NGOs).

Since 2004, the majority of victims who have come to the attention of authorities were located in Sydney and Melbourne, and primarily linked to allegations of sexual exploitation. This reflects the population concentration in those cities, and the size of the local sex industries. Trafficking victims have also been identified in Queensland, South Australia and the Australian Capital Territory in lesser numbers (IDC 2012, p.14).

The fourth report of the Interdepartmental Committee on Human Trafficking and Slavery, **Trafficking in People 1 July 2011 -30 June 2012**, (IDC Report) states that the AFP HTTs undertook 346 investigations between 2004 and June 2012 of slavery and people trafficking-related offences with 41 new investigations in the reporting period. These assessments and investigations sometimes lead to matters being referred to the Commonwealth Director of Public Prosecutions (CDPP), mostly for matters related to sexual exploitation. A smaller number of investigations involved labour exploitation as the primary criminal conduct.

The IDC Report states that 59 per cent of the new matters in 2011-12 related to sexual exploitation, with the remainder relating to other forms of labour exploitation.

The IDC Report also states that HTTs are increasingly focusing their attention on states and territories other than New South Wales and Victoria, particularly with its renewed focus on labour trafficking, in accordance with the Australian Policing Strategy to Combat Trafficking in People 2011-13.

Recent charges laid against three people for 'facilitating the arrival of four men from the Philippines into Australia on sporting visas and then forcing them into debt bondage and exploited labour' is an example of this focus on labour trafficking (AFP 2013).

State and Territory criminal offences

Trafficking offences are primarily located in Commonwealth law though all Australian jurisdictions have offence provisions to cover related crimes such as assault, sexual assault, forced prostitution, kidnapping and deprivation of liberty. The state and territory offences may be used in conjunction with Commonwealth offences to secure convictions (IDC 2012 p.20).

Responsibility for investigating federal trafficking offences lies primarily with the AFP. Where state and territory law enforcement officials suspect a trafficking offence has occurred, they refer the matter to the AFP (IDC 2012 p.20).

State and territory governments are also responsible for regulating the sex industry. Most jurisdictions have legislation relating to sexual servitude and deceptive recruiting. In practice, state and territory police services, including NSW, refer people trafficking related matters to the AFP because it has the appropriate specialisation and resourcing to conduct the often complex and resource intensive processes required to investigate these matters (IDC 2012 p.20).

Human Trafficking Visa Framework

The IDC Report outlines the Visa Framework and the support available through its Support for Trafficked People Program (IDC 2012 p.37).

The **People Trafficking Visa Framework** allows people who cooperate with AFP investigations to apply for three visa types set out in table 1:

Table 1. Human Trafficking Visa Framework

Bridging Visa F (BVF)	For suspected victims and their immediate family for 45 days, with an option for another 45 day visa to be granted in exceptional circumstances. They have no work rights but access to intensive support.
Criminal Justice Stay Visa (CJSV)	The Attorney-General can grant a Criminal Justice Stay Certificate which can provide for a CJSV, at the discretion of the Minister for Immigration. The grant of a Certificate may occur for the purpose of the administration of criminal justice in relation to a federal offence. Visa holders have work rights and ongoing support.
Witness Protection (Trafficking) (Permanent) Visa (WPTV)	May be granted if the victim is considered to be in danger in their home country and has contributed to an investigation or prosecution.

Source: IDC, *Trafficking in People 1 July 2011 -30 June 2012*, p. 30

In 2011/12, the number of visas granted in all categories was significantly less than in the previous financial year and appears to be trending downwards. The IDC Report does not explain why. The number of BVFs granted was 12 compared to 24 in 2010/11; the number of CJSVs granted was 17 compared to 29 in the previous year, while the number of WPTVs was 26 compared to 42 the previous year (IDC 2012 p.31).

As discussed under Finding 2, this visa framework has been criticised because the only way the trafficked person can continue to stay in Australia and not take part in an investigation/prosecution is if they already hold a valid visa. They are only eligible for a permanent visa if they are considered to be in danger in their home country and if they cooperate with law enforcement.

Many commentators point to the real challenges faced by trafficked people when cooperating with a criminal investigation, including a fear of threats to their families back in their home country, fear of the consequences for themselves, and fear that they may be deported (Andrevski 2013).

Support for Trafficked People Program

The Support for Trafficked People Program provides support for suspected victims. The victim is referred to the program, provided by the Red Cross across Australia. It is a 24/7 service in each state and territory and consists of case management to access services including:

- suitable housing
- Medicare and the Pharmaceutical Benefits Scheme
- counselling, legal and migration advice
- skills training including English language
- other social supports
- childcare/schooling (IDC 2012 p.31)

Table 2 shows that as at 30 June 2012, 193 clients had been referred to the Support Program since it began in 2004. In 2011-12, there were 77 clients on the program and most of these were women in the sex industry. There were nine men on the program, all for non-sexual exploitation. (p35) Most of the people on the program came from Thailand.

Table 2. Number of clients on the Support Program by country of origin/citizenship

Country of Origin/	2011 - 2012	Total since 2004
Thailand	33	81
Malaysia	13	32
Phillippines	10	10
Republic of Korea	6	32
Other*	15	38
TOTAL	77	193

* Client total where individual countries had less than five clients.

Source: IDC, *Trafficking in People 1 July 2011 -30 June 2012*, p. 28

Australian Policing Strategy to Combat Trafficking in People 2011-13

This strategy was endorsed by the AFP and all State and Territory police in 2011. The strategy is broader than pursuing prosecutions, encompassing awareness raising, prevention programs, partnerships with NGOs, providing support to victims and training for police. However, as a policing strategy, the focus is on detecting crime. The strategy set obligations for states as well, although in practice, it appears that our policing response mainly consists of referrals (see Finding 4).

The IDC Report indicates that Australia also works collaboratively with other countries to combat people trafficking and slavery. For example, Australia and Indonesia co-chair the **Bali Process on People Smuggling, Trafficking in People and Related Transnational Crime**. Australia's aid program supports a number of projects in the Asia region, including the Asia Program to Combat Trafficking in Persons (AATIP).

The Anti-People Trafficking Interdepartmental Committee

The Australian Government's arrangements to combat people trafficking and slavery are coordinated through the Anti-People Trafficking Interdepartmental Committee (IDC), established in January 2004 and chaired by the Attorney-General's Department. The IDC tables an annual report in the Parliament. The IDC consists of the following agencies:

- Attorney-General's Department
- Australian Crime Commission
- Australian Federal Police
- Australian Institute of Criminology
- Australian Agency for International Development (AusAID)*
- Commonwealth Director of Public Prosecutions
- Department of Education, Employment and Workplace Relations*
- Department of Families, Housing, Community Services and Indigenous Affairs*

- Department of Foreign Affairs and Trade
- Department of Immigration and Citizenship*
- Department of the Prime Minister and Cabinet
- Fair Work Ombudsman
- Fair Work Building and Construction.

*The names and configuration of these agencies have changed since the 2013 federal election.

While this is a comprehensive list of Commonwealth agencies, the IDC has no formal links with State Government, other than through the Policing Strategy. See Finding 1.

The role of the IDC is to monitor, report and assess the effectiveness of Australia's Strategy to Combat Human Trafficking and Slavery. Much of the information in this section of this report comes from their annual report to Parliament. While the IDC Report thoroughly describes activity, it does not evaluate the effectiveness of the strategy. At the time of concluding this Inquiry in August 2013, the 2012-13 Report had not been released.

National Roundtable on Human Trafficking and Slavery and the Senior Officials' Meeting of the National Roundtable

The Commonwealth Attorney-General's Department advises that the National Roundtable on Human Trafficking and Slavery was established in June 2008 as a consultative mechanism between the government and NGOs on human trafficking issues. It has been convened each year since then, with the membership varying depending on the issues.

Ministers invited to attend the fifth National Roundtable on Human Trafficking and Slavery (Roundtable) were the Attorney-General, and the Ministers for Foreign Affairs, Immigration and Citizenship, and the Status of Women.

The 2012 Roundtable was attended by representatives from a range of organisations, including Anti-Slavery Australia, the Australian Catholic Religious Against Trafficking in Humans, the Australian Chamber of Commerce and Industry, the Australian Council for International Development, the Australian Council of Trade Unions, the Australian Hotels Association, the Australian Human Rights Commission (AHRC), the International Organization for Migration, the Law Council of Australia, Master Builders Australia, Project Respect, the Red Cross, the Salvation Army, Scarlet Alliance, Shakti, the Uniting Church, United Voice, and Victim Support Australia, as well as the member agencies of the IDC.

Since 2011, the National Roundtable has been supported by an operational-level Senior Officials' Meeting. Few State Government agencies are represented on this group which leaves a significant gap in state and federal policy and service coordination.

These processes show high and broad levels of representation but as discussed, the Roundtable lacks state and territory representation. The Inquiry is aware that the IDC is developing a 2014-18 Action Plan in consultation with stakeholders (AGD 2012). This is a welcome initiative, which would benefit from input from the state level agencies responsible for providing services.

Australian Institute of Criminology Monitoring Research Program

It is widely acknowledged that the number of suspected victims is unlikely to reflect the true number of people trafficked to Australia. The Australian Institute of Criminology (AIC) observed that the picture of human trafficking in Australia and the region was unclear, with competing claims about the extent and nature of trafficking to Australia (Putt 2007).

The Commonwealth has funded the (AIC) to conduct an extensive research program to help fill the gap in knowledge.

The AIC's latest completed program: **Monitoring human trafficking trends and activities**, examined trends in human trafficking in the Asia-Pacific region, assessed the likely impact of these on Australia. This concluded in 2012 with publication of the report **Trafficking in people monitoring report: January 2009–June 2011**.

Since the report's publication, the Commonwealth Attorney-General's Department has released data updates which will be discussed in subsequent AIC publications. Between major reports, the AIC publishes widely on human trafficking in South East Asia, the Asia-Pacific, Pacific Islands and Australia. To date, the AIC has also hosted:

- two conferences on International Serious and Organised Crime
- a Pacific trafficking in people forum
- a (non-sex industry) labour trafficking forum.

On her Mission to Australia, the United Nations Special Rapporteur on Trafficking in People Especially Women and Children, Dr Joy Ngozi Ezeilo, encouraged the Government to liaise with independent research institutions, including universities that are undertaking relevant research (UNGA 2012 p.17). Filling the gaps requires multidisciplinary studies into patterns of trafficking, the organisation of trafficking, of perpetrators and into good practice in victim support and criminal justice responses (Putt 2007 p.6).

A key finding of this Inquiry is the importance of research and data to policy development. NSW should make a contribution to the research as part of collecting relevant data. The AIC research program and its relevance to this Inquiry is discussed in detail under Finding 5.

Concluding Comments

This overview shows that the Commonwealth has developed a clear policy framework founded on ILO and UN Conventions and Protocols. Since 2003, it has developed a legislative program, detection and enforcement response. The response recognises that trafficking and slavery takes many forms and is based on the need to ensure an integrated national approach, founded on the human rights framework required by international obligations. However, NSW is only marginally involved.

The following Findings consider how a combined response should be developed at the policy, service, community awareness and research levels.



Finding 1. Strengthen the NSW Government Response

Summary

The Inquiry found that there is a need to strengthen the response to human trafficking and slavery in NSW. With few exceptions, including police forces, state and territory governments are not presently involved in any national processes for determining policy and strategies.

The Inquiry Committee was concerned to find a very low level of awareness among government agencies in NSW. The main response appears to be to refer those who come to the attention of the NSW Police Force to the Australian Federal Police. There are no formal relationships between agencies which should have responsibilities for providing services and information. There are also no formal relationships with non-government organisations which are most likely to come into contact with trafficked people and are active in this area.

The Inquiry recommends that NSW adopt a human rights based approach focussed on information, education and prevention, as well as enforcement. This would help empower trafficked and enslaved people to make decisions in their interests. NSW has a responsibility, as the major provider and financier of relevant services, especially housing services, to ensure that the welfare and rights of trafficked people are paramount. Findings 3 and 4 include specific recommendations on access to services, particularly housing and education pathways.

The Inquiry welcomes the use of NGO Guidelines for Working with Trafficked People (2010), developed by the Australian Government and agencies in conjunction with key community organisations. The NGO Guidelines provide government and non-government agencies with best practice responses, including ethical interviewing, dealing with media inquiries, as well as providing culturally appropriate services. This Inquiry has opened communication channels and created networks which could be developed to form the basis of more ongoing collaboration to ensure a well coordinated and effective approach to all responses from education to prosecution. In NSW, there are opportunities to build on the work of the Domestic and Family Violence Reforms Women NSW 2013) to include forced marriage and domestic servitude.

The Inquiry recommends that NSW establish a Ministerial-level advisory structure and also request to be included in National high level, coordinated processes. Communication and interconnectedness between governments and agencies involved are necessary to improving the response at the service level.

This section covers:

- lack of NSW representation and response
- stronger, earlier response to trafficking.

Finding 1. Strengthen the NSW Government Response

Lack of NSW representation and response

The NSW Government is not represented in any forum where policy and strategy is determined, apart from NSW Police participation as a partner in the **Australian Policing Strategy to Combat Trafficking 2011-2013**.

