



Australian Government

TRAFFICKING IN PERSONS

The Australian Government Response

1 July 2012 – 30 June 2013

THE FIFTH REPORT OF THE INTERDEPARTMENTAL COMMITTEE
ON HUMAN TRAFFICKING AND SLAVERY

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Foreword

We are pleased to present this fifth report of the Interdepartmental Committee on Human Trafficking and Slavery. This report details the important work of Australian Government agencies and their partners during 2012–13.

Fortunately, instances of human trafficking and slavery remain comparatively rare in Australia, with only 214 victims referred to the Support for Trafficked People Program between 1 January 2004 and 30 June 2013. This number includes 21 men and women identified during this reporting period. The impact of these crimes on victims, however, must not be underestimated. Slavery is a crime against humanity, and undermines that birth right of every human being – freedom. Human trafficking is a major violation of human rights and can have a traumatic and lasting effect on victims.

It is for this reason that the Australian Government continues to implement a strong program of initiatives to combat human trafficking and slavery. These initiatives are founded on three equally important needs: to do as much as we can to prevent human trafficking and slavery; to prosecute offenders; and to provide support to trafficked people, including by protecting their human rights.

In 2012–13, significant advances were made in furthering these aims.

The passage of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Slavery Act) and the *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* strengthened Australia's ability to prosecute offenders and to protect victims.

A key provision of the Slavery Act was the introduction of offences which criminalise forced marriage. The Australian Government believes that marriage should be a happy event, entered into freely between consenting adults. Forced marriage places young people, mostly women and girls, at risk, and can result in harmful consequences, including emotional and physical abuse, restriction of movement and autonomy, and the loss of access to education.

As a result of the combined efforts of the Australian Federal Police, Queensland Police, the Commonwealth Director of Public Prosecutions and the Queensland Director of Public Prosecutions, on 16 April 2013, Australia secured our first conviction for child trafficking. The offender, Ms 'K', brought her daughter to Australia from Thailand, and subsequently subjected her to sexual exploitation. Ms K was sentenced to nine years' imprisonment, with a non-parole period of four years; a sentence which was subsequently appealed.

In 2012–13, Australia also cemented our role as a regional leader and the most significant donor in East Asia, with the announcement of the new, \$50 million flagship program, the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP).

In the coming year, the Australian Government will finalise and launch the *National Action Plan to Combat Human Trafficking and Slavery*, a document which will set the strategic aims of Australia's whole-of-community response to human trafficking and slavery over the coming five years, including measures to quantify the impact and effectiveness of our collective efforts to combat these crimes.

During this period, we will focus on improving general community awareness of human trafficking and slavery, and developing strategies to increase resilience amongst groups identified as particularly vulnerable to these crimes. We will also examine ways to address human trafficking and related exploitative practices in supply chains.

We look forward to presenting the next report of the Interdepartmental Committee on Human Trafficking and Slavery.

The Hon Michael Keenan MP

Minister for Justice

The Hon Julie Bishop MP

Minister for Foreign Affairs

The Hon Kevin Andrews MP

Minister for Social Services

The Hon Scott Morrison MP

Minister for Immigration and Border Protection

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Notes on terminology

Human trafficking vs. people trafficking

In 2012–13, the Australian Government formally replaced references to ‘people trafficking’ with references to ‘human trafficking, slavery and slavery-like practices’. This change was made to more accurately reflect work undertaken by members of the Interdepartmental Committee on Human Trafficking and Slavery and the National Roundtable on Human Trafficking and Slavery (previously the Anti-People Trafficking Interdepartmental Committee and the National Roundtable on People Trafficking respectively), and to recognise forms of exploitation that do not require an element of movement.

For ease of reference, this document uses ‘human trafficking and slavery’ as a general term that encompasses slavery-like practices including servitude, forced labour, deceptive recruiting for labour or services, debt bondage and forced marriage.

Trafficked person vs. victim

The term ‘trafficked people’ is also used as a general term that encompasses all victims of human trafficking, slavery and slavery-like practices. The exception is where the term ‘victim’ is used in relation to a proper noun or has a specific meaning in relation to law enforcement, for example, victim impact statements or victims of crime compensation schemes.

Criminal Code provisions

The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* entered into force on 8 March 2013. Amongst other things, the Act amended the *Commonwealth Criminal Code Act 1995* (Criminal Code) to repeal the existing offences of sexual servitude and deceptive recruiting for sexual services, and replace them with the broader offences of servitude and deceptive recruiting for labour or services. The Act also introduced new offences of forced marriage and harbouring a victim, and standalone offences of forced labour and organ trafficking (see page 6), changing some of the section numbers of existing provisions. At 30 June 2013, no offenders had been charged with, or convicted of, the human trafficking or slavery offences as amended by the Act. For this reason, where a Criminal Code provision is referenced in relation to a particular matter, the section numbers referenced are those in the Criminal Code as they appeared prior to 8 March 2013.

Titles of Australian Government agencies and departments

This report details the activities of the Interdepartmental Committee on Human Trafficking and Slavery during 2012–13. For this reason, the titles of Australian Government agencies and departments listed in this report appear as in use at 30 June 2013. Some of these titles have changed following the outcome of the federal election on 7 September 2013. Current departmental naming arrangements are outlined in footnotes where applicable.

Abbreviations

Attorney-General's Department	AGD
Australia-Asia Program to Combat Trafficking in Persons	AAPTIP
Australian Agency for International Development	AusAID
Australian Crime Commission	ACC
Australian Federal Police	AFP
Australian Human Rights Commission	AHRC
Australian Institute of Criminology	AIC
Bridging F visa	BVF
Commonwealth Director of Public Prosecutions	CDPP
Criminal Justice Stay visa	CJSV
Culturally and linguistically diverse	CALD
Department of Families, Housing, Community Services and Indigenous Affairs	FaHCSIA
Department of Foreign Affairs and Trade	DFAT
Department of Immigration and Citizenship	DIAC
Fair Work Building and Construction	FWBC
Fair Work Ombudsman	FWO
Human Rights Council	HRC
Human Trafficking Teams	HTT
Interdepartmental Committee on Human Trafficking and Slavery	IDC
International Labour Organization	ILO
International Organization for Migration	IOM
International Police	INTERPOL
Operational Working Group	OWG

<i>Proceeds of Crime Act 2002</i>	POCA
Non-government organisation	NGO
United Nations	UN
<i>United Nations Convention against Transnational Organized Crime</i>	UNTOC
United Nations Office on Drugs and Crime	UNODC
Witness Protection (Trafficking) (Permanent) visa	WPTV

Executive summary

In 2009, in response to a recommendation of the Australian National Audit Office, the Australian Government agreed to undertake more systematic annual reporting of outcomes under our strategy to combat human trafficking and slavery. In June 2009, the Australian Government tabled in Parliament the first report of the Interdepartmental Committee on Human Trafficking and Slavery (IDC), covering the period from January 2004 to 30 April 2009.¹ The second report covered the period 1 May 2009 to 30 June 2010, and the third and fourth reports covered the periods 1 July 2010 to 30 June 2011, and 1 July 2011 to 30 June 2012 respectively. This is the fifth annual report of the IDC and covers the period 1 July 2012 to 30 June 2013.

The 2012–13 reporting period saw the passage of two significant pieces of legislation. The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* and the *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* amended the *Criminal Code Act 1995* and the *Crimes Act 1914* to ensure Australia's law enforcement authorities are well equipped to investigate and prosecute human trafficking and slavery, and that trafficked people are afforded appropriate support and protection when engaging with the criminal justice system.

In 2012–13, the Australian Government began the development of the *National Action Plan to Combat Human Trafficking and Slavery* (Action Plan). The Action Plan will set the strategic aims of the ongoing Australian response to human trafficking and slavery, and is in line with a recommendation of the United Nations Special Rapporteur on trafficking in persons, especially women and children, following her November 2011 mission to Australia.

On 8 March 2013, the then Prime Minister, the Hon Julia Gillard MP, announced an initiative to ensure that no business providing goods or services to the Australian Government is tainted by human trafficking, slavery or related exploitative practices anywhere in the supply chain. This initiative recognises that the Australian Government is a significant contributor to the national economy and has an important role to play in leading by example with respect to ethical procurement.

The Australian Federal Police undertook 52 new investigations and assessments into human trafficking and slavery-related matters in 2012–13, taking the total to 399 since 2004. Almost 43 per cent of these new matters related to sexual exploitation and 45 per cent to other forms of labour exploitation. As at 30 June 2013, there were seven human trafficking and slavery-related matters before the courts, two of which were in the appeal phase.

Fair Work Building and Construction (FWBC) and the Fair Work Ombudsman (FWO) recovered significant amounts in underpaid wages for migrant workers through audits and investigations. The FWO also initiated court action against a number of employers

¹ Previous reports are available online at: <www.ag.gov.au/humantrafficking>.

of migrant workers for contraventions of Australian workplace laws. FWBC launched a campaign which includes a comprehensive suite of educative in-language tools, documents and resources for culturally and linguistically diverse workers in Australia's building and construction industry.

In 2012–13, the Support for Trafficked People Program (Support Program), administered by the Department of Families, Housing, Community Services and Indigenous Affairs² and delivered by the Australian Red Cross, provided assistance to 83 clients, including 21 new clients. Eighteen of the new clients were female and three were male. Of the 21 new clients, 12 (57 per cent) were exploited in the sex industry and the remaining nine (43 per cent) were subjected to other forms of exploitation. No minors were referred to the Support Program during this period.

Through the Human Trafficking Visa Framework, the Department of Immigration and Citizenship³ granted 18 Witness Protection (Trafficking) (Permanent) visas (WPTVs) in 2012–13, including 12 to suspected victims of human trafficking and slavery, and six to immediate family members. This compares with a total of 26 WPTVs granted in 2011–12 (16 to suspected victims and 10 to immediate family members). Sixteen Bridging F visas were granted to suspected victims of human trafficking and slavery in the reporting period (12 in 2011–12), as well as 21 Criminal Justice Stay visas (17 in 2011–12).