Responses from Government agencies confirmed that there is no NSW whole-of-government approach and no formal relationship with NGOs. A welcome by-product of this Inquiry is that communication channels and relationships have been created with both government and non-government agencies, as well as experts in the field. This provides a solid basis for more ongoing collaboration and coordination.

The **NSW Police Force** has a role, which involves receiving and assessing intelligence, assisting with crime scene management and acts as a first response. They report that the Sex Crimes Squad attends the annual training course organised by the AFP but most general duty police are not involved in training.

NSW Police also has a Memorandum of Understanding with Housing NSW for exchanging information on any criminal activity (including human trafficking).

Stronger relationships with non-government agencies are needed according to Police. This would be an essential first step in gaining trust from potential victims. It may improve reporting to police and facilitate compensation.

NSW Police also proposed that a priority is education, information and media campaigns in line with the Policing Strategy (AFP 2013).

An integrated government response would give greater visibility to prevention, education and support. This is discussed further under **Finding 1**.

NSW Family and Community Services (FACS) confirms that it does not have a specific focus on trafficking, though Women NSW has developed the whole-of-government Domestic and Family Violence Reforms which could include forced marriages. This is discussed under Finding 3.

Housing NSW also sits within the FACS portfolio, but apart from the MOU with Police mentioned above, it does not cooperate with the Commonwealth to assist victims with their housing needs. This is because Housing NSW does not provide services to people who are not permanent residents.

Similarly, the **Department of Attorney General and Justice** reported that its only response is through its Victim Access line. Since 2009, of the 26 people identified as trafficked in Australia 11 had sought counselling. It works closely with the Commonwealth's Victims of People Trafficking Program.

NSW Health has some related programs where it may come across trafficked women in the sex industry, through its Sex Worker Health Policy Framework and sex worker health services. The **Department of Premier and Cabinet** is working on the regulation of brothels.

WorkCover has not conducted any activities related to trafficked workers. WorkCover's responsibility for regulating health and safety in the workplace is potentially in the front line, especially in instances of labour exploitation.

No other agencies in NSW reported activity in this area. Yet issues raised in this and other inquiries often relate to state responsibilities such as housing, education and the identification and referral of exploited people by frontline service providers.

Finding 1. Strengthen the NSW Government Response

Stronger, earlier response to trafficking and slavery

The paucity and fragmentation of the NSW Government response comes after a strong earlier focus on human trafficking. In 2006/7, the Community Relations Commission and the (then) NSW Office for Women were involved in the National Working Party on Sexual Servitude and Trafficking. This Senior Officers' Group reported to the Ministerial Advisory Committee for Multicultural Affairs and the Ministerial Conference on Status of Women (MINCO) and considered many of the same issues identified in this Inquiry, although with a particular focus on sex trafficking and servitude.

The Working Party comprised of women's and multicultural agencies from each jurisdiction and the Commonwealth. While a report was produced, it was never acted upon at the Ministerial levels. Instead, the Commonwealth took charge of the policy issue and today, state governments are insufficiently represented in national forums.

As a first step, NSW needs its own policy and coordination response. **Anti-Slavery Australia** called for a formalised framework for coordination between state, territory and federal organisations and agencies. This would include a comprehensive training program and a framework that creates clear pathways of responsibility between all levels of police and regulatory arms of local government.

The **Salvation Army** and others emphasised the need for structured management of data, formal oversight and clear frameworks to guide the disparate elements working in or across the complex issue of human trafficking.

The **Josephite Counter Trafficking Project** also articulated the importance of whole-of-government strategies in building a more solid understanding of human trafficking in NSW.



Finding 1. Strengthen the NSW Government Response

Concluding Comments

The Inquiry found that NSW clearly needs a high-level forum to bring together the relevant government and non-government agencies and community groups with expertise in this area. The role of such an Advisory Council would be to advise on policy and programs and identify gaps in knowledge and research.

A first task of this Council would be to establish protocols for comprehensive collaboration between all levels of government. This goes to creating clear pathways of responsibility and procedures in identifying and responding to victims of trafficking, slavery and exploitation.

Recommendations

1 That the NSW Government establish a high level Human Trafficking Ministerial Advisory Council to coordinate a whole-of-government response to human trafficking and slavery in all its forms in NSW and to liaise with the Commonwealth. The Advisory Council:

- should be chaired by the relevant Minister
- membership should be appointed by the Minister and include high level representatives of relevant NSW Government and non-government agencies
- the terms of reference should include advising the Government on policy and program priorities, including identifying and addressing gaps in policy and research
- should establish protocols for comprehensive collaboration between all levels of government, to create clear pathways of responsibility and procedures in identifying and responding to victims of trafficking, slavery and exploitation.

2 That the NSW Government call on the Federal Government to establish a high-level structure of state and territory governments, as part of its formal national response to human trafficking and slavery.

The priority of this representation should be to better coordinate intergovernmental responses to human trafficking and slavery. This includes:

- investigating the gaps in services provided through the Australian Government Support for Trafficked People Program
- developing programs to ensure that the human rights of trafficked and enslaved people are protected and supported
- referring all matters to the proposed NSW Human Trafficking Advisory Council to develop a NSW response that ensures the needs of trafficked and enslaved people are met.

Finding 2. Undertake legal and policy reform

Summary

The Inquiry identified the need for a legal and policy framework which fully implements a human rights based response to human trafficking and slavery. The Commonwealth, as the signatory to UN Conventions, should take the lead. The overall Commonwealth framework provides a holistic approach - from education and prevention to investigation and prosecution - though for victims of trafficking and slavery, the focus remains largely on criminal justice outcomes.

Participants in this Inquiry reported that in practice, the focus has been strongly on enforcement generally and in the sex industry in particular. The Inquiry understands that efforts are underway to develop, in consultation with stakeholders, a National Action Plan to combat human trafficking that will include benchmarks and indicators to measure progress and impacts (AGD 2012).

Many of the written submissions focused on the sex industry but from different points of view. Some argued that stronger regulation would deter traffickers, while others recommended that enforceable rights for sex workers would make the industry less of a target. However, the evidence for either approach is contested and inconclusive. This Report does not make recommendations on the regulation of the sex industry.

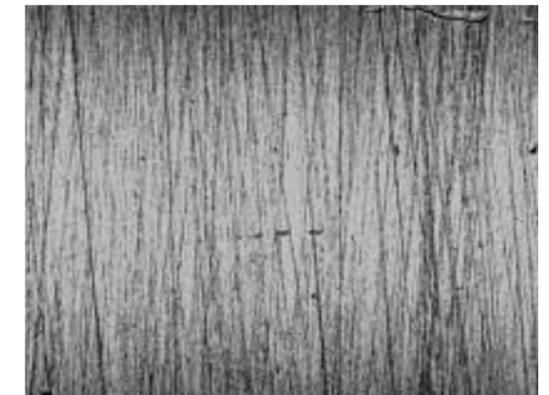
The Inquiry urges the Commonwealth to sign the **Domestic Workers Convention**, designed to protect the estimated 53 million workers worldwide who are exploited in domestic work, without any external regulation to protect their pay and conditions (C189 2011). The International Labour Organisation estimates that 83 per cent are women (ILO 2011). Participants in the Inquiry pointed to cases where women have been exploited in domestic servitude in NSW. The experience of community workers as reported to the Inquiry is that there may be few workplace protections for domestic workers in private homes. The Domestic Workers Convention would provide greater assistance and protection to domestic workers in Australia.

The Community Relations Commission also asks the NSW Government to consider specific legislation related to criminal exploitation,

including forced labour and servitude, to open the way for more victims of crime to be eligible for financial recognition of their status as victims of crime in NSW.

This section covers:

- human rights policy framework
- UN Convention on Migrant Workers and Domestic Workers
- link with sex industry policy and regulation
- forced marriages
- forced labour
- law enforcement and prosecution.



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Human rights policy framework

A significant number of recommendations made in submissions and in the consultations supported the need for a human rights based approach to trafficking, as a starting point for developing a response. A number of submissions referred to the concluding comments made by Dr Joy Ngozi Ezeilo's Report of the Special Rapporteur on trafficking in People, especially Women and Children:

'Australia has demonstrated strong leadership in combating trafficking in people regionally and domestically, as well as a willingness to learn from experience and adapt its approach accordingly. However, there are some weaknesses that prevent Australia from realising a genuinely human rights and victim-based response (UNGA 2012 p.19).'

The **Australian Lawyers' Alliance** commented that the Australian Government's construction of human trafficking as a 'crime' and the framing of trafficked people as 'victims of violence requiring protection', detracts from an alternative conception of individuals having positive rights that warrant protection. This is reinforced, they argue, by the fact that substantial government support for trafficked people is only available while assisting the police with criminal investigations and by acting as prosecution witnesses.

Some of the calls for a human rights framework were presented as concern and protection for victims. Others articulated the need for greater coordination and governance to prioritise the rights of trafficked people over the demands of making a prosecution. The **Australian Lawyers' Alliance** quoted from a 2010 United Nations Human Rights Council statement in saying that the best way to address human trafficking is to 'incorporate a human rights based approach to measures taken to prevent and end trafficking in people and to protect, assist and provide access to adequate redress to victims' (UNHRC 2010 p.10).

Some of the recommendations in submissions stated that the language used to talk about the situation impacted on the rights of the people involved. For example, Empower Foundation Thailand urged that people should stop referring to 'victims' and replace it with 'person affected by trafficking'.

A number of the submissions (including those from the **Salvation Army** and private citizen **Joelle Moukhaiker**) state that law enforcement officials and other authorities investigating or coming into contact with trafficked people should place the human rights of that person(s) as the primary consideration, above the efforts of gaining a conviction. Submissions stressed the importance of cultural sensitivity and cultural awareness in identifying trafficked people.

A human rights approach puts the needs of all victims at the core of any response. The Special Rapporteur identified a number of ways to strengthen the human rights focus of the Australian response, which shift the focus from the criminal justice system to the victim, including:

- ensure the legal framework around trafficking fully meets Australia's international legal obligations, including those under international human rights law
- ensure that in cases of mandatory detention, adequate safeguards are put in place to make sure that victims of trafficking are promptly identified and protected
- improve procedures and practices for the identification of victims of trafficking
- enhance support for victims of trafficking
- focus on the needs of children, including appointing a guardian
- enhance preventative measures, including raising community awareness

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- consider ratifying the **International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families and International Labour Organisation Convention No.189** (2011) concerning Decent Work for Domestic Workers (UNGA 2012 pp.19 - 22).

The Inquiry found strong support for a human rights based approach.

UN Conventions on Migrant Workers and Domestic Workers

ACON, the Scarlet Alliance, and Empower Foundation Thailand noted that Australia had not yet signed the **United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)**, and recommended ratification as a priority. This Convention provides, among other things, that no migrant worker or any member of their family shall be:

- subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 10).
- held in slavery or servitude
- required to perform forced or compulsory labour (Article 11).

The Convention is also intended to provide protection against threats to liberty and security of person, arbitrary detention and other forceful or deceitful practices that are commonly associated with trafficking offences (Article 16).

However, no other similar country has ratified this Convention, which it is argued, goes too far in privileging the rights of migrant workers and their families over permanent residents. The Human Rights Council of Australia's website states that Australia '...views the existing protections for migrant workers as adequate' (HRCA 2013). It goes on to say that there is no publicly available information that suggests a detailed analysis has been carried out of ratification.

The Inquiry found that a high priority is to ratify **ILO Convention Concerning Decent Work for Domestic Workers, No. 189**. This Convention is designed to protect the estimated 53 million workers worldwide who are exploited in domestic work, without any external regulation to protect their pay and conditions (C189 2011). Ratification would assist in dealing with domestic servitude, where trafficking also occurs. Ratifying this Convention would confer obligations on the Commonwealth to enact protections such as award coverage for domestic workers, access to minimum entitlements such as superannuation and work health and safety provisions.

Scarlet Alliance advocated for industrial rights and justice for all workers, regardless of their immigration status. Relatively simple measures like translating information on visa access and conditions, industrial and human rights, justice mechanisms and local laws in multiple languages would be a key step towards enhancing the rights of migrant workers whatever industry they were involved in.

The Inquiry found that there is a shifting focus from trafficking into the sex industry to other forms of exploitation including forced labour and servitude in private homes. However, a human rights response is often lacking and the principle that the trafficked persons should be at the centre of any response is sometimes forgotten. The NSW Government urges its Commonwealth counterpart to fully implement the relevant ILO and UN Conventions including adopting the **Domestic Workers Convention**.

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Link with sex industry policy and regulation

Evidence to this Inquiry supports the observation that awareness of trafficking tends to focus on the sex industry, with very low understanding and reporting of exploitation and trafficking in other industries and situations. This focus on trafficking and the sex industry was evident in a number of submissions that made recommendations about the regulation and control of the sex industry. A number of submissions, argued that decriminalisation of sex work provides an incentive for trafficking women into the sex industry.

The Inquiry heard about many proposals related to reforming the NSW criminal justice system's approach to the sex industry. The key issues raised are summarised in this section.

Frequently cited recent research by Cho, Dreher and Neumayer (Cho et al 2013) suggests that there is a link between decriminalising the sex industry and an increase in trafficking. While their study is a thorough review of 150 countries, the Inquiry found that it relies on the weak data in this area to draw its conclusions. Legalisation makes sex workers more visible but not necessarily more prevalent.

Donovan, Egger and Harcourt of the Kirby Institute at the University of NSW, which contributed to this Inquiry, argue that decriminalisation has 'improved human rights; removed police corruption; netted savings for the criminal justice system; and enhanced the surveillance, health promotion, and safety of the NSW sex industry' (Donovan et al 2005 p.7). They say that since decriminalisation, '... the sex industry has not increased in size or visibility, and sex work remains stigmatised.'

The submissions favoured a few basic models, which can be briefly classified as:

- decriminalisation
- the Swedish (or Nordic) model, criminalising the purchaser.

Decriminalisation in the sex industry

There was significant support for decoupling policies about the trafficking response from the sex industry. **Scarlet Alliance**, the national peak sex worker organisation in Australia, argued that criminalisation of sex work, the clients of sex workers, and the workplaces of sex workers are not only detrimental to the human rights of the sex workers but have no impact on the reduction of trafficking.

Proponents of decriminalisation/legalisation (such as **ACON**, **The Kirby Institute** and **Scarlet Alliance**) argued that an open and accessible industry is more conducive to good public health outcomes and sex workers' rights than a model that seeks to penalise and disrupt sex workers. **Scarlet Alliance** argues that the decriminalisation of sex work will help prevent the circumstances that cause human trafficking and reduce the legal barriers to accessing support and services.

Some argued for stronger regulation within a decriminalised environment. The **Australian Lawyers' Alliance** said that the licensing of current owners and prospective brothel owners and operators needs to be more stringent, with prohibitions on those with criminal histories associated with trafficking offences. They further argued that those with connections to people with criminal histories related to trafficking should also be prevented from owning and operating brothels.

Australian Lawyers' Alliance recommended the registration and licensing of all sex workers and the presence of at least one licence holder on the premises at all times, who would be required to furnish licences to police on demand. Such a system would operate in a context of regular checks on suitability to hold a licence, punitive monetary fines for breaches and a 'three-strike rule' that would result in loss of licence for multiple breaches.

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Exodus Cry stated that the sex industry in NSW had expanded considerably since prostitution had been decriminalised. They suggested that the NSW government should focus on dramatically reducing the number of legal and illegal brothels, with a view to an overall reduction in the sex industry and consequently (they argue) trafficking in women.

The Kirby Institute, operating from a public health focus, disagreed with the concept of licensing sex workers, but supported a multi-representative approach to developing planning guidelines for brothels (Donovan et al 2005).

The Swedish Model

Family Voice recommended significant reform to the sex industry. Specifically, they argued for the introduction of a new strict liability offence into the **Crimes Act** of purchasing, or attempting to purchase, a sexual act with a person who is being forced or coerced to perform sexual acts.

While this proposal relates directly to the issue of sexual servitude and may have links with human trafficking, they see this type of law reform as a step towards more significant regulation of the industry.

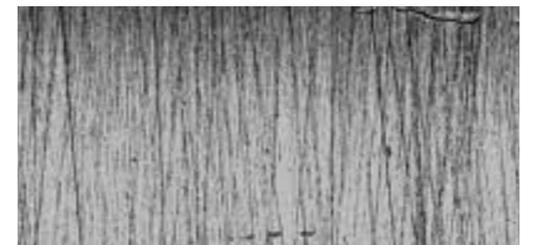
Family Voice argues for prohibitions on owning and operating premises used for prostitution, recruiting a woman to be a prostitute and a ban on advertising for prostitution. They believe that the decriminalisation of brothels has led to the increased involvement of organised crime, and that a comprehensive suite of offences and adequately resourced enforcement are the only way to reduce the perceived associated crime.

Similarly, **Exodus Cry** stated their belief that the legal model of prostitution in NSW is a cause of the expansion of the sex industry, which in turn generates an increased demand for sex workers and a drive for trafficking. They use this argument to recommend the criminalisation of the purchase of sex to reduce demand for prostitution and consequently human trafficking. Any initiative to reduce demand

(such as reducing the number of brothels) would have an impact on the instances of sex trafficking in NSW.

The Swedish Model (proposed by **Collective Shout**, private citizens **Matthew and Tanya Sykes** and the **Australian Christian Lobby**) prohibits the purchase (but not the sale) of sex. Proponents of this model recommend that legislative reform should be accompanied by support for the (mostly) women working in the sex industry to provide genuine opportunities and alternatives to exit the sex industry. This model seeks to absolve the sex workers from criminal blame, while clearly discouraging sex work.

Collective Shout and private citizens **Matthew and Tanya Sykes** argue that this model would strongly deter trafficking by creating prosecutable offences for sexual activity with trafficked people. According to these submissions, a policy of widely publicising and communicating these offences within the community would act as a deterrent.



Project Respect did not advocate for the Swedish model in its totality, but stated that there needed to be penalties for knowingly or recklessly obtaining sexual services from trafficked women, and sanctions for brothels that use trafficked women. They believed these strategies could be effectively implemented within a decriminalised and regulated sex industry.

Similarly, the **Australian Catholic Migrant and Refugee Office** recommended the establishment of legal measures penalising the purchase of sex, but only in

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conjunction with well-supported education, counselling and support programs for men, arguing that there is a need for more research that would increase our understanding of the demand for sexual services. This information could be obtained, in part, by collecting statistics from police and through the prosecutions system.

Regulation of brothels

The **Kirby Institute** and **Collective Shout** noted that in NSW, the regulation of brothels has been devolved to local government authorities. At the time submissions were called, the Better Regulation Office, with the Department of Premier and Cabinet was conducting an inquiry into brothel regulation.

Collective Shout and the **Kirby Institute** said that given the crucial role of local government in regulating the sex industry, any forum that explores human trafficking should consult with the Division of Local Government as a matter of course. The Department of Planning and Infrastructure, the Department of Attorney General and Justice, NSW Health and community leaders were also identified as key stakeholders for consultation because of their relevance to the sex industry.

Scarlet Alliance expressly argued that local government should not become involved in the monitoring or management of human trafficking. Instead, they should focus only on the responsibilities that are within their authority around the regulation of sex industry businesses and private sex workers within the broader legal context of decriminalisation of prostitution.

The **Local Government and Shires Association** wrote that local governments are not well positioned to be the lead agency for regulating brothels, concurring with the findings of a recent Productivity Commission Report on the role of local government as a regulator (Productivity Commission 2012).

The **Josephite Counter Trafficking Project** also raised the issue of there being discrepancies across local council areas, and pushed for harmonisation in brothel legislation, in the interests of ensuring equitable protection

of the rights of workers in brothels that is not dependent on the workers' local government area.

Family Voice Australia said that more resources and authority should be made available to Police to close brothels. This approach was strongly countered by the **Scarlet Alliance** and the **Empower Foundation Thailand** submissions, which argued that the application of criminal justice tactics to trafficking investigations achieves little more than curtailing the rights of sex workers to choose their occupation, limits their freedom of movement, creates barriers for migrant sex workers accessing essential services and undermines opportunities to negotiate suitable workplace conditions.

While the Inquiry does not recommend changes to regulation or decriminalisation (or otherwise) of the sex industry, there is clearly a need to clarify the role of local government if any, in matters that touch upon human trafficking, and the extent to which local government authorities have a role to play in identifying and reporting suspected trafficked people. Local government should be included in any processes that address human trafficking. (See **Finding 1**).

The concept of safe migration

Scarlet Alliance encouraged policy makers to adopt an evidence based approach to prevention strategies, including examining the circumstances that enable trafficking to occur. This would include addressing some of the visa barriers that prevent migration for legitimate sex work that is legal in some jurisdictions. This is sometimes referred to as 'safe migration', where a migrant can access opportunities that are not irregular or exploitative. These migrants would then have the tools to make an informed decision about the migration and labour.

This notion of 'safe migration' was also raised by the **Salvation Army**, who reiterated the right of trafficked people to be involved in decision-making about

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their own personal situation (through the provision of confidential and useful information) as well as contributing to the shaping of public policy. **Scarlet Alliance** and **ACON** stated that sex workers, in particular, should be consulted before amendments to the existing law are contemplated.

Visas used for exploitation

Some submissions also argued that temporary work, student, and holiday visas encourage labour exploitation. The creation of an offence of forced labour in March 2013 may increase the number of reported cases of forced labour exploitation of temporary work, student and holiday visa holders.

Exodus Cry suggests that the (then) Department of Immigration and Citizenship re-examine the working holiday visa, considering that this visa was abused for the purpose of trafficking women into Australia.

Visa issues are part of the Commonwealth's immigration policy and making specific recommendations is beyond the scope of this Inquiry. However, there is clearly a need to look in detail at the potential for abuse of visa categories for trafficking purposes. This is one important example of the kind of policy issues that should be on the agenda in national forums involving state based government and non government representatives.

Forced marriage

The occurrence of forced marriages, including among international students, was reported in the Inquiry consultations. Discussions indicated that forced marriages are a particularly complex issue if the victim or the potential victim is not an Australian national.

The issue of forced marriage caused confusion, particularly as it is often conflated with arranged marriages that are traditionally practised by some communities. It is not always possible to draw a clear distinction between arranged and forced marriage, as there may be family and other pressures applied.

Under the Commonwealth Criminal Code, a forced marriage is a marriage that occurs without the consent of one or both of the parties due to the use of coercion, threat or deception.

A forced marriage can affect both men and women but it mostly affects women. Though not explicitly stated in the Trafficking Protocol, the United Nations has confirmed in the **Model Law against Trafficking in Persons** that trafficking in adults and children for the purpose of exploitation includes trafficking for forced marriage (Simmons and Burn 2013).

A number of general themes were identified in the community consultations:

- difficulties reporting crimes when parents and relatives are involved
- family and community members unaware that forced marriage is a crime in Australia
- special vulnerabilities that exist for victims of forced marriage, including fear, duress, intimidation, as well as other factors such as isolation, language barriers and financial restrictions.

A Filipino community member provided an anecdote that demonstrated situations where an Australian citizen marries a non-citizen who is then subject to exploitative conditions in Australia. As the offence of forced marriage deals primarily with the notion of 'free and full consent' when entering a marriage, these situations may be better characterised as forced labour or domestic servitude. The community member stated:

'I am aware of such an incident where a woman from my home country married an Australian citizen. Once she arrived, she had to face great hardship. ... She was kept like a slave.'

Evidence of forced marriage has come before the Family Court of Australia, where orders have been made to place girls on airport watch lists, annul marriages the court has deemed as obtained through duress and cases of parenting orders to prevent the removal of a girl from Australia (Simmons and Burn 2013).

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Given the nature of the powers of the Family Court to make these orders, the cases that have been heard only involve Australian girls under the age of 18. There are currently no civil protection measures provided for in the **Family Law Act, 1975** (Cth) for women over the age of 18. It is not difficult to understand why forced marriage remains an under reported issue when those facing a forced marriage are reluctant to speak out against family members and civil courts are limited in handling cases involving adults prior to a forced marriage. Lack of community awareness of forced marriage compounds the problem (Simmons and Burn 2013).

The NSW Domestic and Family Violence Reforms provide an opportunity to include forced marriage as part of an overall strategy (Women NSW 2013). **Anti-Slavery Australia** urges greater community engagement around forced marriage and the need for research into its occurrence in Australia.

The new Commonwealth Law and strategies such as the airport watch list (AFP 2013) should be widely promoted. **Finding 4** proposes school based education campaigns and **Finding 3** calls on FACS to lead the service response.

The NSW Minister for Family and Community Services and Minister for Women, the Hon Pru Goward, MP, said the Department of Family and Community Services was aware of only a small number of forced marriages of girls in NSW but that under reporting was possible. She has ordered the investigation of any suggestion of forced marriage of Australian girls either in Australia or overseas (Bashan 2013).

Prospective marriage visas for fiancés of Australians

Information provided to the Inquiry drew a connection between Prospective Marriage Visas granted to fiancés of Australians and exploitation in Australia. Relevant to the issue of forced marriage is that on 23 November 2011, the Senate referred questions about the Prospective Marriage (Subclass 300) visa to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report.

The Commonwealth Government responded to the recommendations in June 2013 accepting that:

- applicants and sponsors under the age of 18 be interviewed by visa decision makers
- the minimum age of visa holders be increased to 18
- the non-consent of one party to a visa application be investigated and recorded
- 'real consent' of applicants and sponsors to a visa application be investigated and assessed (Australian Parliament 2013).

It also noted and accepted a number of recommendations in principle. However, the changes were not made before the Federal election in September 2013 and are now awaiting the new Commonwealth Government's response.

Forced labour

Unlike the information gathered through the written submissions, a recurring issue in the consultations was international students exploited in situations of forced labour. Members of the Egyptian, Indian and Nepalese communities reported that overseas students are particularly vulnerable to forced and exploitative labour conditions.

This was also identified by the Special Rapporteur on her Mission to Australia in 2011. She observed that certain visas such as student visas appear to increase vulnerability to trafficking-related exploitation. The Government has responded that the student visa system has a low risk of being exploited due to the safeguards to ensure that visa holders are genuine students, including an 80 per cent mandatory class attendance rate and a limit of 20 hours of employment per week.

However, reports from community service organisations and the media indicate that individuals on student visas, typically from Asia, have been victims of forced labour and forced prostitution in Australia. In 2010/11, eighteen foreign students were

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participating in the Support for Trafficked People Program.