Australia continues to take an active role in regional and international efforts to combat human trafficking and slavery. To mark the 10th anniversary of the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*, in November 2012, Australia co-chaired a forum with Indonesia on advancing regional cooperation on human trafficking. Australia also participated in the Bali Process Ministerial Conference in April 2013, at which Ministers agreed to establish a Working Group to specifically focus on human trafficking issues.

The Australian Government, primarily through AusAID,⁴ continues to be the lead donor funding activities to combat human trafficking in East Asia. These include Australia's new, \$50 million flagship program, the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) announced in November 2012 by the then Prime Minister, the Hon Julia Gillard MP. AAPTIP continues the work of the Asia Regional Trafficking in Persons Project (ARTIP) for a further five years, and is due to commence in late 2013.

During the next year, there will be a continued focus on revising the strategic aims of Australia's response to human trafficking and slavery through the development of the Action Plan. The Australian Government will also work collaboratively with civil society to develop awareness-raising materials and examine possible ways to address exploitative practices in product supply chains.

2 Following the federal election of 7 September 2013, the Department of Families, Housing, Community Services and Indigenous Affairs was renamed the Department of Social Services.

3 Following the federal election of 7 September 2013, the Department of Immigration and Citizenship was renamed the Department of Immigration and Border Protection.

4 On 1 November 2013, AusAID was integrated into the Department of Foreign Affairs and Trade (DFAT) to better align Australia's development, foreign policy and trade objectives.

Introduction

Human trafficking and slavery are complex crimes and major violations of human rights. The Australian Government takes a comprehensive, whole-of-government approach to combating human trafficking and slavery. Australia is committed to working with other governments domestically and internationally, and with intergovernmental and non-government organisations (NGOs), to prevent human trafficking and slavery, prosecute the perpetrators, and protect and support the victims.

Human trafficking is a very different crime from people smuggling. Australia uses the term 'human trafficking' to encompass a range of crimes including those where a person is moved domestically or transnationally for the purposes of exploitation – as well as those where a person already in Australia is subjected to exploitative practices like slavery, servitude, forced labour and forced marriage. By contrast, people smuggling is the organised, irregular movement of people across borders, usually on a payment-for-service basis, and does not involve the ongoing exploitation of the victim by the offender.

Slavery is where a person exercises the rights of ownership over another person. Practices involving exploitation so serious that they are considered similar to slavery are known as slavery-like practices. Slavery-like practices include servitude, forced labour, deceptive recruiting, debt bondage, and forced marriage. Australia comprehensively criminalises human trafficking, slavery and slavery-like practices.

The link between human trafficking, slavery and slavery-like practices is that they involve the manipulation of complex relationships between the offender and the victim, and that they result in the serious undermining of the victim's personal freedom.

There is little reliable data about the nature and extent of human trafficking and slavery at a global, regional or domestic level. However, there is general consensus that human trafficking and slavery affect almost every country in the world, whether as a source, transit or destination country – or as a combination of these. The United Nations Office on Drugs and Crime (UNODC) *Global Report on Trafficking in Persons 2012* found that between 2007 and 2010, victims from at least 136 countries were detected in 118 countries worldwide.

The nature of human trafficking, slavery and slavery-like practices varies from region to region. The most visible form of these crimes involves the transnational movement of women for sexual exploitation. But around the world men, women and children are exploited for a wide range of other purposes, including forced labour in industries such as hospitality, construction, forestry, mining and agriculture; domestic and sweatshop labour; street begging; forced recruitment into militias and armed forces; and the harvesting of body organs.

Opportunities to traffic people into, or exploit people within, Australia are limited because of our strong migration controls, geographic isolation, and high degree of regulation, compliance and enforcement. Australia's comprehensive whole-of-government strategy to combat human trafficking and slavery also helps to ensure that Australia is a hostile environment for offenders.

Australia is traditionally a destination country for human trafficking and slavery, with the majority of trafficked people identified by Australian authorities to date being women from Asia (particularly Thailand, the Republic of Korea and Malaysia) who have been exploited within the sex industry. In recent years, cases of men and women exploited in a range of other industry sectors have increasingly been identified. In 2012–13, 45 per cent of investigations conducted by the Australian Federal Police (AFP) related to forms of labour exploitation not involving the sex industry. Of the 21 clients referred to the Support for Trafficked People Program in 2012–13, 43 per cent experienced exploitation other than in the sex industry.

Since the establishment of Australia's strategy to combat human trafficking and slavery in 2003, the Australian Government has provided more than \$150 million to support a range of domestic, regional and international initiatives. In 2012–13, key measures included:

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

These initiatives reflect the four central pillars of Australia's strategy to combat human trafficking and slavery: prevention and deterrence; detection and investigation; prosecution and compliance; and victim support and protection. Together these measures address the full cycle of trafficking from recruitment to reintegration and give equal weight to the critical areas of prevention, prosecution and victim support.

Australia's strategy to combat human trafficking and slavery is overseen by the Interdepartmental Committee on Human Trafficking and Slavery (IDC), chaired by the Attorney-General's Department (AGD), with membership from the following agencies:

- Australian Agency for International Development (AusAID)
- Australian Crime Commission (ACC)
- Australian Federal Police (AFP)
- Australian Institute of Criminology (AIC)
- Commonwealth Director of Public Prosecutions (CDPP)
- Department of Education, Employment and Workplace Relations (DEEWR)⁵
- Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)
- Department of Foreign Affairs and Trade (DFAT)
- Department of Immigration and Citizenship (DIAC)
- Department of the Prime Minister and Cabinet (PM&C)
- Fair Work Building and Construction (FWBC), and the
- Fair Work Ombudsman (FWO).

The IDC is responsible for monitoring the implementation of the strategy, reporting to the Australian Government on its effectiveness, and ensuring that emerging issues are addressed on a whole-of-government basis. Relevant agencies remain responsible for administering individual components of the strategy.

An Operational Working Group (OWG) comprising AFP, AGD, CDPP, DIAC and FaHCSIA has been established as a subcommittee of the IDC to resolve systemic operational issues that arise in the management of individual cases. The OWG also has an important role in referring emerging policy issues for the IDC's consideration.

This is the fifth report of the IDC and covers the period from 1 July 2012 to 30 June 2013.

⁵ Following the federal election of 7 September 2013, the Department of Education, Employment and Workplace Relations became the Department of Education and the Department of Employment.

Strengthening Australia's legislative frameworks

2012–13 saw the passage of two Acts intended to enhance Australia's legislative frameworks around human trafficking and slavery. The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Slavery Act) and the *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Vulnerable Witness Act) amended the *Criminal Code Act 1995* (Criminal Code) and the *Crimes Act 1914* (Crimes Act).

The Acts were developed following broad public consultations. In particular, the Acts sought to address the views of stakeholders following the 2010 discussion papers on *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections* and on *Forced and Servile Marriage*.⁶ Due to the complexity of the amendments required, the response to the 2010 discussion papers was progressed in two stages; the first focused on investigation and prosecution through the Slavery Act, and the second focused on victim support and rehabilitation through the Vulnerable Witness Act.

The Slavery Act was passed by the Australian Parliament on 27 February 2013, and came into force on 8 March 2013. The Slavery Act strengthened the existing range of offences against human trafficking and slavery to ensure the comprehensive criminalisation of all forms of serious exploitation.

Key amendments to the Criminal Code made by the Slavery Act include:

- the introduction of new offences of forced marriage and harbouring a victim, and standalone offences of forced labour and organ trafficking
- the expansion of the definition of exploitation to include a range of slavery-like practices
- amendments to existing definitions to capture more subtle forms of coercion, including psychological oppression, the abuse of power, or taking advantage of a person's vulnerability
- the expansion of the existing offences of sexual servitude and deceptive recruiting for sexual services to apply to all forms of servitude and deceptive recruiting, regardless of industry
- amendments to ensure the slavery offences apply to conduct which reduces a person to slavery, as well as conduct involving a person who is already a slave

⁶ The discussion papers on *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections* and *Forced and Servile Marriage* are available online at: <www.ag.gov.au/humantrafficking>.

- an increase to the penalties applicable to the debt bondage offences to ensure they adequately reflect the seriousness of enforcing an unfair debt contract, and
- the insertion of provisions to allow a judge or jury to consider factors such as the economic relationship between the victim and the offender, and the personal circumstances of the victim, in determining whether the victim was coerced, threatened or deceived, consented to organ removal, or entered into debt bondage.

The Slavery Act also amended the Crimes Act to improve the availability of reparation orders to individual victims of Commonwealth offences, including human trafficking and slavery.

The Vulnerable Witness Act was passed by the Australian Parliament on 27 June 2013, and came into force on 29 June 2013. The Vulnerable Witness Act provides protections for vulnerable witnesses giving evidence in Commonwealth criminal proceedings, including victims of human trafficking and slavery. Following the passage of the Vulnerable Witness Act, trafficked people can give evidence by closed-circuit television, video link or video recording, have their contact with the defendant or members of the public limited, and have a support person with them while they give evidence. The Vulnerable Witness Act also makes it an offence to publish material identifying a trafficked person, and allows trafficked people to make victim impact statements to the court outlining the harm they have experienced.

Key amendments to the Crimes Act made by the Vulnerable Witness Act include:

- the extension of existing vulnerable witness protections available to children in sexual offence proceedings to apply to all victims of human trafficking and slavery offences, as well as witnesses who apply to a court to be recognised as a 'special witness' due to a certain characteristic, such as age, culture or a disability
- the insertion of a new category of vulnerable witness protections to assist victims of child sex-related, human trafficking and slavery offences to give evidence in retrials and subsequent trials for those offences, and
- the insertion of a scheme to provide for the use of victim impact statements in the sentencing of federal offenders.