Foreign students can also become vulnerable to trafficking and slavery once in Australia, to the high costs of studying and living. In October 2011, the then Minister for Immigration and Citizenship announced a targeted analysis of the student visa program. The Special Rapporteur looks forward to the results of this review, and reminded the Government of the need to adopt a human rights framework in any appraisal of the student visa system (UNGA 2012).

The Inquiry heard that students who pay large amounts of money to overseas agents to obtain international student visas are often under great financial pressure. Participants in the consultations advised that there was a prevalence of students being subjected to unpaid, below award wages, and slavery-like conditions to pay debts they had incurred in their home countries. One member of the Indian community reported:

'I have also heard that employers, particularly those in the restaurant business, coerce students hard up for cash, to perform sexual favours.'

Concern was expressed about abuse of the student visa program for trafficking into sexual servitude, particularly in light of the recent conviction of a brothel owner who had kept Malaysian international students in sexual servitude and exploitative conditions (Bodkin 2013).

Accounts provided in the consultations also suggested that international students do not report their situation, fearing deportation by Australian immigration authorities, or due to threats, intimidation and fear of reprisals from their 'traffickers'. Coercion or duress is often the way students are controlled by exploitative employers.

Some participants acknowledged that individuals who sought assistance often retreated from their approach once they realised that this might mean disclosure of trafficking. This is particularly true of international students who worry about the implications that reporting exploitation may have on their visa status and immigration plans.

While it is important to be vigilant about certain visa categories, gross labour exploitation also occurs domestically. Industrial relations disputes can be pursued at little or no expense to the individual, provided the work is covered by an award (domestic work in private homes is not, but the hospitality industry is). The Inquiry is concerned to note that the NSW contract with the Fair Work Ombudsman was not continued, making more than 60 workplace inspectors redundant (AAP 2013). This leaves far fewer people on the ground to inspect the books and premises of employers to ensure they are complying with the award and statutory entitlements. The Special Rapporteur noted in her 2011 Report that there were already not enough people to enforce the law.

Australia's work, health and safety laws are stringent and WorkCover NSW can inspect premises for health and safety breaches. Often labour exploitation and poor health and safety go together.

As with any form of trafficking and slavery, education and awareness campaigns are needed to make people aware of their rights. This will at least counter misinformation and ignorance, recognising the many remaining barriers to exercising workplace rights.

Law enforcement and prosecution

The Inquiry heard from many sources about the difficulties of enforcing the laws on trafficking. The **NSW Police Force** talked about operational challenges in identifying human trafficking, including problems encouraging victims and witnesses to provide information caused by cultural mistrust of law enforcement agencies, and threats by alleged offenders to the victim and their family in the home country. As discussed they are also worried they will be treated as 'illegal migrants' and deported. Globally, this is what happens to most trafficked victims (UNGA 2012).

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Other submissions focused on the way that Police (and other authorities) respond to trafficked people once they have been identified. While much of this was couched in terms that acknowledge the human rights of victims, a solid, early response from officials was also seen to be critical to the pursuit of a successful prosecution.

Participants agreed that successful prosecutions are dependent on the evidence provided by a trafficked person. The quality of that evidence is impacted by the initial actions at the point of seeking assistance and disclosure.

Service providers identified the importance of gaining the trust and cooperation of victims for the collection of corroborating evidence. This is crucial to ensure that referrals are appropriately made and taken up, and to identify suitable protections. Victims' fears should be addressed carefully because of the short and longer term impacts of an unsuccessful first approach. This can be challenging for service providers who often lack the tools and experience to facilitate safe disclosure by trafficked clients.

Anti-Slavery Australia noted that the identification of trafficked people is vital to ensure their protection from further harm and to receive access to services. To this end, they argue that training of NSW police and identification of gaps, including in policing strategies, such as appropriate responses and methods of dealing with victims are critical.

Legal Aid advised the Inquiry that their services are available to defendants charged with Commonwealth trafficking related indictable offences and Commonwealth criminal indictable matters listed for trial or sentence in the Supreme court or District Court (subject to means testing). Legal Aid is also available for Commonwealth trafficking related summary offences. Conditions apply to granting aid in these cases. Legal representation in criminal matters is provided using a mix of in-house Legal Aid NSW solicitors and private practitioners, Public Defenders and private barristers. Legal Aid also offers advice to trafficked victims, including the option of a non-legal path.

ACON argued that the sex industry should not be singled out for law enforcement initiatives. Nor should the industry be subjected to disproportionate levels of surveillance and raids. Such an intrusion, they argue, is not consistent with a human rights approach. Furthermore, a decriminalised, open and accessible sex industry has a greater likelihood of achieving intended public health outcomes.

Others representing the interests of sex workers (including **ACON** and private citizen **Lucy Huang**) expressed concern about the negative impact raids on brothels have on sex workers. While the raids may ostensibly be to identify trafficked people, they argue that instead of serving their intended purpose, raids are a form of harassment that threaten the income of sex workers, their access to support services, and the privacy and confidentiality of sex workers.

The **Department of Attorney General and Justice** (DAGJ) advised the Inquiry that both federal and state offences are prosecuted in NSW criminal courts, and accordingly trafficked people involved in the criminal justice system are entitled to access DAGJ's Victims Services. This includes information, referral and support to victims of trafficking through the Victims Access Line, 24-hour telephone service. Those who become the victims of crime through trafficking offences, such as causing sexual servitude, are able to access the Approved Counselling Scheme. Statistics show that since 2009, of the 26 people identified as having been victims of trafficking, 11 sought counselling. Victims Services has formed a strong relationship with the Support for Victims of People Trafficking Program, a Commonwealth Government initiative.

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Concluding comments

Many of the issues raised in this section are matters for the Commonwealth. At a policy level, NSW needs to ensure that the legal frameworks of the Commonwealth and State are properly aligned. This fits with Finding 1, which shows that NSW needs to strengthen its response.

The Inquiry identified the need for a legal and policy framework which fully implements a human rights based response to human trafficking and slavery. This requires work at both the Commonwealth and NSW Government levels. The Commonwealth, as the signatory to UN Conventions, should take the lead. While the overall Commonwealth framework provides a holistic approach - from education and prevention to investigation and prosecution - for victims of human trafficking and slavery, the focus remains largely on criminal justice outcomes.

Recommendations

- 3 That the NSW Government urge the Commonwealth to adopt the **ILO Convention Concerning Decent Work for Domestic Workers, No. 189**.
- 4 That the Attorney General of NSW review provisions in the **Victims Rights and Support Act 2013** to ensure that crimes related to human trafficking and slavery are included as an offence category in the recognition payment scheme and other avenues of support provided for in the legislation.

Finding 3. Improve outcomes for trafficked people

Summary

NSW Government agencies and community organisation could improve outcomes for trafficked people by greater awareness on how to identify people who are experiencing human rights abuses.

The two measures identified as critical to improving the outcomes for trafficked people are:

- building the capacity of government and non-government service providers to improve the initial and ongoing response to people identified as trafficked
- clarifying the protections, support and access to financial compensation that trafficked people are eligible for once identified.

Submissions to the Inquiry reported that confusion and deliberation about whether a person was 'trafficked' could have a significant impact on their future financial security, their eligibility to remain in Australia, and their mental health.

As discussed under Finding 2, a human rights approach would allow a number of pathways, depending on the real and potential risks for the trafficked person and their families. In particular, trafficked victims need access to housing and other services. The Salvation Army recommends the appointment of a state based guardian for minors. The Australian Red Cross, as the provider of Commonwealth funded support services, also agreed that the guardianship status of minors is unclear.

Inquiry participants also stated that there was an opportunity for an expanded role for the NSW Department of Family and Community Services (FACS) to coordinate the response provided by state authorities and non-government organisations. This could be similar to the approach taken with the Domestic and Family Violence Reforms, with the emphasis on better integrated services.

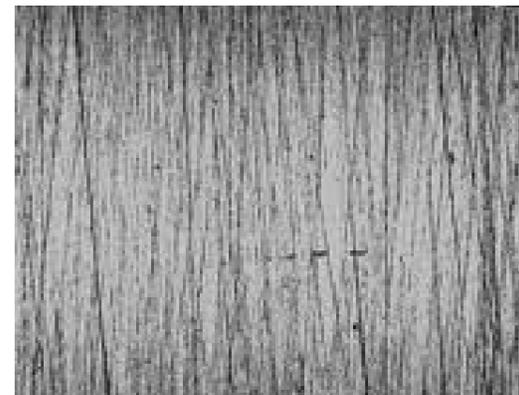
The recent reduction in the maximum payout for the NSW Victims' Compensation Scheme to \$10,000 diminishes the capacity of victims to access fair and effective compensation.

While NSW is encouraged to broaden the payment amounts available under the **Victims Rights and Support Act 2013** (NSW), the priority is to establish a national Victims' Compensation Scheme. This should include all forms of slavery and slavery-like practices, including forced marriage and forced labour.

Currently, the eligibility criteria for access to special benefit payments is such that victims of trafficking and slavery who receive compensation payments must exhaust that amount before being entitled to on-going support to rebuild their lives. The compensation payment is recognition for the pain and suffering experienced, rather than a source of income.

This section covers:

- clarity and cooperation between different tiers of government
- guardianship of children
- FACS to coordinate service response
- victims' compensation
- improved services
 - housing
 - safe accommodation
- workers' rights to safe and fair working conditions.



Finding 3. Improve outcomes for trafficked people

Clarity and cooperation between different tiers of government

Many submissions and the consultations stressed the need for the Commonwealth and the State to work together. This is important for policy and regulation, as discussed in Finding 1. But it also matters for delivering services on the ground.

Anti-Slavery Australia recommended clearer protocols for collaboration not only between the tiers of government, but also within the state jurisdiction. These protocols would create clearer pathways of responsibility and procedures for identifying and responding to victims of trafficking, slavery and exploitation.

Guardianship of Children

The **Salvation Army** in particular, made a number of recommendations for situations when children, young people and their families are involved in trafficking. They recommended that the appointment of a guardian (state authority) to oversee care and protection is a crucial first step once a child has been identified as a trafficked person.

Australian Red Cross, as the provider of the Commonwealth's support program, also urged the Department of Immigration and Citizenship clarify the responsibility for guardianship for children and young people who have been trafficked.

The **Red Cross** has reported instances where guardianship provisions for children in their care affected by trafficking were unclear. Where a NSW Government agency made a determination of 'cross-jurisdictional' relevance of a case, instead of cross-jurisdictional collaboration, the result was that the minor had no guardian appointed.

The lack of consistency around intervention (despite mandatory reporting requirements) remains a challenge for the **Red Cross**, as children and young people's safety and well-being was considered to be inadequately addressed by either the State or Federal governments.

FACS to coordinate the service response

Respondents also stated that there was an opportunity for an expanded role for the NSW Department of Family and Community Services (FACS) to coordinate the response provided by state authorities in consultation with non-government organisations.

Family and Community Services (FACS) confirms that it does not have a specific focus on trafficking. Through Women NSW, it has developed the whole-of-government Domestic and Family Violence Reforms, which could include forced marriages. This idea has merit as the primary purpose of the reforms is to improve collaboration and coordination of the service response. There should be a link as 'forced' implies coercion, duress, threat or psychological violence which may also be physical. Forced marriage can occur domestically without the element of trafficking.

Further, while some trafficking, including forced marriage, often involves physical and psychological violence against women and girls, there are other kinds of trafficking that also affect men and boys. The recommendation from this Inquiry is that FACS coordinate and improve services for all trafficked people.

It should also be noted that individual case workers who come into contact with people they suspect are trafficked do not have internal departmental policies to guide their response and no way of recording the information formally. Nor is there guidance on how to identify a trafficked victim or one who is at risk of forced marriage, servitude, forced labour or related offences.

While the Department of Family and Community Services (FACS) does not have any specific policies or programs related to women in forced marriages or trafficking, it has both the capacity and the mandate to respond to the issue within the broader state and federal violence against women and child protection strategies.

Finding 3. Improve outcomes for trafficked people

The Inquiry takes up the recommendation from **Project Respect** for a state-wide plan of action (to complement the national) that engages government and non government agencies to strengthen a coordinated response and to raise awareness of trafficking and servitude.

At the same, time there are some parallels between the work that needs to be done on trafficking and exploitation with the work that has already started on domestic and family violence and violence against women, particularly inter and intra-jurisdictional co-operation, and cross-jurisdictional frameworks.

Legal Aid NSW funds the Domestic Violence Practitioner Service (DVPS). The DVPS is a statewide specialist service where private lawyers are funded to assist women and children experiencing domestic violence who are in need to legal protection through an apprehended domestic violence order. **Legal Aid NSW** administers state government funding for the Women's Domestic Violence Court Advocacy Program (WEDVCAP). WEDVCAP funds 28 Women's Domestic Violence Court Advocacy Services.

Such schemes could be expanded to encompass women and children who had been exposed to violence through trafficking, to assist them to access state-based support and legal remedies.

Victims Compensation

In the 2012-2013 financial year, **Clayton Utz** and **Anti-Slavery Australia** obtained over \$1 million in statutory compensation for trafficked clients in NSW by making applications to the then NSW Victims Compensation Tribunal pursuant to the Victims Support and Rehabilitation Act 1996.

The model for compensation applications has also been used successfully to obtain statutory compensation for victims trafficked into Queensland and the ACT. In 2013 the **Victims Support and Rehabilitation Act** was repealed and replaced by the **Victims Rights and Support Act 2013**. While the Act is intended to provide an earlier 'lump sum' recognition payment, the Inquiry heard that the reduction

in the amount of the recognition payment from a maximum of \$50,000 to \$10,000 has caused difficulty for some victims of crime.

This Inquiry recommends that the Attorney General of NSW review provisions in the **Victims Rights and Support Act 2013** to ensure that all offences relating to the crimes of human trafficking and slavery are included as an offence category in the recognition payment scheme and other avenues of support provided for in the legislation.

Anti-Slavery Australia proposed that a public consultation on the effect of the **Victims Rights and Support Act 2013** NSW Victims Compensation Scheme be conducted, noting that there is inconsistency between different state and territories relating to degrees of harm suffered and amounts payable, as well as difficulties for that who have suffered slavery and slavery-like conditions that did not involve sexual assault. **Anti-Slavery Australia** also urges the establishment of a national victims compensation scheme for victims of the Commonwealth crimes of human trafficking, slavery and slavery-like practices.

This Inquiry supports calls for a national victims' compensation scheme. This recommendation is in keeping with the recommendation from the **Inquiry into Modern Day Human Trafficking** held by the Joint Standing Committee on Foreign Affairs, Defence and Trade. In its June 2013 report, it recommended 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 people convicted of these crimes.'

There is a further difficulty, in cases where a compensation payment is made, if the awardee holds a Special Benefit payment from the Department of Social Services, then the Commonwealth requires the victim to exhaust their compensation payout before they are able to draw on the Special Benefit. The principle behind compensation payments is that they are

Finding 3. Improve outcomes for trafficked people

intended to acknowledge pain and suffering, rather than provide a source of income.

Scarlet Alliance further suggests that Fair Work Australia should invest in training to increase its capacity to work effectively with migrant sex workers. They also suggested and that a compensation scheme should be established to address labour exploitation that is independent of the need for a criminal investigation.

This Inquiry supports calls for a national victims' compensation scheme. This recommendation is in keeping with the recommendation from the **Inquiry into Modern Day Human Trafficking** held by the Joint Standing Committee on Foreign Affairs, Defence and Trade. In its June 2013 report, it recommended 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 people convicted of these crimes.

Improved services

Housing

Obtaining safe, stable and affordable housing is difficult for clients and caseworkers, particularly in Sydney. This is compounded by a number of factors, including cost, safety issues and unfamiliarity with their surroundings.

The NSW Social Housing Eligibility and Allocations Policy requires social housing applicants to hold residency (proof of citizenship or permanent residency). In the past, Housing New South Wales (HNSW) exercised their discretion to allow asylum seekers and people who have been trafficked and were holding temporary visas to access their services, if they met the HNSW requirements. In exceptional circumstances, temporary residents may have been considered for a few days of temporary accommodation if escaping family or domestic violence while the case is progressed with other relevant providers.

The application of this policy has excluded people who have been trafficked, including vulnerable clients with children who would otherwise meet the requirements for HNSW. Services that were previously used, including Emergency Accommodation, Emergency Temporary Accommodation, Rent Start, are no longer available to people who have been trafficked.

The positive effect of having stable housing for someone who has experienced extreme physical and psychological trauma is profound. Establishing safety and stability provides trafficked people the space to process their experiences, engage in the criminal justice process, care for dependent children, stabilise medical treatment and move forward with their lives.

Safe accommodation

Another issue was the need for culturally appropriate housing and accommodation for trafficked people. Safe and secure accommodation such as a refuge or other forms of accommodation is critical to a victim's safety. Access to programs that focus on the cultural and emotional needs of individual victims, and which are matched to their stage of recovery, was identified as a critical form of support. This highlights the need for proper evaluations of services to ensure they are effective in delivering appropriate services at the right time.

Some of the suggestions were as simple as providing relevant information in people's preferred language (**Salvation Army, Scarlet Alliance and Empower Foundation Thailand**). This issue is relevant to Finding 4 which addresses the need to educate and train those who provide frontline support.

Finding 3. Improve outcomes for trafficked people

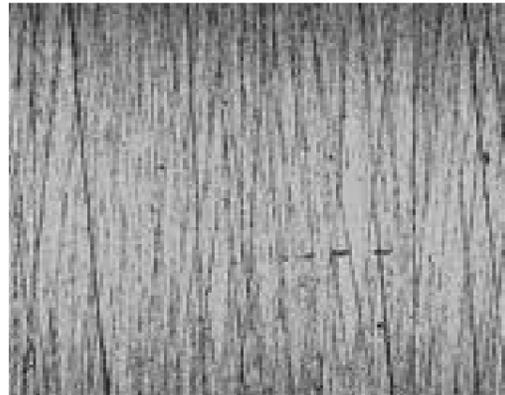
Workers' rights to safe and fair working conditions

Some submissions, especially those of **Empower Foundation Thailand** and **Scarlet Alliance**, emphasised the need to provide safe and fair working conditions for all workers, regardless of their occupation or their immigration status. Though they are predominantly focused on the sex industry, **Scarlet Alliance** recommended that state-based mechanisms and civil remedies should be established to provide compensation for people experiencing any form of labour exploitation in NSW.

They argue that the best approach to addressing labour exploitation across all industries remains a thorough focus on prevention, labour protections, occupational health and safety, civil remedies and statutory compensation.

However, **WorkCover** reported that it has not conducted any investigations or workplace visits, issued any notices, or had any reported incidents involving trafficked workers. Though **WorkCover** has conducted investigations of complaints and incidents in brothels, the sex industry has not been identified as one of the priority high risk industries. As already noted under **Finding 2**, **WorkCover** has not conducted any activities or projects directly targeting trafficked workers.

As noted under **Finding 2**, reduced enforcement is a serious loss for workers in exploited conditions, including trafficked people. While acknowledging that there is often a gap between legal rights and the ability to access them, the Community Relations Commission is aware of some successes in recovering lost entitlements where the Fair Work Ombudsman and/or unions are involved.



Finding 3. Improve outcomes for trafficked people

Concluding comments

The state government service response is the most critical aspect of providing the appropriate support for trafficked people. State based services such as health, education, and community services are the 'front line'. As many of these services are government funded, non-government agencies the approach needs to be fully integrated. These services may be seen as less intimidating than going to the police and can provide an alternative path to prosecution.

The Domestic and Family Violence Reforms provide a model for collaboration to improve the service response. The Department of Family and Community Services has a number of the key agencies relevant to trafficked people in its portfolio and is in a good position to lead the state response. It is now aligning its planning processes with **NSW Health**, allowing for joined up strategies at the local level. The service response should also include **Workcover** and the Fair Work Ombudsman as crucial partners in a non criminal pathway to redress labour exploitation.

Improving outcomes for trafficked people by adjusting the service response will be greatly enhanced by increased community awareness and understanding of human trafficking and slavery. The available evidence (Findings 4 and 5) demonstrates that this is not well understood in the NSW community.

Recommendations

- 5 That the State Government consider, where appropriate, the appointment of a guardian (state authority) to oversee the care and protection of children and young people who are affected by human trafficking or slavery.
- 6 That the Department of Family and Community Services develop an Action Plan to coordinate and improve services for trafficked and enslaved people, including working with the Commonwealth as needed.
- 7 That Housing NSW examine accommodation provisions for victims of human trafficking and slavery to determine:
 - whether the Commonwealth provisions are sufficient to provide suitable housing for victims of human trafficking and slavery in NSW
 - what provisions ought to be consistent across jurisdictions
 - whether they should reconsider the policy of excluding 'non-residents' (meaning permanent residents or citizens) from their services, especially trafficked people, recognising that the small numbers have little impact on their overall services.

Finding 3.
Improve outcomes for trafficked people

- 8 That the Commonwealth establish a national Victims' Compensation scheme to ensure that victims of human trafficking and slavery are entitled to effective remedy including a financial sum in recognition of their experience as a victim of a federal crime.
- 9 That the NSW Government make representations to the Commonwealth Department of Social Services that monetary compensation made to victims of slavery, servitude, human trafficking and related crimes not be classified as income for the purposes of assessing eligibility for the Special Benefit payment.
- 10 That the NSW Government urge the Commonwealth, through **Fair Work Australia**, to ensure that there are sufficient resources devoted to assist victims of labour exploitation gain their correct entitlements under Australian law.

Finding 4.
Enhance knowledge and awareness

Summary

This Inquiry confirmed that vulnerable people and service providers need information, knowledge, and training to deal appropriately with the issue. Representatives of different ethnic communities agreed that trafficking and slavery is a serious issue and acknowledged that it exists within their communities. It was seen as a challenge to address, as often the issue is hidden and there is a general unwillingness to discuss it openly.

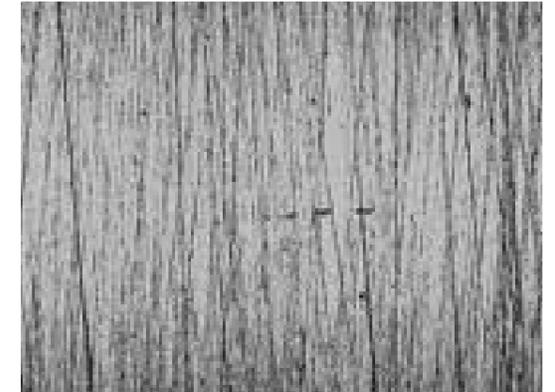
The education system offers an ideal avenue for awareness raising around forced marriage. While prevention strategies are key, the capacity of teachers and other professionals needs to be developed to detect, and act within their professional responsibilities to prevent forced or underage marriages.

The Inquiry recommends the Commonwealth Government provide information to visa applicants in their language before they arrive in Australia.

The Community Relations Commission commits to conducting regular consultations to monitor the level of understanding and progress towards a human rights based approach and to integrated service delivery.

This section covers:

- education and training for police and other government agencies
- education and awareness.



Finding 4. Enhance knowledge and awareness

Education and training for police and other government agencies

Participants in the consultations noted that timely identification of trafficked people is a prerequisite for their access to services and protection. Participants reported that several women had been identified as victims of forced marriage when they were treated for pre- and post-natal depression by their health care workers. This highlights the importance of enlisting cooperation of front line staff including police, general practitioners, healthcare and social workers. Appropriate training can assist community workers to identify trafficked people and refer them to victim support services.

Staff of community organisations revealed that there was a general lack of awareness about available services and preliminary support for trafficked victims.

While the consultations uncovered rich anecdotal reports, they could not provide a full picture of the extent of trafficking and slavery. The lack of data points to the need for appropriate record-keeping systems, particularly by community organisations. (See [Finding 5.](#))

Many of the submissions emphasised that training for authorities (especially for those working in law enforcement) is critical in ensuring that the human rights of trafficked people are paramount in any legal response.

For many, this means NSW investing in training and awareness programs for police officers, judicial officers and other first response officials, such as health professionals and child protection case workers. (**Australian Red Cross, Josephite Counter Trafficking Project, Australian Catholic Religious Against Trafficking in Humans (Acrath), Anti-Slavery Australia**).

Anti-Slavery Australia raised the need for NSW Police and other government agencies to engage in training to identify trafficked people, so that authorities are able to better articulate available support services and identify gaps. They argued for a comprehensive training framework to be delivered across all levels of government and across the community sector. It would include modules on identifying trafficking and slavery, accessing emergency support services such as accommodation, medical assistance, legal advice, financial assistance and counselling as well as longer term solutions.

This training framework could include outreach programs that could be delivered by and to a range of different providers (such as teachers, community workers, legal, social and health professionals, police and other government officials) in a range of different settings (e.g. schools, youth centres, community centres and migrant resource centres).

Education and awareness

Many participants in the Inquiry emphasised the need for education and awareness within communities to reach potential victims to seek appropriate help and prevent exploitation from occurring. Private citizen and academic **Joelle Moukhaiker** suggested that awareness raising campaigns needed to allow audiences to identify with people who had been the subject of trafficking and slavery. Similarly, private citizen **Tiara Curnock** expressed the need to encourage empathy for non-Australians who had been affected by trafficking and associated exploitation. These community education measures are important, they argue, for overcoming stereotypes about victims and engendering compassion.

Finding 4. Enhance knowledge and awareness

Consistent with the idea that there needs to be better general awareness about the presence, prevalence and impact of trafficking, several organisations (including **Collective Shout** and **Project Respect**) recommended funding be allocated to educate the general community about trafficking and servitude.

Private citizens **Matthew and Tanya Sykes** wrote that there needed to be an investment in education for children aged between 10 and 18, at the stage that boys were forming their views on women as sexual beings and focused on improving the dignity of girls and women in society.

The Commonwealth has funded organisations to provide outreach and education, including some of the organisations that submitted to this Inquiry.

Targeted and linguistically appropriate awareness raising material

A frequently suggested option was the increased use of in-language signage in brothels, indicating that it is an offence to engage the sexual services of a trafficked person. Such a model is operational in Victoria. **ACRATH** and the **Josephite Counter Trafficking Project** argued that it could serve the dual purpose of informing the trafficked person of their rights, and educating the customers of sex workers to be aware of their actions and the impact on the human rights of the trafficked person.

Scarlet Alliance did not agree with signage at brothels, arguing that it was ineffective and that signs increase stigmatisation and discrimination while simultaneously failing to reach the target groups. However, it stated that there is a need for translated information on visa access and conditions, industrial rights, human rights, justice mechanisms and relevant laws to be widely available in multiple languages where sex work is conducted.