The Vulnerable Witness Act also amended the Criminal Code to allow a court to hear evidence by video link from witnesses outside Australia in proceedings for human trafficking and slavery offences.

The amendments made by the Slavery Act and the Vulnerable Witness Act ensure Australia's law enforcement authorities are well equipped to investigate and prosecute human trafficking and slavery, and that trafficked people are afforded appropriate support and protection when engaging with the criminal justice system.

Extracts of the Criminal Code and the Crimes Act, incorporating the recent amendments, are at Appendix 3.

National Action Plan to Combat Human Trafficking and Slavery

In line with a recommendation of the United Nations (UN) Special Rapporteur on trafficking in persons, especially women and children, following her November 2011 mission to Australia, AGD is leading the development of Australia's revised formal national plan of action.

The *National Action Plan to Combat Human Trafficking and Slavery* (Action Plan) will set the strategic aims of the ongoing Australian response to human trafficking and slavery. The Action Plan will set clear goals and action items which align to our domestic laws and international obligations and which are underpinned by key performance indicators for monitoring purposes. These will be supported by a series of guiding principles which will provide the high-level and strategic foundation for the Action Plan.

Key aspects of the existing strategy will remain the same: the four pillars (prevention and deterrence; detection and investigation; prosecution and compliance; and victim support and protection); the balance between a victim-centred approach complemented by effective criminal justice processes; and established measures such as the Support for Trafficked People Program and the Human Trafficking Visa Framework.

A regular monitoring program will be established to assess the Action Plan's effectiveness and progress. This will include monitoring through existing mechanisms such as the annual reports of the Interdepartmental Committee on Human Trafficking and Slavery.

The Action Plan will be supplemented by a Framework for Monitoring Trafficking in Persons in Australia, currently being finalised by the AIC.

Preliminary consultations on the Action Plan were held at both the 2012 National Roundtable on Human Trafficking and Slavery, and the May 2013 National Roundtable on Human Trafficking and Slavery Senior Officials' Meeting. Further collaboration and consultation with government agencies, unions, industry groups and civil society will take place in 2013–14.

Ethical standards and Australian Government procurement

On 8 March 2013, the then Prime Minister, the Hon Julia Gillard MP, announced an initiative to ensure that no business providing goods or services to the Australian Government is tainted by human trafficking or slavery anywhere in the supply chain.

The Australian Government is a significant contributor to the national economy and has an economic footprint that extends to all industries and regions. The Australian Government therefore has an important role to play in leading by example in ensuring our procurement practices meet with ethical standards.

During her announcement of the initiative, former Prime Minister Gillard listed areas of concern that could be improved through revised Commonwealth procurement arrangements, as well as strategies that the Department of Finance and Deregulation⁷ (Finance) will adopt to address these areas of concern, including:

- processes – Finance will ensure that Commonwealth procurement arrangements adequately identify human trafficking and slavery as an important issue when considering the ethical behaviour of suppliers
- advice to agencies – Finance will issue revised procurement guidance to reinforce the need for specific actions or behaviours to eliminate the chances of human trafficking and slavery being used in supply chains, and
- training – Finance will strengthen training and development arrangements for Commonwealth procurement officers to reinforce specific legal and policy requirements, including reporting of breaches of policy.

Finance, in consultation with AGD, is currently developing implementation measures to support the initiative, focusing on education and awareness-raising strategies.

Measures that have already been undertaken include a briefing of the Commonwealth's Senior Procurement Officers' Reference Group on 3 April 2013 about the implications of the initiative, and an article in the March 2013 edition of the *Commonwealth Procurement Bulletin* reminding procurement officers of their obligations with respect to ethical procurement.

To more broadly examine ways to address human trafficking and related exploitative practices in supply chains, a Supply Chains Working Group has been established under the National Roundtable on Human Trafficking and Slavery. The working group will begin its work in 2014.

⁷ Following the federal election of 7 September 2013, the Department of Finance and Deregulation was renamed the Department of Finance.

Investigation and prosecution

Australia's strategy to combat human trafficking and slavery includes performance indicators relating to the investigation, prosecution, and conviction of people involved in criminal activities associated with human trafficking and slavery.

Given the complexity of matters involving human trafficking and slavery, a range of Australian Government agencies work together to ensure that matters are effectively investigated and prosecuted, and that victims get the support they need.

The *United Nations Convention against Transnational Organized Crime* (UNTOC) and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol) establish a framework for international cooperation, including various forms of assistance for the conduct of investigations and prosecutions and for the extradition of offenders.

The AFP maintains an extensive network of officers posted to Australia's overseas missions. The officers provide a conduit for Australian and overseas law enforcement agencies to exchange information and progress investigations. In 2012–13, this network was complemented by DIAC specialist immigration officers posted in Thailand, China and the Philippines who focus on human trafficking issues and aim to prevent trafficking in source countries.

The AFP Human Trafficking Team (HTT) investigates human trafficking and slavery matters, both proactively and through referrals from other Commonwealth or State and Territory Government agencies, industry or NGOs. The HTT National Coordinator is based in Canberra, with HTTs located in Sydney and Melbourne. The AFP also has members trained in human trafficking and slavery in Brisbane, Darwin and Perth. For human trafficking and slavery matters in other locations, the HTT can draw upon additional support from the AFP's crime operations function, which has members in each capital city.

Since 2004, the majority of victims have come to the attention of authorities in New South Wales and Victoria, and have primarily been linked to allegations of sexual exploitation. This reflects the population concentration and the size of the local sex industries in these cities. Victims of human trafficking and slavery have also been identified in Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory.

Primary legislative provisions

Criminal Code offences

Australia's human trafficking and slavery-related offences are set out in Divisions 270 and 271 of the Commonwealth *Criminal Code Act 1995* (Criminal Code). On 8 March 2013, amendments to Divisions 270 and 271 came into force, strengthening Australia's legislative framework criminalising these exploitative crimes (see page 6).

Division 270 of the Criminal Code criminalises slavery, which is defined as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. The slavery offences have universal jurisdiction and can therefore apply whether or not the conduct occurred in Australia, and whether or not the victim or the offender are Australian citizens or residents.

Division 270 also criminalises slavery-like practices, including servitude, forced labour and deceptive recruiting. These offences can apply to the exploitation of a person's labour or services in any industry, or to exploitation within intimate relationships. Forced marriage is also considered a slavery-like practice under Division 270, and applies where one or both parties do not fully and freely consent to the marriage because of coercion, threat or deception.

The slavery-like offences in Division 270 have extended geographic jurisdiction, and can apply where the conduct occurred in Australia, or where the conduct occurred outside Australia but the offender was an Australian company, citizen or resident. None of the offences in Division 270 require the victim to be subject to an element of movement.

Division 271 of the Criminal Code contains specific offences for trafficking in persons, fulfilling Australia's obligations under the Trafficking Protocol. The offences in Division 271 are not limited to trafficking for the purposes of sexual exploitation, and cover trafficking in all its forms. Division 271 includes:

- trafficking in persons offences, which criminalise organising or facilitating the transportation of the victim into, out of, or within Australia, using coercion, threat or deception, or by being reckless as to the exploitation of the victim
- trafficking in children offences, which criminalise organising or facilitating the transportation of a child into, out of, or within Australia, intending or reckless as to whether the child will be used to provide sexual services or will be otherwise exploited
- organ trafficking offences, which criminalise organising or facilitating the transportation of the victim into, out of, or within Australia, reckless as to whether the victim's organ will be removed
- an offence of harbouring a victim, which criminalises harbouring, receiving or concealing a victim to assist or further the purpose of another person's human trafficking, slavery or slavery-like offence, and
- an offence of debt bondage, to prevent offenders from using unfair debt contracts or other similar arrangements to force victims into providing services to pay off large debts.

Table 1: Criminal Code provisions

Section	Offence	Maximum penalty
270.3(1)	Intentionally reduce a person to slavery, ⁸ possess or exercise rights of ownership over a slave, engage in slave trading, ⁹ enter into a commercial transaction involving a slave, or exercise control or direction over, or provide finance for, slave trading or a commercial transaction involving a slave	25 years
270.3(2)	Recklessly enter into a commercial transaction involving a slave, or exercise control or direction over, or provide finance for, slave trading or a commercial transaction involving a slave	17 years
270.5(1)	Cause another person to enter into or remain in servitude ¹⁰	15 years, or 20 years for an aggravated offence ¹¹
270.5(2)	Conduct a business ¹² involving the servitude of another person or persons	15 years, or 20 years for an aggravated offence
270.6A(1)	Cause another person to enter into or remain in forced labour ¹³	9 years, or 12 years for an aggravated offence
270.6A(2)	Conduct a business involving the forced labour of another person or persons	9 years, or 12 years for an aggravated offence

8 'Slavery' is defined in section 270.1 of the Criminal Code as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

9 'Slave trading' is defined in subsection 270.3(3) of the Criminal Code as including the capture, transport or disposal of a person with the intention of reducing the person to slavery; or the purchase or sale of a slave.

10 'Servitude' is defined in subsection 270.4(1) of the Criminal Code as the condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception: a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing the labour or services or to leave the place or area where he or she (the victim) provides the labour or services; and the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.

11 Under subsection 270.8(1) of the Criminal Code, a servitude, forced labour, deceptive recruiting or forced marriage offence is aggravated where the victim is under 18; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

12 'Conducting a business' is defined in section 270.1A of the Criminal Code to include taking any part in the management of the business; exercising control or direction over the business; or providing finance for the business.

13 'Forced labour' is defined in subsection 270.6(1) of the Criminal Code as the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing the labour or services; or to leave the place or area where he or she (the victim) provides the labour or services.

Section	Offence	Maximum penalty
270.7	Intentionally induce another person to enter into an engagement to provide labour or services, where the other person is deceived ¹⁴ about the extent to which the person will be free to leave, or to cease providing labour or services; the quantum or existence of a debt owed or claimed to be owed; the fact the engagement will involve exploitation or the confiscation of travel or identity documents; or, if the engagement is to involve the provision of sexual services ¹⁵ , that fact, or the nature of sexual services to be provided	7 years, or 9 years for an aggravated offence
270.7B(1)	Cause another person to enter into a forced marriage ¹⁶	4 years, or 7 years for an aggravated offence
270.7B(2)	Be a party to a forced marriage, where you are not a victim of the forced marriage	4 years, or 7 years for an aggravated offence
271.2(1), (1A)	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of another person, using coercion, threat or deception ¹⁷ to obtain that person's compliance	12 years, or 20 years for an aggravated offence ¹⁸
271.2(1B), (1C)	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of another person, reckless as to whether the other person will be exploited ¹⁹	12 years, or 20 years for an aggravated offence

14 'Deceive' is defined in section 271.1 of the Criminal Code as to mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

15 'Sexual service' is defined in the Dictionary to the Criminal Code as the use or display of the body of the person providing the service for the sexual gratification of others.

16 'Forced marriage' is defined in subsection 270.7A(1) of the Criminal Code as a marriage where, because of the use of coercion, threat or deception, one party to the marriage (the victim) entered into the marriage without freely and fully consenting.

17 'Coercion' and 'threat' are defined in section 270.1A of the Criminal Code. Coercion is defined as including coercion by any of the following: force; duress; detention; psychological oppression; abuse of power; or taking advantage of a person's vulnerability. Threat means: a threat of coercion; or a threat to cause a person's deportation or removal from Australia; or a threat of any other detrimental action, unless there are reasonable grounds for the threat of that action in connection with the provision of labour or services by a person. Threat includes a threat made by any conduct, whether express or implied and whether conditional or unconditional.

18 Under subsection 271.3(1) of the Criminal Code, a trafficking in persons offence is aggravated where the offender intended for the victim to be exploited; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

19 'Exploitation' is defined in section 271.1A of the Criminal Code as conduct which causes the victim to enter into any of the following conditions: slavery, or a condition similar to slavery; servitude; forced labour; forced marriage; or debt bondage.

Section	Offence	Maximum penalty
271.2(2), (2A), (2B), (2C)	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of another person, where the other person is deceived about the provision, or nature of the provision, of sexual services; the extent to which the person will be free to leave, or to cease providing sexual services; the quantum or existence of a debt owed or claimed to be owed; the fact the engagement will involve exploitation or the confiscation of travel or identity documents	12 years, or 20 years for an aggravated offence
271.4(1), (2)	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of a person who is under 18, intending or reckless as to whether the person will be used to provide sexual services or will be otherwise exploited	25 years
271.5(1)	Organise or facilitate the transportation of a person from one place in Australia to another, using coercion, threat or deception to obtain that person's compliance	12 years, or 20 years for an aggravated offence ²⁰
271.5(2)	Organise or facilitate the transportation of a person from one place in Australia to another, reckless as to whether the other person will be exploited	12 years, or 20 years for an aggravated offence
271.5(2A), (2B)	Organise or facilitate the transportation of a person from one place in Australia to another, where the other person is deceived about the provision, or nature of the provision, of sexual services; the extent to which the person will be free to leave, or to cease providing sexual services; the quantum or existence of a debt owed or claimed to be owed; the fact the engagement will involve exploitation or the confiscation of travel or identity documents	12 years, or 20 years for an aggravated offence
271.7	Organise or facilitate the transportation of a person who is under 18 from one place in Australia to another, intending or reckless as to whether the person will be used to provide sexual services or will be otherwise exploited	25 years
271.7B(1), (2)	Organise or facilitate the entry, proposed entry, exit, proposed exit, or receipt of another person, reckless as to whether the other person's organ will be removed ²¹	12 years, or 20 years for an aggravated offence ²²

20 Under subsection 271.6(1) of the Criminal Code, a domestic trafficking in persons offence is aggravated where the offender intended for the victim to be exploited; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

21 Under section 271.7A of the Criminal Code, the removal of a person's organ is captured if the removal, or entering into an agreement for the removal, would be contrary to the law of the State or Territory where it is to be carried out; or neither the victim, nor the victim's guardian, consented to the removal, and it would not meet a medical or therapeutic need of the victim.

22 Under subsection 271.7C(1) of the Criminal Code, an organ trafficking offence is aggravated where the victim is under 18; the offender intended for the victim's organ to be removed; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

Section	Offence	Maximum penalty
271.7D	Organise or facilitate the transportation of a person from one place in Australia to another, reckless as to whether the other person's organ will be removed	12 years, or 20 years for an aggravated offence ²³
271.7F(1)	Harbour, receive or conceal a victim, assisting or furthering the purpose of another person's human trafficking or slavery offence	4 years, or 7 years for an aggravated offence ²⁴
271.8(1)	Intentionally cause another person to enter into debt bondage ²⁵	4 years, or 7 years for an aggravated offence ²⁶

Employer sanctions offences

Under the *Migration Act 1958* (Migration Act), it is an offence for a person to allow to work, or refer for work, an unlawful non-citizen or a lawful non-citizen who is working in breach of a visa condition. The penalty for committing such an offence is two years' imprisonment. 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.

Under the Migration Act, exploitation occurs if a person causes another person to enter into slavery, or a condition similar to slavery, servitude, forced labour, forced marriage, or debt bondage. The penalty for committing an aggravated offence is five years' imprisonment.

One case was successfully prosecuted in the reporting period.²⁷ Along with offences under the Criminal Code, the defendant, Chee Mei Wong, was convicted of four counts of allowing a person to work in breach of visa conditions in circumstances of exploitation, and two counts of allowing a non-citizen to work in breach of a visa condition (see page 20).

The *Migration Amendment (Reform of Employer Sanctions) Act 2013* was passed on 27 February 2013 and came into effect on 1 June 2013. The Act introduced amendments to the Migration Act to implement the recommendations of the independent 2010 Howells' Review of the *Migration Amendment (Employer Sanctions) Act 2007*. The amendments

23 Under subsection 271.7E(1) of the Criminal Code, a domestic organ trafficking offence is aggravated where the victim is under 18; the offender intended for the victim's organ to be removed; the offender subjected the victim to cruel, inhuman or degrading treatment; or the offender engaged in conduct that gave rise to a danger of death or serious harm to the victim or another person.

24 Under subsection 271.7G(1) of the Criminal Code, a harbouring a victim offence is aggravated where the victim is under 18.

25 'Debt bondage' is defined in the Dictionary to the Criminal Code as the status or condition that arises from a pledge by a person: of his or her personal services; or of the personal services of another person under his or her control; as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if: the debt owed or claimed to be owed is manifestly excessive; or the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or the length and nature of those services are not respectively limited and defined.

26 Under subsection 271.9(1) of the Criminal Code, a debt bondage offence is aggravated where the victim is under 18.

27 This prosecution relates to legislation prior to the *Migration Amendment (Reform of Employer Sanctions) Act 2013*, which came into effect on 1 June 2013, and includes aggravated offences.

expand the range of employment relationships subject to the employer sanctions offences, and provide new investigation powers allowing authorised officers to gather evidence to prove suspected breaches of work-related provisions. The amendments also add infringement notices and non-fault civil penalties to the range of available employer sanctions, supplementing the existing criminal offences.

The introduction of the new employer sanctions regime was accompanied by a national communication strategy which included a media and stakeholder engagement campaign to educate businesses on their obligations under the reforms. Enhancements were also made to DIAC systems to assist employers to more easily check employees' work entitlements through the Visa Entitlement Verification Online system.

Table 2: Migration Act provisions as at 30 June 2013

Section	Offence	Maximum penalty
234(1), (2)	Provide false documents or false and misleading statements relating to non-citizens	10 years or \$170,000 or both
234A(1), (2)	Provide false documents or false and misleading statements relating to at least five non-citizens	20 years or \$340,000 or both
245AB(3)	Allow an unlawful non-citizen to work	2 years
245AC(3)	Allow a lawful non-citizen to work in breach of a work-related condition	2 years
245AD(1), (2)	Aggravated offence – allow an unlawful non-citizen to work; allowing a lawful non-citizen to work in breach of a work-related condition	5 years for an aggravated offence ²⁸
245AE(3)	Refer an unlawful non-citizen for work	2 years
245AEA(3)	Refer a lawful non-citizen for work in breach of a work-related condition	2 years
245AEB(1), (2)	Aggravated offence – refer an unlawful non-citizen to work, refer a lawful non-citizen to work in breach of a work-related condition	5 years for an aggravated offence

²⁸ Under subsections 245AD(1) and(2) and 245AEB(1) and (2) of the Migration Act, an offence of allowing a non-citizen to work is aggravated if the worker is being exploited and the person knows of, or is reckless to, that circumstance. Under section 245AH, 'exploited' is defined to have the meaning provided in section 271.1A of the Criminal Code.

State and Territory criminal offences

State and Territory Governments are responsible for regulating the sex industry in Australia. Most jurisdictions have enacted legislation relating to sexual servitude and deceptive recruiting which would allow for the prosecution of cases involving sexual exploitation. However, in practice, State and Territory police services generally refer human trafficking and slavery-related matters to the AFP. This is because the AFP has the appropriate specialisation and resourcing to conduct human trafficking and slavery-related investigations. The AFP is also responsible for referring suspected victims to the Support for Trafficked People Program.

All jurisdictions have a range of offence provisions to cover related crimes such as assault, sexual assault, forced prostitution, kidnapping and deprivation of liberty. State offences may be used in conjunction with Commonwealth offences.

Investigations

Between January 2004 and June 2013, the AFP HTT undertook 399 investigations and assessments of human trafficking and slavery-related offences. Where there was sufficient evidence, these matters were referred to the CDPP.