An information-based model like this could be supplemented with multilingual, peer education in which migrant sex workers could engage other members of their community to strengthen their human, civil and political rights and enhance their capacity to respond to trafficking.

Exploited by their own communities

While no specifics were presented to the Inquiry, allegations were made that some perpetrators are members of the migrant community who are able to use their position in NSW to promote their exploitative business operations internationally, most likely in their country of origin. Allegations included an anecdote of an Australian running an exploitative migration business in the country from which they migrated.

It was further alleged that where the perpetrators are influential, there is a reluctance on the part of the community to report them due to perception of power through association. One such allegation made at one of the consultations drew general assent from many participants.

The Inquiry notes that the Australian Institute of Criminology study 'Human trafficking and slavery offenders in Australia' released in November 2013 reports:

The offenders' migration experiences, knowledge of migration processes, and shared cultural and language backgrounds with the migrant victims appeared to help the offenders identify and control their victims. Then of the 15 convicted offenders in Australian cases were migrants (all female offenders and 2 of the male offenders). Most of the migrant offenders had the same cultural and language backgrounds as their victims (AIO 2013,p.9).

Finding 4. Enhance knowledge and awareness

Information campaigns targeting the various migrant communities would help to counter this perception. NSW should aim for maximum reach into the community, particularly community members who are less likely to lead public lives. Information should include reference to slavery and forced marriage so that they may be aware of the risks and penalties associated with these forms of human trafficking and the availability of support mechanisms in the community.

Information should be conveyed in the first language of migrants as well as in English. However, policy makers must be aware that some migrants will not be literate in their first language so information should also be conveyed verbally where possible.

An education and awareness campaign in schools targeting both the parents and the children is important for forced marriage in particular. It needs to be clear that it is against the law and Australian values, and cannot be justified on religious or cultural grounds.

Suggested medias to maximise the reach of information included:

- ethnic radio (particularly targeting people with less public lives, including women and the elderly, as well as those who have no or little literacy in their first language)
- ethnic print publications
- mainstream media
- presentations given directly to ethnic community groups and at migrant resource centres
- information (targeting exploited workers, their colleagues and their employers) conveyed through workplaces
- information (targeting students) conveyed through education institutions.

A number of organisations pointed to the need for information to be given to visa applicants both before and after they arrive in Australia.



Finding 4. Enhance knowledge and awareness

Concluding comments

Proper awareness raising and education requires significant and ongoing resources. It is a job that never finishes. One off, small scale projects are no substitute for a sustainable, strategic campaign. The impact of awareness and training strategies recommended under this finding needs careful monitoring. Evaluation should be an integral part of the proposed initiatives. The relative paucity of data is addressed in the following Finding (5), effective monitoring and evaluation of campaigns will help develop the quantitative and qualitative datasets in this field.

The Community Relations Commission will contribute to this by holding regular community consultations to measure progress in improving awareness and in the service response.

Recommendations

11 That the Commonwealth Government ensure that information on slavery, slavery-like practices, including forced marriage, forced labour and human trafficking is given to **both** visa applicants and new arrivals in their own language at the time of application for a visa and on arrival in Australia. The information should:

- describe exploitation, the law and the support mechanisms available
- be provided in the first language of applicants both in writing and orally where appropriate.

12 That the NSW Government, in consultation with the Commonwealth, develop and fund an education campaign to be delivered by the appropriate agencies and community organisations. This should target:

- people in the NSW community who might be experiencing exploitation, be aware of exploitation, or might be either knowingly or unknowingly participating in exploitation

- all members of the NSW community who may come into contact with people who are experiencing trafficking and slavery, such as those in the service, construction or agricultural industries and students
- children and young people in the education system, related to forced marriage and family violence.

The education campaign should be developed by a working party set up by the proposed Human Trafficking Advisory Council, be consultative in nature and include evaluated campaigns and initiatives such as:

- radio education campaigns delivered through mainstream and ethnic media, directed to different communities and in community languages
- a specific hotline or inclusion in other government telephone information services with language options, or run by an appropriate NGO, with information on housing and legal advice
- a smartphone application of the style and accessibility of the Aurora domestic violence application.

Finding 4. Enhance knowledge and awareness

Recommendations

13 That relevant agencies, including NSW Police, the judiciary, frontline workers in government agencies, health and community service workers and community organisations undertake training to:

- identify victims trafficked and enslaved in any employment or intimate partner relationship
- protect the human rights and safety of exploited individuals.

14 That the Community Relations Commission For a multicultural NSW conduct regular consultation with community members and service providers on human trafficking in all its forms in New South Wales, including forced marriage and forced labour.

The results of the consultation should be reported to the Human Trafficking Advisory Council and be included in the Commission's Community Relations Report, tabled in Parliament annually.



Finding 5. The need for more research

Summary

Many submissions called for additional research to improve data and knowledge that will lead to better outcomes. At the same time, submitters recognised that this is a very difficult area to research because of the hidden nature of trafficking and the fear of exposure and deportation, following identification.

As a starting point, the NSW Government should examine what data and information it can collect to throw light on the issue and help to design an effective service response.

This section covers:

- the availability and reliability of quantitative data
- research on awareness and attitudes in Australia
- multidisciplinary and qualitative research
- priorities for research.

Availability and reliability of quantitative data

There is general consensus that people trafficking affects almost every country in the world, whether as a source, transit or destination country – or as any combination of these (ACC 2013).

The most noticeable forms of human trafficking are the sexual exploitation of women and children. But globally, people are trafficked for a wide range of other purposes including forced labour in industries such as hospitality, construction, forestry, mining and agriculture, domestic and sweatshop labour, illicit adoption, street begging, forced marriage, the harvesting of organs, and recruitment into militias and armed forces (DSS 2013).

The Inquiry has considered the extent of trafficking globally and in our region, based on official UN and ILO estimates (UNODC 2012, ILO, 2011). Australia is described as a destination country rather than a source of trafficked people, other than in the context of forced marriage. At the same time, there is enough anecdotal evidence from this and

other inquiries, including the Australian Commonwealth Parliament Inquiry into Slavery, Slavery-like conditions and People Trafficking (JSCFADT 2013), to suggest that Australia needs to be vigilant in its immigration and labour law policy settings to ensure that human trafficking is difficult to achieve.

Some examples that came to the Inquiry's attention through the community consultations include:

- women brought to Australia through marriage, held in slave-like conditions and abused by their only contacts in a new country.
- vulnerable women migrants exploited in domestic or sexual servitude in the family home by their new husbands and families.
- students employed to work as nannies, denied their liberty and wages, made to work long hours, cleaning the homes and businesses of their sponsors.
- men brought out on 457 visas to work in a skilled area but instead required to perform unskilled labour for long hours with little pay.
- the wives of men on 457 visas coerced to perform domestic work with no remuneration.
- men migrating to work as sporting boxers enslaved and made to participate in illegal and unsafe fights.

The AIC acknowledges that 'Trafficking in people is an elusive and complex crime and remains an area of research where tangible numbers and facts are challenging to collect. Therefore, it is important that official statistics are monitored and supplemented with qualitative information sourced from non-government actors involved in this area' (Larsen 2012).

Finding 5. The need for more research

The AIC is investigating the development of a national minimum dataset to improve knowledge of trafficking in Australia (Larsen 2012). The Inquiry's findings suggest that this is necessary and that State Governments are critical to collecting data at a service system level. Non government agencies providing services also need to improve their data collection, in line with the minimum dataset so that the data is consistent and can be compared.

Research on awareness and attitudes in Australia

As part of its monitoring role, the AIC conducted an online survey to gauge understanding and attitudes to human trafficking (AIC 2009). This Inquiry agrees that this kind of research is important to establish a baseline for developing education and awareness campaigns as proposed under Finding 4. The AIC rightly points out that members of the community are more likely to come into contact with trafficked people than authorities (AIC, 2000 xi).

Its online survey attracted 1,617 respondents and showed that many people lacked a basic understanding of what constitutes human trafficking. There was confusion about the difference between people smuggling and human trafficking, which led respondents to incorrectly conclude that over 1,000 people are trafficked each year and most come from Afghanistan. The survey showed that people were generally positive about the human rights of trafficked people (AIC, 2000 xii).

This concurs with the findings of the small scale survey undertaken as part of this Inquiry comparing the attitudes of particular ethnic groups with the larger AIC data set. The results are set out in **Appendix 2** and show that, overall, there is little difference in awareness and attitudes between ethnic communities, and between ethnic communities and the broader community. This survey selected five attitude-based questions and did not test knowledge directly. However, the large number of respondents who did not have an opinion suggests they did not feel they knew enough about the issue.

The AIC is intending to run a similar survey to compare with earlier data. The methodology needs to be considered, so that it is a random rather than self selecting survey, and avoids the inherent biases in this method.

Likewise, the survey run as part of this Inquiry provides a basis for further research. The survey showed significant differences in the attitudes of Thai people to the human rights of trafficked victims compared with the Chinese and Korean respondents. As a sample of only 30 people per ethnic group, the Inquiry is not confident about speculating on the reasons.

Multidisciplinary and qualitative research

The most rigorous of quantitative research will be limited in understanding the reasons for people's views. Quantitative survey methods can also struggle with overcoming reactivity (ie interviewees responding normally) when investigating clandestine phenomena. It needs to be supplemented with qualitative and multidisciplinary methods. Filling the gaps in knowledge requires multidisciplinary studies into patterns of human trafficking, the organisation of trafficking, of perpetrators, and into good practice in victim support and criminal justice responses (Putt 2007 p.6).

Priorities for research

As part of its forward research program the AIC is also:

- developing a conceptual framework for monitoring trafficking in people, providing better data for future monitoring reports
- examining human trafficking for the purpose of exploitation in non-sex industries
- examining understandings of trafficking scenarios, trafficked people, offenders, and offending patterns and trafficking in the Pacific.

Finding 5. The need for more research

The Special Rapporteur notes that the focus of the AIC is on criminal law and practice and its research perspective may be restricted. She encouraged the Government to liaise with independent research institutions, including universities that are undertaking relevant research (UNGA 2012 p.17).

Anti-Slavery Australia recommended NSW prioritise research into the full nature and extent of all forms of slavery, slavery-like practices including forced marriage and forced labour in the Australian context.

The **Salvation Army** recommended a systematic review of the Commonwealth Office for Women's Support for Victims of People Trafficking Program.

The **Kirby Institute** recommended that focused research on specific industries is required. They recommended developing a better understanding of the structure and determinates of the sex industry, for example, with an emphasis on capturing the knowledge, experience and behaviours of the workers.

The **Kirby Institute** also recommended that the NSW Ministry of Health commission a review of clinical and health promotion services available to sex workers. Both of these recommendations are aimed at better understanding the scale of the issue and the adequacy of the current service response.



Finding 5. The need for more research

Concluding comments

While research in this area is extremely challenging, it is necessary to ensure that policy is based on solid evidence. In the absence of comprehensive data, there is a danger that policy makers and service providers will make wrong assumptions about the nature and extent of human trafficking to Australia. As a first step, the proposed Ministerial Advisory Committee should develop priorities for research.

The lack of specific public sector data collection on basic characteristics of clients such as ethnicity, religion, and country of origin in general, shows there is a long way to go in developing reliable quantitative data on trafficked people.

Recommendations

15 That the Human Trafficking Ministerial Advisory Council identifies gaps in research on human trafficking and slavery.

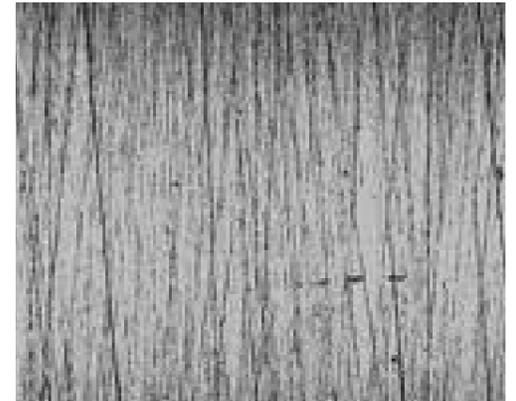
- The first step is to conduct an audit of existing data collections, which could be enhanced to include trafficking data.

Conclusion

This Inquiry has shown that there is no coordinated NSW Government policy and service response to human trafficking and slavery with little intergovernmental coordination or cooperation within NSW. Additionally the NSW Government is insufficiently engaged with Federal strategies and processes. At a service level, there is little awareness about how to identify a trafficked or exploited person, much less systematic data collection or a sensitive, human rights based response.

This Inquiry has made practical recommendations for NSW to engage at all levels and to build a degree of understanding of how human trafficking, slavery and associated exploitation play out in the social, political and economic environment.

The Inquiry calls for the issue to be reconceptualised. This will ensure that the policy and program response puts the trafficked person at the centre of the discussion. The human rights momentum requires both an international and a local focus. It needs multi-layered strategies that span across the whole spectrum of trafficking, labour exploitation and slavery: from addressing the drivers that lead individuals to being exploited through to improved remedies, such as sound and fair compensation, that 'break the chain' of trafficking in human lives.