The AFP commenced 52 new investigations and assessments in 2012–13. This compares to 41 new investigations and assessments in 2011–12. Historically, most referrals investigated by the AFP have related to sexual exploitation, with a smaller number involving other forms of labour exploitation as the primary criminal conduct. In 2012–13, approximately 43 per cent of the new matters related to sexual exploitation, and 45 per cent related to other forms of labour exploitation. The remainder of new matters related to other forms of human trafficking and slavery.

Significant AFP operations

The investigation of matters involving human trafficking and slavery can be protracted, complex and resource intensive, particularly given their often transnational nature.

There are significant practical challenges in investigating crime across international borders, including the challenges of communication, and differences in the role of national institutions, legal and political systems. Victims, offenders and evidence can be located in more than one country, and the same set of circumstances can generate investigations and prosecutions in more than one jurisdiction. Larger operations can involve concurrent investigations in multiple locations throughout Australia, and require the support of the AFP's overseas liaison network.

In 2012–13, the AFP HTT assisted Western Australia Police with an investigation into an established criminal network involved in deceptively recruiting Eastern European men for the purpose of labour exploitation in Australia. The investigation resulted in the first human trafficking charges under the Criminal Code laid in Western Australia.

Working with State and Territory law enforcement

Australian Policing Strategy to Combat Trafficking in Persons

On 4 May 2011, the AFP and all State and Territory police endorsed the *Australian Policing Strategy to Combat Trafficking in Persons 2011–13* (Australian Policing Strategy). The AFP and its State and Territory policing partners are committed to working collaboratively to respond to human trafficking and slavery. The Australian Policing Strategy encompasses all forms of human trafficking and slavery, including labour exploitation and organ trafficking.

The Australian Policing Strategy outlines a number of obligations, primarily for the AFP, but also for State and Territory police forces, which are:

- promoting awareness of human trafficking and slavery as crimes
- maintaining partnerships with government and NGOs and developing prevention programs
- contributing to assessments and intelligence products prepared by the Commonwealth, States and Territories
- ensuring that appropriate technical tools are available to police agencies
- ensuring that all suspected victims are given the option of referral to the case management service provider
- providing appropriate training and education to police personnel, and
- contributing to reviews of legislation and regulatory regimes.

The Australian Policing Strategy is in effect until the end of 2013, at which time it will be reviewed and options to extend or amend the strategy will be considered.

Referrals

In Australia, human trafficking and slavery-related matters have been referred to authorities by various sources. The referral of many matters has resulted from official State, Territory, and Commonwealth Government activities, including those activities undertaken by State and Territory police together with DIAC. Some matters have been referred by industry representatives or NGOs, while others have been referred by concerned individuals or co-workers of suspected victims. A small number of referrals have also been received from those either working at, or connected to, various embassies and diplomatic missions located in Australia.

DIAC has a network of compliance officers in every State and Territory in Australia. DIAC officers conduct field operations to locate foreign nationals who have breached their visa conditions, or who are unlawfully in Australia. These officers are provided with specific training in identifying possible indicators of trafficking activity during compliance operations. They are also trained to ask questions designed to elicit information that might indicate whether a person has been trafficked. Any indicators of human trafficking or slavery are referred to the AFP for further assessment, irrespective of the visa status of the person concerned.

Human trafficking does not imply illegal entry: to date all suspected victims have entered on a valid visa, although immigration malpractice or fraud may later become apparent. In 2012–13, 44 reports of possible human trafficking (involving 19 possible victims) were referred by DIAC to the AFP for assessment. Suspected victims had entered Australia on a variety of visa types, including tourist, student, and temporary work visas, and some held electronic visas. Some visas had expired by the time their holders were located, making them unlawful ‘overstayers’, while the immigration status of others remained lawful.

During the reporting period, AFP personnel conducted 47 workplace visits, including assisting DIAC officers on a number of compliance visits to various work sites.

Criminal methodology

In Australia, human trafficking and slavery matters have largely involved small crime groups, rather than large organised crime groups. These small crime groups use family or business contacts overseas to facilitate recruitment, movement and visa fraud. Human trafficking and slavery matters have also generally involved other crime types, including migration fraud, identity fraud, document fraud and money laundering.

Research undertaken by the AIC during the reporting period has shown that offenders convicted of human trafficking and slavery offences under the Criminal Code often shared similar backgrounds, experiences and characteristics with their victims. As well as being of the same sex, offenders often shared similar cultural, language, socio-economic and migration backgrounds and work histories with their victims. Several of the female offenders also had prior histories of victimisation.

With the entry into force of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act* (Slavery Act) in March 2013, the AFP has begun to receive and investigate referrals relating to the new forced marriage offences. Forced marriage matters are expected to require a different investigative approach from other human trafficking and slavery matters, including because of the increased likelihood that immediate family members will be the primary offenders; that the victim will be an Australian citizen or resident; that the victim will be under the age of 18; and that the victim will be taken from Australia to another country for the purposes of the offence.

Prosecutions

Securing prosecutions is a key objective of the Australian Government strategy to combat human trafficking and slavery.

The CDPP is an independent prosecuting service established by the Australian Parliament to prosecute offences against Commonwealth law. The CDPP has no investigative function, and matters are referred to the CDPP from the AFP and other investigative agencies. Decisions about whether to proceed with human trafficking or slavery-related prosecutions are guided by the *Prosecution Policy of the Commonwealth*.²⁹

29 A copy of the Prosecution Policy is available online at: <www.cdpp.gov.au/Publications/ProsecutionPolicy/>.

The CDPP must be satisfied that:

- there are reasonable prospects of a conviction being secured, and
- the prosecution would be in the public interest.

In making this decision, the prosecutor must evaluate how strong the case is likely to be when presented in court. This evaluation continues at each phase of the trial process. The decision can only be made based on admissible evidence. Not all the information gathered during the course of the investigation will necessarily be admissible. The evaluation must take into account such matters as the availability, competence and credibility of witnesses and their likely effect on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence open to the defendant and any other factors that could affect the likelihood of a conviction.

The cooperation of suspected victims is essential to the investigation and prosecution of human trafficking and slavery-related offences. The major impediment to prosecuting these offences is the reluctance of people to give evidence, particularly as they (or their families) may have been the subject of violence or threats of violence. Because the prosecution of matters involving human trafficking and slavery relies heavily on the evidence of individual victims, corroboration of that evidence is frequently necessary to meet the high standard of proof in criminal proceedings. It is often challenging to corroborate this evidence.

Amendments made to the framework criminalising human trafficking and slavery during the reporting period aimed to address some of the challenges in obtaining successful prosecutions. For example, the Slavery Act inserted a definition of coercion into the Criminal Code to ensure the subtle means by which an offender may gain a victim's compliance is captured and criminalised. The Slavery Act extended protections to assist trafficked people to participate in the criminal justice system, including by allowing them to give evidence by closed-circuit television, video link or video recording, and by ensuring the identities of trafficked people are protected.

Since the commencement of Divisions 270 and 271 of the Criminal Code, 17 individuals have been convicted of human trafficking or slavery-related offences. Ten of those individuals were convicted of slavery offences, four of servitude offences and three of human trafficking offences. One of the human trafficking convictions was for a matter involving labour exploitation. As at 30 June 2013, seven human trafficking and slavery matters were before the courts. Two of those matters were at the appeal stage.

The following provides a summary of convictions in 2012–13. More detailed information on these matters, and on ongoing matters, can be found at Appendix 1.

On 27 March 2013, **Chee Mei Wong** was convicted of one count of conducting a business involving sexual servitude contrary to subsection 270.6(2) of the Criminal Code, four aggravated counts of allowing non-citizens to work in breach of their visa conditions contrary to subsection 245AC(2) of the Migration Act, and two counts of allowing non-citizens to work in breach of their visa conditions contrary to section 245AC of the

Migration Act. The convictions relate to 11 women from Malaysia who worked for Ms Wong as sex workers under very harsh circumstances.

On 16 April 2013, Ms 'K' pleaded guilty to trafficking in children contrary to subsection 271.4(1) of the Criminal Code. This case is significant as it represents Australia's first conviction for trafficking in children under the Criminal Code. Ms K brought her daughter to Australia from Thailand, and subsequently subjected her to sexual exploitation. Ms K was sentenced to nine years' imprisonment, with a non-parole period of four years. As at 30 June 2013, Ms K had appealed against her sentence.

Table 3: Convictions finalised, by Criminal Code provision, 2012–13

	270.3(1) Slavery	270.3(2) Slavery	270.6(1) Sexual servitude	270.6(2) Sexual servitude	271.2(1B) Trafficking in persons	271.2(2B) Trafficking in persons	271.4(1) Trafficking in children	271.8(1) Debt bondage
K								
WONG, Chee Mei								

Table 4: Convictions finalised, by Criminal Code provision, 2004–13

	270.3(1) Slavery	270.3(2) Slavery	270.6(1) Sexual servitude	270.6(2) Sexual servitude	271.2(1B) Trafficking in persons	271.2(2B) Trafficking in persons	271.4(1) Trafficking in children	271.8(1) Debt bondage
DOBIE, Keith								
DS								
HO, Ho Kam								
HO, Kam Tin								
K								
KOVACS, Melita								
KOVACS, Zoltan								
LEECH, Sarisa								
McIVOR, Trevor								
NANTAKHUM, Watcharaporn								
NETTHIP, Namthip								
SEIDERS, Johan								
TANG, Wei								
TANUCHIT, Kanokporn								

	270.3(1) Slavery	270.3(2) Slavery	270.6(1) Sexual servitude	270.6(2) Sexual servitude	271.2(1B) Trafficking in persons	271.2(2B) Trafficking in persons	271.4(1) Trafficking in children	271.8(1) Debt bondage
TRIVEDI, Divye ³⁰								
WONG, Chee Mei								
YOTCHOMCHIN (KENT), Somsri								

Law enforcement training

Human Trafficking Investigations Program

In 2012–13, the AFP delivered two Human Trafficking Investigations Programs in Canberra. The course aims to assist in developing investigator skills in the specifics of human trafficking and slavery-related investigations.