Participants in the Inquiry

Community Attitudes on Trafficking Survey

Extracts from UN Conventions defining 'slavery' and 'forced labour'

Participants in the Inquiry

Public Submissions

The NSW public authorities who responded to the Inquiry were:

- Department of Attorney General and Justice, The*
 - Corrective Services NSW
 - Juvenile Justice, NSW
- Department of Education and Communities, NSW
 - TAFE NSW*
- Department of Family and Community Services*
 - Ageing, Disability & Home Care
 - Community Services
 - Housing NSW
 - Women NSW
- Department of Finance and Services, The
- Department of Premier and Cabinet, NSW
 - Division of Local Government*
- Department of Trade and Investment, Regional Infrastructure and Services
- Legal Aid NSW*
- NSW Ministry of Health*
- NSW Ombudsman
- NSW Police Force*
- The Treasury
- Transport for NSW
- WorkCover Authority of NSW*

**those agencies that made a substantial submission.*

The Commonwealth public authorities who responded to the Inquiry were:

- Attorney-General's Department
- Australian Institute of Family Studies
- Department of Immigration and Citizenship

The following non government agencies and individuals provided written submissions:

- ACON (Sex Workers Outreach Project)
- Anti-Slavery Australia
- Australian Catholic Bishops Conference
- Australian Catholic Religious Against Trafficking in Humans
- Australian Christian Lobby
- Australian Lawyers Alliance
- Australian Red Cross
- Collective Shout
- Curnock, Tiara
- Empower Foundation Thailand
- Exodus Cry
- Family Voice Australia
- Huang, Lucy
- Josephite Counter-Trafficking Project
- Local Government Association of NSW and Shires Association of NSW
- Moukhaiber, Joelle
- Project Respect
- Salvation Army
- Sykes, Matthew and Tanya
- Scarlet Alliance Australian Sex Workers Association
- The Kirby Institute
- Faculty of Medicine, University of New South Wales
- private citizen (identity protected)
- a joint submission from Julie Bates, Urban Planner and Saul Isbister, Sex Industry Consultant.

Participants in the Inquiry

Confidential Hearings

The Inquiry held a number of private meetings and confidential hearings.

Discussion Forum

Participation in the Discussion Forum held at NSW Parliament on 19 December 2012 included:

- Anti-Slavery Australia
- Australian Christian Lobby
- Australian Red Cross
- Mr Charles Casuscelli, RFD, MP, Member for Strathfield
- Commissioner for Children and Young People
- Kirby Institute, The
- Rosemount Good Shepherd Youth and Family Services
- Salvation Army, The
- Scarlet Alliance,
- Women NSW

Community consultations

- Participation in public consultations included:
- Australian Hindi Indian association
- Bankstown Women's Health Centre
- Blacktown Women's and Girls' Health Centre Incorporated
- Corrective Services NSW
- Council of Indian Australians
- Department of Attorney General and Justice, NSW
- Department of Immigration and Citizenship
- Egyptian Forum Council
- Equal Housing Partnerships
- Fairfield City Council
- Hills Holroyd Parramatta Migrant Resource Centre, The
- Indian Australian Association of NSW
- Indian Herald
- Indian Link
- Immigrant Women's Speakout
- Islamic Charity Projects Association
- Mangalorean Catholic Association
- Marie Claire Magazine
- NSW Police Force
- Philippino Community Herald Newspaper, The
- Scarlet Alliance
- Stop the Traffic
- Sex Workers Outreach Project
- Sing Tao Daily
- Sunrise Daily Newspaper, The
- Sydney Korean Women's Association
- Tisi Sangam of NSW Incorporated
- Transcultural Mental Health NSW
- University of Sydney
- Vietnamese Women's Association, The
- Women's Health NSW.

Community Attitudes on Trafficking Survey

As part of the Inquiry into the exploitation of women through human trafficking, in all its forms in NSW, the Community Relations Commission conducted a short telephone survey of three ethnic communities to gauge their attitudes to trafficked people compared with the general population. This survey was based on the Institute of Criminology (AIC) larger survey conducted in 2009 (AIC 2009).

As part of its research program, the AIC developed an online survey of respondents to gain a better understanding of trafficking and attitudes to a range of related issues, including people who are unlawfully in Australia, labour exploitation, sex work and the notion of 'deserving' victims. With their advice, the CRC selected five key questions to compare attitudes of specific ethnic groups with the general population:

Statement 1: People claim they are being trafficked to avoid deportation.

Statement 2: The human rights of trafficking victims are important.

Statement 3: All victims of trafficking require support, regardless of how they arrived in Australia.

Statement 4: All people who say they have been trafficked, but stay in the same industry once they have paid their debt, were not real victims.

Statement 5: People who accept an offer from a stranger to work overseas have no right to complain about their working conditions on arrival.

The survey targeted three communities where trafficked people have been identified in Australia and which are also easier to select from the White Pages:

- Chinese
- Thai
- Korean.

Respondents were randomly recruited using the electronic White Pages, filtered on surnames common in these communities. They were interviewed in their language of choice (Mandarin, Cantonese, Thai or Korean).

A total sample of 90 interviews was achieved comprising n=30 from each community. This is the smallest statistically valid sample for analysis.

The highest number of respondents were male (51.1%), aged between 21 and 30 (28.9%). The largest number of female respondents was aged from 51 – 60 (30.2%)

The AIC survey was much larger, available on line, with a focus on knowledge and understanding as well as attitudes. 1,617 responded to the survey which was advertised in the major newspapers in each state and territory as well as via Ninemsn, Facebook and the Australian Institute of Criminology's website. The highest number of respondents were female (63%), aged between 30 and 49 (46%), born in Australia (76%). 96% of respondents indicated they were Australian citizens.

Brief Analysis of Results

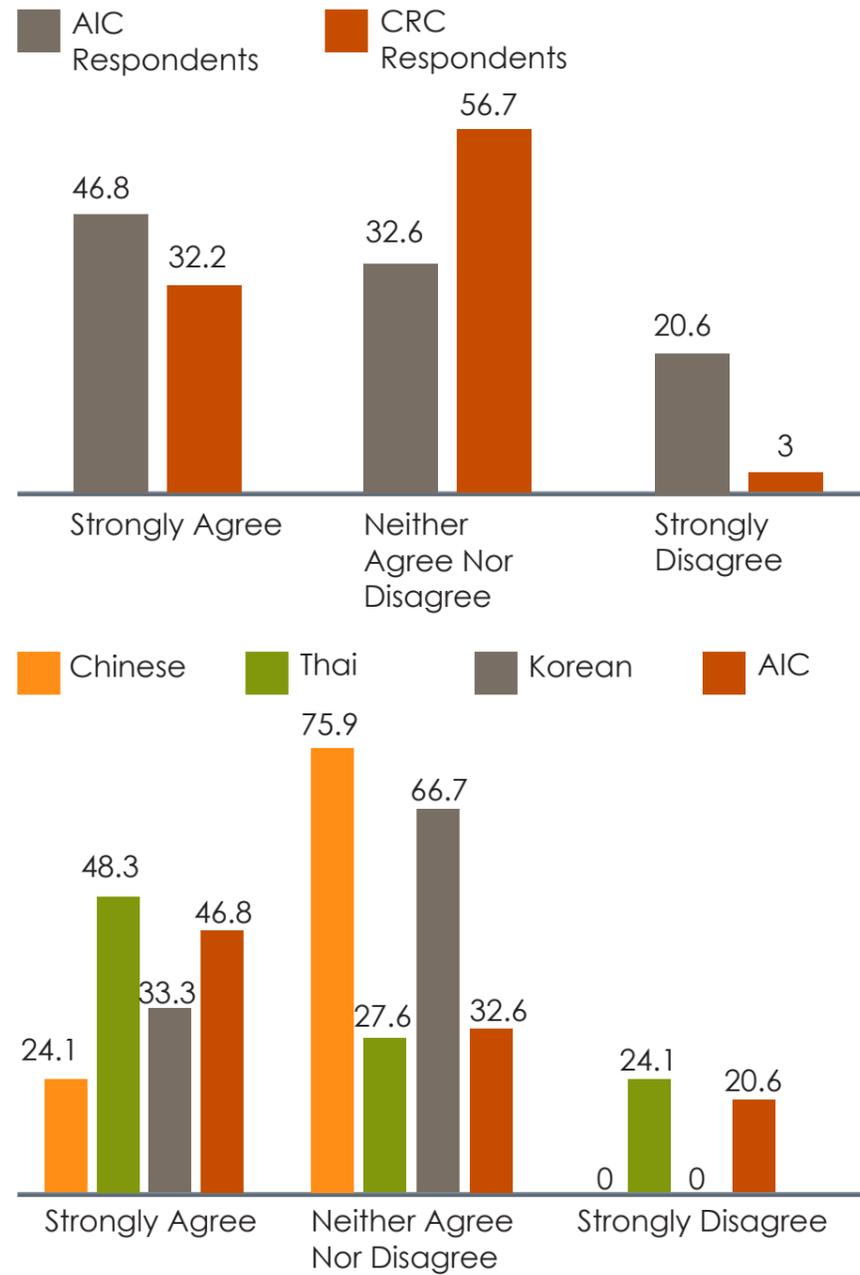
The charts below compare the results of the Inquiry's survey and show that, overall, there was little difference between the attitudes of specific ethnic communities compared with the general population. There appears to be some differences between ethnic groups, with Thai respondents more ambivalent about the human rights of victims.

In general, respondents were sympathetic to victims of human traffickers but were also less willing to have an opinion than the general population.

Appendix 2.

Statement 1:

People claim they are being trafficked to avoid deportation



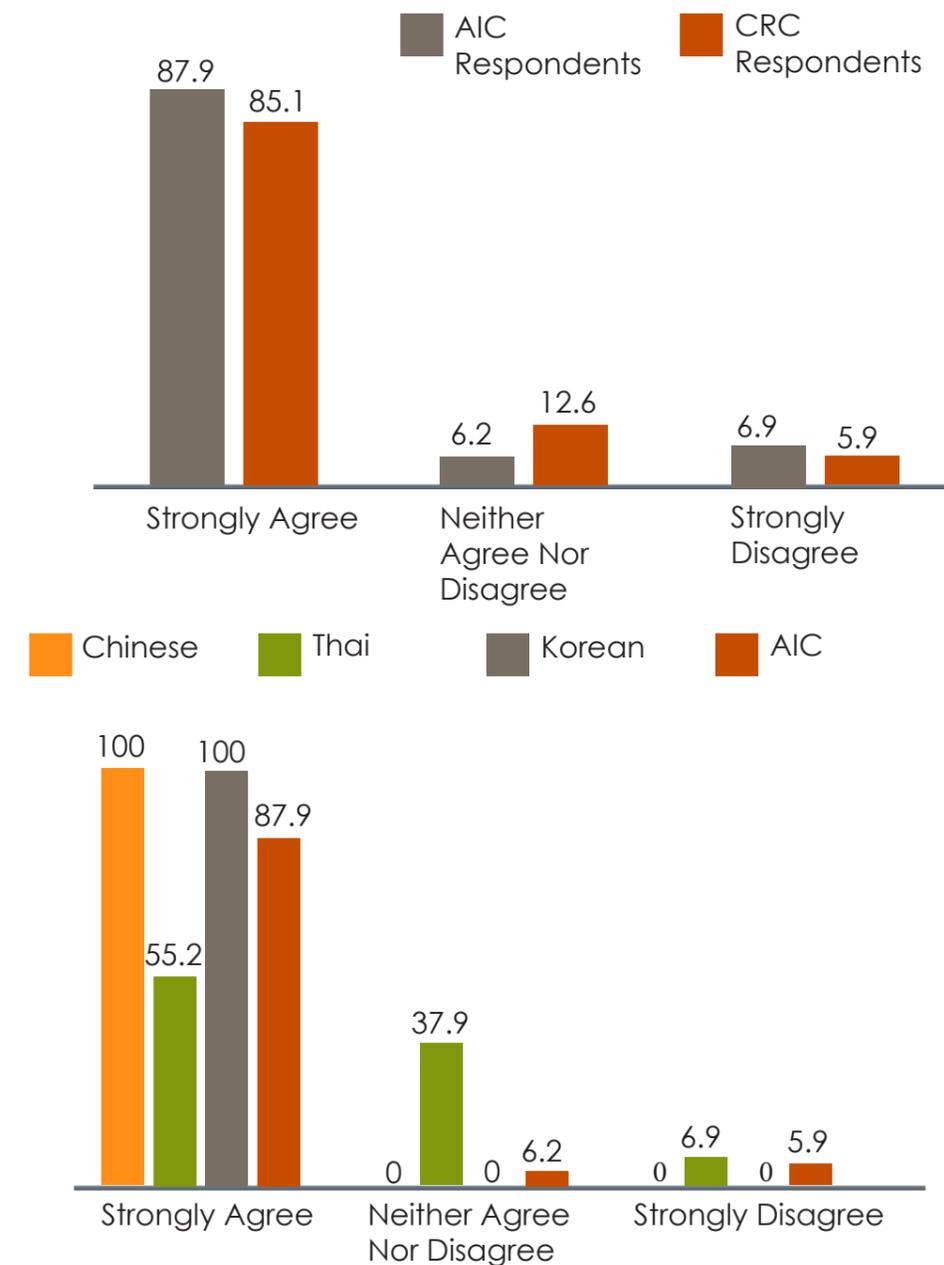
Although there was more agreement than disagreement with this statement, a large proportion were undecided, particularly the Chinese and Korean respondents.