Since 2004, 212 investigators have completed the course, including 145 AFP investigators, 40 investigators from State and Territory police (all jurisdictions), six representatives from DIAC and 21 investigators from foreign police services. Thirty-five investigators from AFP, DIAC and State and Territory Police completed the course during the 2012–13 reporting period.

In August 2012, members of the AFP HTT attended the International Law Enforcement Academy (ILEA) to deliver a two week International Human Trafficking Investigation Workshop to participants from 11 South East Asian countries. The participants were a mix of investigators, prosecutors, immigration officers and social welfare members, reflecting the cooperation between different agencies in human trafficking and slavery-related investigations. In addition to the Human Trafficking Investigations Program, the AFP HTT has delivered training to AFP police recruit programs.

The AFP is also developing an information package for frontline investigators to assist them in identifying human trafficking and slavery.

Continuing legal education seminars

As part of the ongoing implementation of the Slavery Act, on 27 March 2013 AGD officers presented to a CDPP continuing legal education seminar to raise awareness about technical aspects of the amendments and the broader implications of the Act.

³⁰ References in the Third Report of the Anti-People Trafficking Interdepartmental Committee, which covered the period 1 July 2010 to 30 June 2011, and the Fourth Report of the Anti-People Trafficking Interdepartmental Committee, which covered the period 1 July 2011 to 30 June 2012, incorrectly spelled the name of Mr Divye Trivedi.

The presentation was well attended by CDPP staff from State and Regional Offices, including prosecutors who have previously worked on human trafficking and slavery matters.

Immigration compliance training

In the reporting period, DIAC provided training to 24 onshore compliance officers through the human trafficking and slavery module of the Compliance Training Program. DIAC also provided two training sessions on human trafficking and slavery to 34 staff being posted overseas, to ensure they would be able to recognise indicators of trafficking and prevent trafficking from source countries. Specialised training has also been developed for State and Territory Offices to ensure frontline staff, as a first point of client contact, are able to identify indicators of human trafficking and slavery. During the reporting period, DIAC delivered this training to 17 officers in the Australian Capital Territory Regional Office.

Training for Australian consular officials overseas

DFAT officers posted overseas are required to report on the possible commission of extraterritorial crimes to ensure that, where appropriate, such matters are referred to Australian law enforcement authorities. Following the introduction of the new forced marriage offences in March 2013, DFAT has updated and strengthened policy guidance and training for DFAT officers posted overseas including on the management and referral of consular cases involving forced marriage.

Training for civil marriage celebrants

AGD is working with marriage celebrants to raise awareness of forced marriage issues. Following the introduction of the new forced marriage offences in March 2013, a module about forced marriage and servile marriage has been included in the professional development training provided to civil marriage celebrants. As part of the ongoing implementation of the Slavery Act, in 2013–14, AGD will work with marriage celebrants in both the civil and religious spheres to raise awareness about forced marriage.

Australia's response to serious and organised crime

Human trafficking is a complex form of transnational organised crime. A range of people may be involved in the trafficking process, including those engaged in the recruitment, transport and harbouring of trafficked people, and in providing false identification or immigration documentation.

The Australian Government is committed to preventing, disrupting, investigating and prosecuting serious and organised crime in all its forms. Australia adopts a capability-led approach to respond to the challenges of serious and organised crime. Under this approach, five key capabilities are used to guide the development of concrete measures to combat serious and organised crime. These capabilities are:

- the development of intelligence, information sharing and interoperability at a whole-of-government level
- removing the profit motive of organised crime by targeting the criminal economy
- investigation, prosecution and offender management laws and processes that are able to respond to the flexible, innovative, resilient and multi-jurisdictional nature of organised crime
- the development of preventative partnerships with industry and the community, and
- the development of strong domestic and international partnerships.

This approach aims to ensure effective cooperation and collaboration among policy, regulatory, law enforcement and intelligence agencies to combat serious and organised crime. It also aims to improve information and intelligence sharing between law enforcement and partner agencies to create a more accurate picture of serious and organised crime in Australia and enhance the Government's ability to address all forms of serious and organised criminal activity.

Three of the key initiatives developed under this capability-led approach are:

- the ACC's classified Organised Crime Threat Assessment (OCTA), prepared every two years, to provide a picture of the most significant threats from organised criminal activity
- multi-agency responses, such as taskforces, and working groups to respond to operational, policy, regulatory and legislative issues, and
- the National Organised Crime Response Plan, agreed with States and Territories, which sets out a framework for strengthened multi-jurisdictional collaboration and coordination in combating organised crime in Australia.

Organised Crime in Australia 2013

During the reporting period, the ACC released the *Organised Crime in Australia 2013* report.³¹ The report is an unclassified version of the OCTA, and provides a comprehensive profile of serious and organised crime in Australia. The report summarises the context in which organised crime operates in Australia, and outlines each of the key illicit markets and the activities which fundamentally enable serious and organised crime, including human trafficking and slavery.

31 The *Organised Crime in Australia 2013* report is available online at: <www.crimecommission.gov.au>.

National Organised Crime Response Plan 2010–13

Commonwealth, State and Territory governments developed the National Organised Crime Response Plan (the National Response Plan) in 2010 to set out strategic principles and protocols to underpin a national response to organised crime. The National Response Plan provided a framework to strengthen multi-jurisdictional collaboration and coordination in combating organised crime in Australia through a range of measures, including measures aimed at:

- improving the consistency of legislation to fight organised crime
- removing impediments to effective sharing of information and intelligence, and
- targeting the priority organised crime risks identified in the OCTA.

The National Organised Crime Response Plan expired in June 2013 and the Government is currently considering next steps.

National Criminal Intelligence Fusion Capability

The ACC's National Criminal Intelligence Fusion Capability (Fusion) is a key element of Australia's collaborative approach to serious and organised crime, and supports a whole-of-government response to this threat. Fusion brings together experts, analysts and investigators from the Commonwealth, States and Territories, including from law enforcement, national security and related agencies.

Fusion is now in the final year of a four year implementation plan. During its first three years, Fusion helped to paint a more comprehensive picture of criminal targets, risks, threats and vulnerabilities than would be possible with each agency working in isolation. In 2012–13, Fusion harnessed discovery and partner work to identify new leads, and has produced a wide range of intelligence products for its partners.

During the reporting period, Fusion was used not only to continue to enhance data collections, data ingestion and analytic tools, but also to generate further intelligence insights. Fusion achieved this by continuing to build proactive monitoring and alerting capabilities against known serious and organised crime entities, developing early detection capabilities, and producing timely and relevant analytic intelligence products. Fusion also focused on developing more robust collaborations with international law enforcement partners through the exchange of criminal intelligence.

In 2013–14, Fusion will continue to invest significant effort in partnering with the broader National Intelligence Community to improve responses to the national security threat of serious and organised crime.

Australian Criminal Intelligence Database/Australian Law Enforcement Intelligence Network

From August 2012 to February 2013, the ACC ran a project to facilitate communication and coordination between law enforcement agencies on human trafficking issues by monitoring intelligence being uploaded to the Human Trafficking Desk (HT Desk).

The HT Desk was established on the Australian Criminal Intelligence Database (ACID) and the Australian Law Enforcement Intelligence Network (ALEIN). ACID is a single intelligence database that centralises Australia's criminal information and intelligence. ALEIN is a secure extranet which provides a gateway to secure databases (such as ACID), as well as a secure channel for sharing criminal information and intelligence between federal, State and Territory police. Together, ACID and ALEIN form a national repository of criminal information and intelligence.

The project involved reviewing information reports as they were uploaded to the desk, confirming entities where appropriate, identifying syndicate linkages across jurisdictions and disclosing actionable intelligence back to the AFP and jurisdictions. The ACC continues to maintain the capability of the HT Desk for the use of other agencies or for the possibility of future projects.

Support and assistance to trafficked people

The Australian Government response to human trafficking and slavery continues to focus on providing appropriate support and services for trafficked people.

Support for Trafficked People Program

Australia provides a comprehensive range of support services for trafficked people through our Support for Trafficked People Program (Support Program). Trafficked people may be identified through a number of avenues, including immigration officials, law enforcement agencies, NGOs, hospitals, medical practitioners, consulates and government agencies. Trafficked people are referred to the AFP for assessment and, where appropriate, entry to the Support Program. Eligibility for the Support Program is determined by the AFP and is based on whether a person is, or may have been, the victim of a human trafficking or slavery-related offence. The person must also be an Australian citizen, or hold a valid visa.

To date, most trafficked people identified in Australia have been women working in the sex industry, both in legal and illegal brothels. Generally, the women have been recruited from low socio-economic countries and are attracted by the perception of improved economic opportunities in Australia. In recent years, Australian authorities have identified an increasing number of men and women trafficked into, or exploited within, other industries, including the hospitality and domestic services industries. This is reflected in referrals to the Support Program in 2012–13, where 43 per cent of new clients experienced exploitation other than in the sex industry.

The Australian Red Cross delivers the Support Program's case management services under a three-year funding agreement, spanning 2012–13 to 2014–15.

The Australian Red Cross provides a 24 hours a day, seven days a week, 365 days a year national response within all States and Territories in Australia. The Australian Red Cross allocates an individual case manager to each client referred to the Support Program. Case managers are responsible for ensuring the appropriate delivery of support services tailored to meet the client's individual needs.

Case managers help clients to access a range of support services to improve their mental and physical health and well-being following the trauma of their trafficking experience and to provide opportunities to learn new skills and develop options for life after exiting the Support Program.

These services may include:

- case management support
- suitable accommodation that meets the AFP's security and safety requirements
- medical treatment (through Medicare and the Pharmaceuticals Benefits Scheme, or as approved)
- counselling
- access to legal and migration advice
- appropriate skills development training including English language and vocational guidance, where appropriate, and
- social support.

Clients who have dependent children living with them may receive assistance with arranging child-care, schooling, counselling and medical support. They can also be assisted to access parenting support or education.

The Support Program is divided into the following streams:

- **Assessment Stream** – intensive support for up to 45 days to all trafficked people referred by the AFP, irrespective of whether they are willing or able to assist with the investigation or prosecution of a human trafficking or slavery-related offence. If the person is not an Australian citizen and does not have a valid visa, they can be granted a Bridging F visa (BVF) for up to 45 days. The Assessment Stream provides an extended recovery and reflection period and time for trafficked people to assess their options. Trafficked people on the Assessment Stream have access to the following support as needed: case management support; secure accommodation; a living allowance; an amount for the purchase of essentials such as clothing and toiletries; access to health care, including counselling; access to interpreters; and access to legal services.
- **Extended Assessment Stream** – access to a further 45 days' support for trafficked people who are willing, but not able, to assist with the investigation or prosecution of a human trafficking or slavery-related offence, for example, due to ill health or trauma. This extended period of support is provided on a case-by-case basis and is designed to provide flexibility in the support available to trafficked people. If required, a second BVF for up to 45 days may be granted in such cases.
- **Justice Support Stream** – support until the investigation and prosecution of a human trafficking or slavery-related matter is finalised. On the Justice Support Stream, clients have access to the following support as needed and if eligible: Special Benefit, Rent Assistance and a Health Care Card administered by Centrelink; assistance with securing longer-term accommodation; assistance to purchase essential furniture and household items; access to Medicare and the Pharmaceutical Benefits Scheme; access to legal services and interpreters; assistance to obtain employment and training (including English-language training) if desired; links to social support; as well as case management support.

- **Temporary Trial Support Stream** – intensive support (similar to that provided under the Assessment Stream) for trafficked people who return to Australia to give evidence pertaining to a human trafficking or slavery-related prosecution. Recipients are entitled to short-term accommodation and a weekly living allowance.

There is also a 20-day transition period for trafficked people leaving the Support Program.

Statistical profile of the Support Program

New clients referred to the Support Program between 1 July 2012 and 30 June 2013

Twenty-one new clients entered the Support Program between 1 July 2012 and 30 June 2013, and of these, 18 were female and three were male. Twelve clients were exploited in the sex industry, and the remaining nine clients were subjected to other forms of exploitation. Six clients were from the Republic of Korea and the remaining 15 were from countries with less than five clients per country. For privacy reasons, the Australian Government does not provide data on individual countries where there were less than five trafficked people per country referred to the Support Program. No minors were referred to the Support Program during this period.

Total number of clients on the Support Program during 2012–13

There were a total of 83 clients supported on the Support Program during 2012–13, compared to 77 clients in 2011–12. As at 30 June 2013, a total of 214 clients had been referred to the Support Program since its inception in 2004 (see Table 6).

Table 5: New clients referred to the Support Program between 1 July 2012 and 30 June 2013 by State and Territory

State/Territory	Number of new clients
NSW	4
ACT	2
VIC	13
TAS	2
TOTAL	21

Table 6: Total number of clients on the Support Program during the financial year

Financial year	Number of clients
2005–06	41
2006–07	48
2007–08	60
2008–09	59
2009–10	67*
2010–11	81*
2011–12	77
2012–13	83
TOTAL	214

* These figures have been adjusted from the previous report to correct an arithmetic error.

At 30 June 2013, there were 54 clients on the Support Program compared to 62 clients on the Support Program at 30 June 2012. Twenty-nine clients exited the Support Program between 1 July 2012 and 30 June 2013. Seventy-six percent of clients supported on the Support Program between 1 July 2012 and 30 June 2013 were exploited within the sex industry, of whom all were female (see Table 7).

Table 7: Number of clients on the Support Program by type of exploitation and gender as at 30 June 2013

	Non-sexual exploitation*		Sexual exploitation		Total	
	2011–12	2012–13	2011–12	2012–13	2011–12	2012–13
Male	9	11	0	0	9	11
Female	7	9	61	63	68	72
Total	16	20	61	63	77	83

* Non-sexual exploitation includes all other forms of human trafficking and slavery-related exploitation that occurs outside the sex industry, including exploitation in other industries (such as the hospitality and domestic services industry), or in intimate relationships, or organ trafficking.

Thailand, Malaysia, the Republic of Korea, the Philippines and China were the main countries of citizenship for clients on the Support Program in 2012–13 (see Table 8).

Table 8: Number of clients on the Support Program during 2012–13 by country of citizenship at time of referral

Country of citizenship	2012–13	Total since 2004
Thailand	26	81
Malaysia	14	33
Republic of Korea	10	38
The Philippines	8	10
China	6	13
Other*	19	39
TOTAL	83	214

* Combined client total where individual countries had less than five clients.

Challenges in delivering the Support Program

FaHCSIA's funding agreement with the Australian Red Cross has provided the service provider with greater flexibility to deliver case management services and tailor support for individual clients.

FaHCSIA's challenge is to ensure that the Australian Red Cross is positioned to respond effectively, within the current funding allocation, to the possibility of a changing client population following the introduction of the new offences to the *Criminal Code Act 1995*. FaHCSIA is actively working with relevant Government agencies and the Australian Red Cross to ensure preparations are in place to manage new cases as they arise, in particular potential cases involving clients who are minors. As at 30 June 2013, there were no minors on the Support Program.

Other challenges include:

- **Access to safe, appropriate and affordable accommodation** – accessing affordable and safe accommodation, especially at short notice, remains a challenge for the Support Program. This has particularly been the case for clients with complex needs such as mental health issues or a drug/alcohol dependency. Clients requiring secure, independently funded long-term accommodation also present a challenge.
- **Supporting dependent children on the Support Program** – the Support Program is not funded to meet the financial needs of dependent children and the lack of direct support may have a detrimental impact on the client. Clients who access Special Benefit on the Justice Support Stream may receive Family Tax Benefit through Centrelink, but clients on the Assessment Stream with dependent children receive minimal additional financial assistance. Challenges in supporting dependent children may increase given the range of new offences, including forced marriage, whose victims will be eligible for the Support Program.

CASE STUDY

A Support Program client

L* was trafficked to Australia for sexual exploitation and referred to the Support Program. L has received intensive casework support from the Australian Red Cross and has been referred to a number of services including health care, legal and migration advice, housing services and Centrelink.

L spoke with her caseworker about how she would like to study so she could build her knowledge and skills and increase her future job prospects. L's caseworker worked with her to identify what type of study she would like to undertake, including what level of study would be appropriate given L's level of English. L's capacity to study and participate in the criminal justice process was also taken into consideration.

With the support of her caseworker, L was referred to a training organisation where she was able to observe some classes. L gained such value from this experience that she decided to undertake more structured study leading to formal qualifications as soon as her visa status enabled her to do so.

As L was willing and able to assist in the criminal justice process, she was granted a Criminal Justice Stay visa (CJSV) and moved to the Justice Support Stream. CJSV holders have study rights, and, with the help and support of her caseworker, L was able to enrol in formal classes at local student rates through a State government training scheme. The Support Program was able to provide financial support to L around the purchase of course-related materials.

Since enrolling, L has told her caseworker that she really enjoys her classes and values the engagement and connection with other students. L has also said that she has been 'chuffed' to receive positive feedback on her work. While L continues to experience symptoms of anxiety and stress related to her trafficking experience, she has gained a more positive outlook on life as a result of her study. L also feels more able to assist in the criminal justice process.

This opportunity has enabled L to form stable and strong relationships outside of her trafficking experience and to work towards establishing a sustainable future for herself.

* Given the small number of clients on the Support Program and the need to preserve the privacy of individual clients, this case study is representative, drawing on common experiences of a number of clients.

Human Trafficking Visa Framework

The Australian Government's comprehensive Human Trafficking Visa Framework (Visa Framework) enables foreign nationals who do not already hold a valid visa and are suspected victims of human trafficking or slavery to remain lawfully in Australia. Like Australian citizens and other valid visa holders who are suspected trafficked people, they are then able to access support through the Support Program.

The Visa Framework comprises three visas:

- **Bridging F visa (BVF)** – a person assessed by the AFP as a suspected trafficked person may be eligible for a BVF for up to 45 days. A BVF can also be granted to immediate family members in Australia. There are no work rights associated with a BVF, but the trafficked person can receive intensive victim support through the Support Program. There is also an option to grant a second BVF for a further 45 days (taking the total to 90 days). During this time the trafficked person will continue to receive intensive support. The offer of a second BVF is considered on a case-by-case basis.
- **Criminal Justice Stay visa (CJSV)** – after the expiry of a BVF, a CJSV may be granted to a suspected trafficked person at the request of the police. A CJSV allows the holder to remain in Australia for as long as their presence is required for the administration of criminal justice. A suspected trafficked person on a CJSV is allowed to work and receives support under the Justice Support Stream of the Support Program.
- **Witness Protection (Trafficking) (Permanent) visa (WPTV)** – a trafficked person who has made a contribution to an investigation or prosecution of an alleged offender may be eligible for a WPTV. This visa allows the holder to remain in Australia permanently, and immediate family members may be included in the visa application.

A WPTV may be granted to a trafficked person if the criteria prescribed in the *Migration Regulations 1994* are met. These include, but are not limited to:

1. the Attorney-General certifies that:
 - the person made a contribution to, and cooperated closely with, the prosecution of a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions (whether or not the person was convicted), or
 - the person made a contribution to, and cooperated closely with, an investigation in relation to which the Director of Public Prosecutions has decided not to prosecute a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions
2. the person is not the subject of a prosecution for an offence that is directly connected to the prosecution mentioned in the Attorney-General's certificate, and
3. the Minister for Immigration and Citizenship is satisfied that the person would be in danger if he or she returned to his or her home country.