The Thai and the AIC respondents were less convinced of the validity of the statement, with around a quarter disagreeing strongly.

Appendix 2.

Statement 2:

The human rights of trafficking victims is important



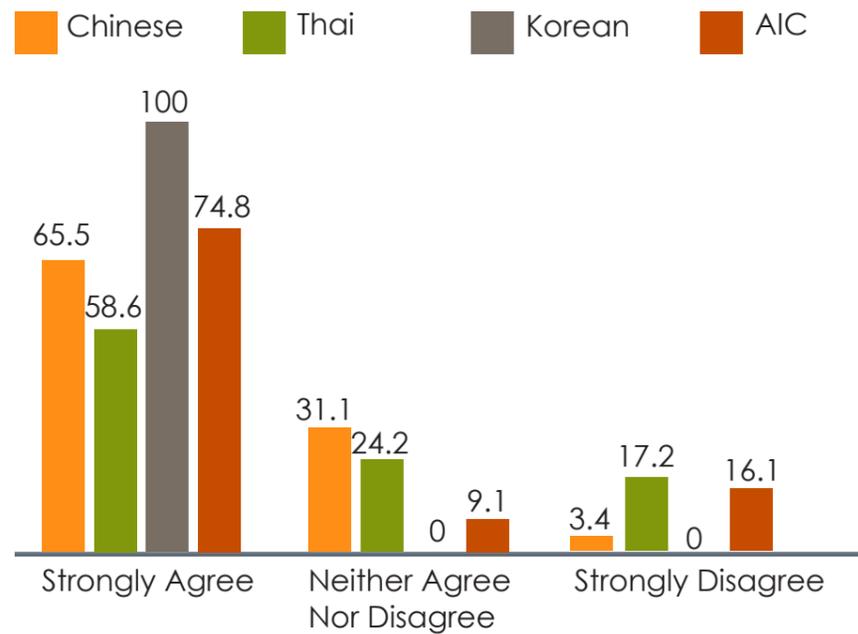
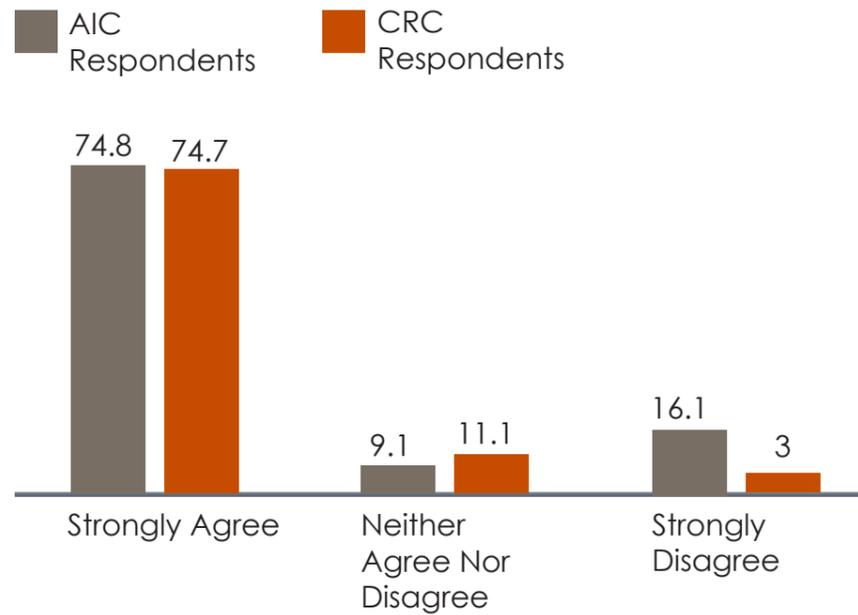
There was a very strong level of agreement that the human rights of victims are important. All Chinese and Korean respondents and the majority of the AIC respondents agreed strongly with this statement.

The Thai respondents were more ambivalent, but they generally agreed.

Appendix 2.

Statement 3:

All victims of trafficking require support, regardless of how they arrived in Australia



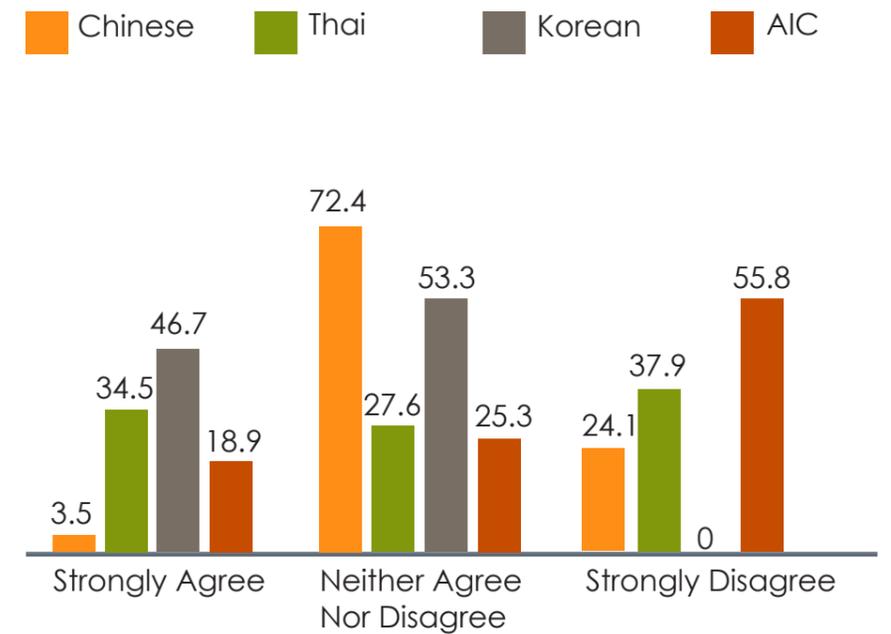
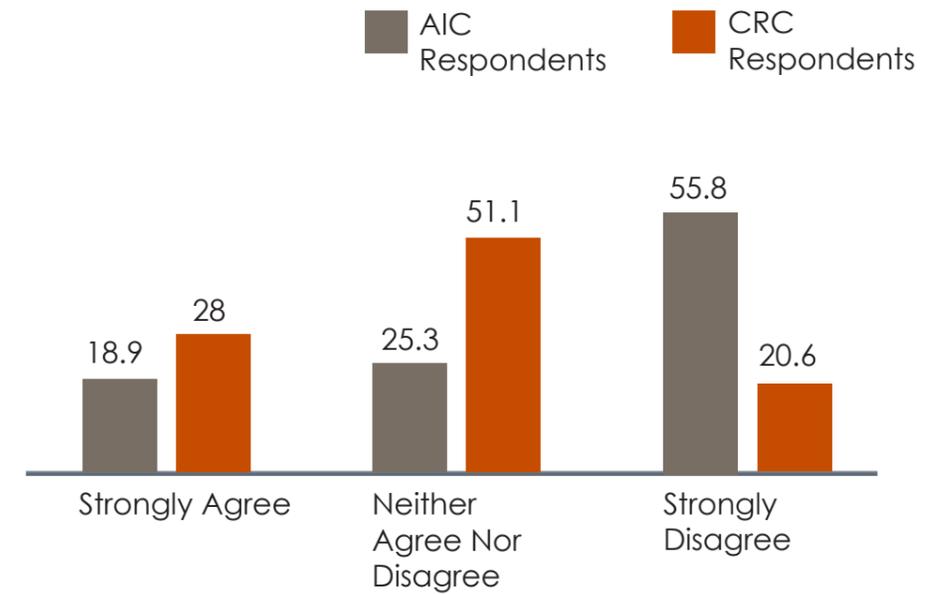
There was general agreement that victims require support, with all the Korean respondents and most of the other respondents also strongly agreeing.

However, around one-third of the Chinese were undecided, and a few Thai and AIC respondents disagreed.

Appendix 2.

Statement 4:

All people who say they have been trafficked, but stay in the same industry once they have paid their debt, were not real victims



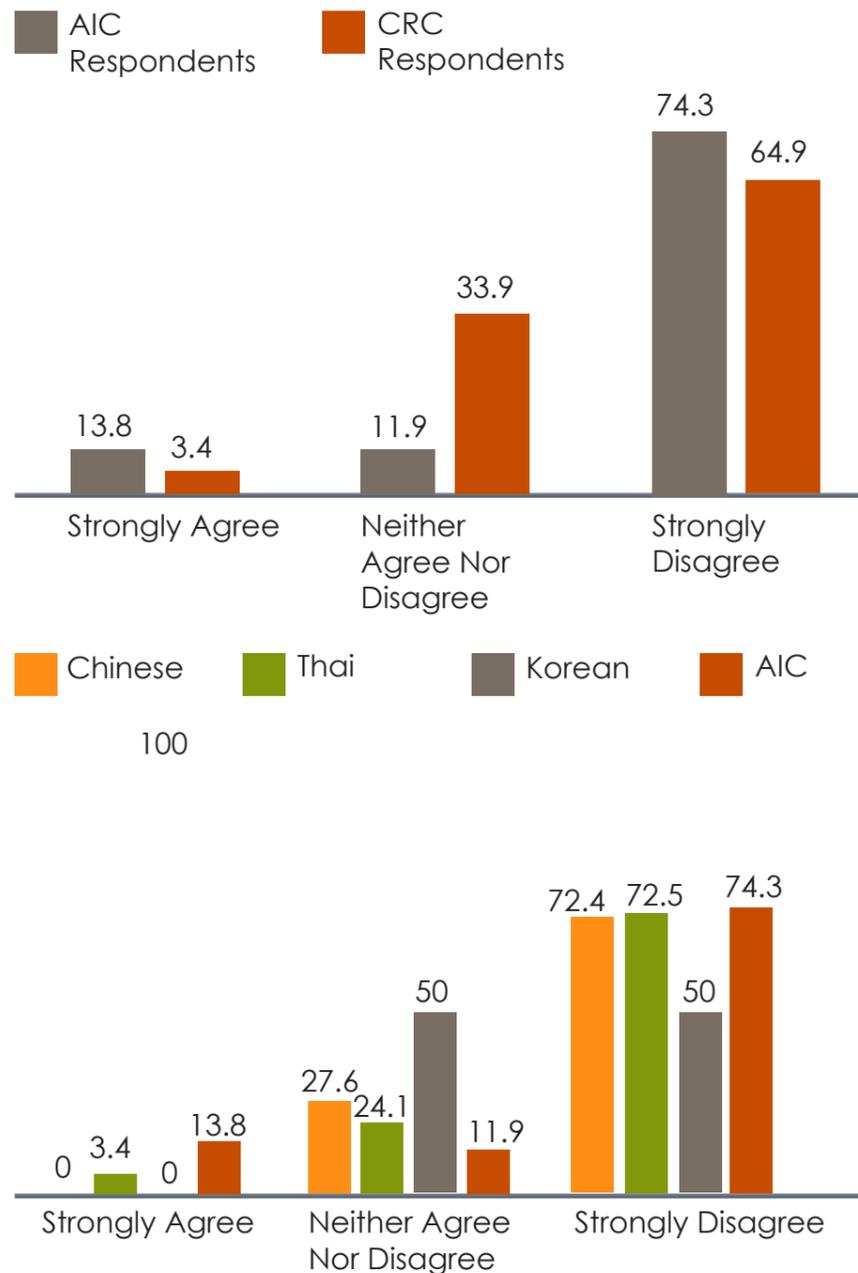
Opinions on this issue were varied, but many respondents were undecided. The AIC respondents strongly disagreed.

The Korean group was split between those who could not make up their minds, and those who strongly agreed, while almost no Chinese people agreed with the statement.

Appendix 2.

Statement 5:

People who accept an offer from a stranger to work overseas have no right to complain about their working conditions on arrival



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There was very strong disagreement with this statement.

Around a quarter were undecided, particularly the Korean respondents, but very few in any group believed that people in this situation have no right to complain.

Appendix 3.

Extracts from UN Conventions defining 'slavery' and 'forced labour'

The terms 'forced labour' and 'slavery or practices similar to slavery', are defined with-in earlier international documents such as the, International Convention to Suppress the Slave Trade and Slavery 1926:

Article 1 International Convention to Suppress the Slave Trade and Slavery 1926

For the purpose of the present Convention, the following definitions are agreed upon:

(1) **Slavery** is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

The Supplementary Convention to the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956:

Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, entered into force April 30, 1957 defines institutions and practices similar to slavery as:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:
(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Under Article 2 of the International Labour Organisation Convention No.29 on Forced or Compulsory Labour 1930:

'The term **forced or compulsory labour** shall mean all work or services which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include--

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

71

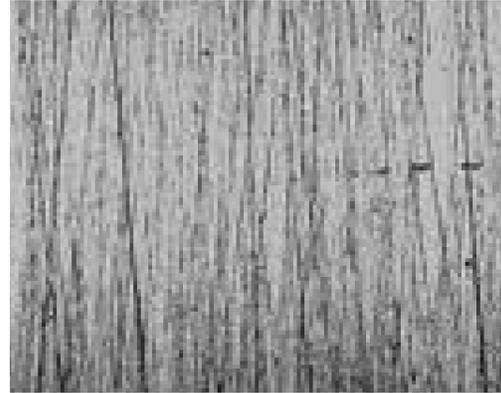
Appendix 3.

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.



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