Between 1 July 2012 and 30 June 2013, DIAC granted 16 BVFs and 21 CJSVs to suspected trafficked people and their immediate family members. During this period, a total of 18 WPTVs were granted, 12 to trafficked people and six to their immediate family members. The following table includes visa grant statistics for previous years.

Table 9: Trafficking related visas granted 2004–05 to 2012–13

Financial Year	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13
Bridging F visa	31	11	16	34	39	33	24	12	16
Criminal Justice Stay visa	23	8	18	18	30	23	29	17	21
Witness Protection (Trafficking) (Temporary) visa	-	-	4	13	-	The Witness Protection (Trafficking) (Temporary) visa was removed by legislative change on 30 June 2009.			
Witness Protection (Trafficking) (Permanent) visa	-	-	-	-	5	21	42	26	18

Note:

- The number of visas cited includes those granted to both trafficked people and their immediate family members.
- For the Bridging F and Criminal Justice Stay visas only, the number granted reflects the ability to grant such visas more than once to the same person.

In the past year DIAC has introduced additional measures to protect the confidentiality of trafficked people by preventing disclosure of possibly sensitive personal information to third parties through the Visa Entitlement Verification Online system. These measures are in response to concerns raised by stakeholders, including through the UN Special Rapporteur on trafficking in persons, especially women and children, about the need to ensure confidentiality and respect for the privacy of trafficked people.

Protection for vulnerable workers

Australian workplace law and practice – supported by migration law and relevant State and Territory laws – requires all people who undertake productive work in Australia to be engaged in accordance with its provisions (including salary, employment conditions and standards, workers' compensation, and occupational health and safety).

The FWO and FWBC are responsible for education, advice and compliance activities in relation to Commonwealth workplace laws. The matters investigated by the FWO and FWBC include claims of substandard working conditions that do not meet the threshold of the human trafficking and slavery criminal offences, including forced labour.

A person may be in a situation of forced labour if he or she does not feel free to cease providing labour or services because of coercion, threat or deception. The International Labour Organization (ILO) estimates that, globally, some 21 million people are victims of forced labour.

Forced labour is a type of exploitation for which people may be trafficked into, from, or within Australia, but not all victims of forced labour are trafficked. It is important to recognise that Australian citizens and permanent residents may experience substandard working conditions and more serious forms of exploitation, including slavery, servitude and forced labour, within Australia.

Foreign workers can be particularly vulnerable to substandard working conditions and more serious forms of exploitation, either by those who facilitate their journey to Australia or by employers once they arrive. This may be because of cultural and language barriers, a lack of knowledge of local workplace laws and standards, and in some cases, their reliance on their employer for their immigration status.

Australian employers who wish to employ foreign workers must be willing and able to meet certain obligations, including complying with any requirements regarding the pay and conditions of workers that are set out under the *Migration Act 1958* (Migration Act) and workplace relations laws. Foreign workers are entitled to receive the same protection as Australian nationals, including investigation by the competent Australian authority of all claims of underpayment and substandard working conditions.

There is an important distinction to be drawn between people in circumstances of forced labour, and those who may experience substandard working conditions. However, substandard working conditions, including the underpayment of wages, are not acceptable in Australia, and may be an indicator of more serious exploitation.

Fair Work Ombudsman

The Fair Work Ombudsman (FWO) is an independent statutory agency created by the *Fair Work Act 2009* (FW Act) and is responsible for providing education, assistance and advice about the Commonwealth workplace relations system. In addition, the agency is also responsible for impartially enforcing compliance with the FW Act and related instruments.

The FW Act contains minimum entitlements for all employees in the federal workplace system. The FWO's jurisdiction extends to ensuring that all workers in Australia receive these workplace rights, including foreign workers on short or long term visas and international students.

While offences relating to human trafficking and slavery do not fall within the operational remit of FWO, the agency has developed strong relationships with other government regulators to effectively respond to suspected instances of serious exploitation. In particular, the agency has a well-established relationship with the AFP for the referral of information. Where the FWO identifies behaviour that could amount to human trafficking or slavery during a phone call to the Fair Work Infoline or the course of an investigation, evidence is referred to the AFP.

The FWO works with DIAC on an ongoing basis to ensure that migrant workers receive their minimum entitlements. The FWO also works cooperatively with other government agencies and community stakeholders representing vulnerable foreign workers through the Interdepartmental Committee on Human Trafficking and Slavery and the National Roundtable on Human Trafficking and Slavery.

The FWO places a strong emphasis on assisting vulnerable workers, including migrants and other foreign workers, and has continued to build upon its compliance and education strategies in responding to the specific challenges faced by these workers.

In 2012–13, the FWO conducted 2,018 investigations involving Temporary Business (Long Stay) (subclass 457) and other visa holders, and recovered more than \$1,427,395 in unpaid entitlements for these workers.

The FWO continues to litigate matters involving migrants and other foreign workers given their particular vulnerability as well as to enhance deterrence in the community. The FWO finalised 11 litigations concerning foreign workers during 2012–13, with \$613,048 awarded in penalties and \$362,596 recovered in unpaid wages. Penalties imposed by the courts as a result of actions taken by the FWO over 2012–13 include:

- \$136,000 on 20 February 2013, awarded against Shafi Investments Pty Ltd, Younus Mohammed and Mahmood Mohammed, who operated an 'Ali-Baba' franchise. The contraventions in this case were significant, involving the exploitation of a vulnerable employee, an Indian national on a dependent spouse visa, resulting in an underpayment of over \$50,000, and
- \$59,400 on 27 July 2012, awarded against Go Yo Trading Pty Ltd, the former operator of Ajisen Raman Noodle Restaurant and Yojiro Nakauchi for underpaying two young foreign workers. The workers, who were from the Republic of Korea, spoke little English and were on working holiday visas. They were underpaid over \$7,500 when they worked as food and beverage attendants for the business.

The FWO continues to operate a National Overseas Workers Team which focuses resources on employers of foreign workers. Through the initiative, the FWO has, for example, conducted targeted education and compliance activities in geographic areas and industries identified as employing high numbers of foreign workers, including the horticulture, hospitality, cleaning and retail industries. The FWO's Overseas Workers Team takes a proactive approach to its education and compliance activities as these vulnerable employees are often unaware of their workplace rights or are reluctant to make complaints against their employer.

Audits are also conducted by the FWO's Overseas Workers Team as a direct result of intelligence or 'tip-offs' relating to businesses employing migrant or other foreign workers. For example, as a result of information received from the community that international students, migrants and other foreign workers were being exploited, in December 2012, proactive compliance activities were undertaken in Adelaide at 22 restaurants and eight massage shops employing foreign workers. Similar audits were conducted at 21 restaurants and fast food outlets in Sydney and Coffs Harbour in February and March 2013.

Beyond its direct compliance activity, the FWO targets services and resources to assist foreign workers and increase awareness about workplace rights in Australia. The FWO has developed and implemented a culturally and linguistically diverse (CALD) strategy, which includes:

- a translation service free of charge for people of non-English speaking backgrounds
- YouTube videos entitled *Working in Australia: What you need to know* (translated into 14 languages) and *Employing staff in Australia* (translated into 12 languages)
- tailored publications and fact sheets translated into 27 languages available on Fair Work Online
- a community presentations package in 11 languages available on Fair Work Online for community leaders and groups to educate their members about workplace rights
- a dedicated international students web page with translated material available
- in-language posters and brochures distributed to Migrant Resource Centres and community groups across the country, and
- continued and proactive engagement with community organisations who work with foreign workers, such as migrant resource centres and Anti-Slavery Australia, to gather intelligence and increase awareness of the FWO and its services in migrant communities.

Fair Work Building and Construction

Fair Work Building and Construction (FWBC) is an independent statutory authority established on 1 June 2012. FWBC's primary responsibility is to regulate compliance with Commonwealth workplace laws in the building and construction industry through education, advice and compliance activities, including investigations and litigation.

FWBC ensures building and construction work is carried out fairly and productively for the benefit of all building industry participants and the Australian economy as a whole. FWBC's role is to:

- assist industry participants understand workplace relations laws
- monitor workplace conduct, and
- investigate alleged contraventions.

An important aspect of the work of FWBC is to ensure compliance with obligations under:

- the FW Act
- Commonwealth Industrial Instruments (including awards and workplace agreements), and
- safety net contractual entitlements (i.e. wages and entitlements matters).

This includes matters involving the exploitation of vulnerable workers, such as:

- workers of various nationalities who are in Australia on a variety of visas permitting work
- others working in contravention of visa conditions, and
- workers who have no valid visa.

In 2012–13, FWBC recovered approximately \$1,622,854 on behalf of 1,363 employees in the building and construction industry. A significant number of these workers were believed to be migrant workers, and many could be classified as vulnerable.

FWBC also provides advice and assistance to all building and construction industry participants, including those from CALD backgrounds. These industry participants may be vulnerable to exploitation, and, in extreme cases, this exploitation could take the form of human trafficking or slavery. If, in the process of conducting its operations relating to workplace relations laws, FWBC staff become aware of conduct that may amount to human trafficking or slavery, the agency will refer the matter to the AFP as a matter of priority.

FWBC's CALD campaign was launched at a community event held on 22 November 2012 in Melbourne. On the same day, a comprehensive suite of educative in-language tools, documents and resources were published on the FWBC website to deliver key information to CALD participants working in Australia's building and construction industry. These resources were developed in response to community consultations held across Australia in April 2012 to better understand the barriers and issues facing CALD community members working in the building and construction industry.

Increasing protections for subclass 457 visa holders

The *Migration Amendment (Temporary Sponsored Workers) Act 2013* was passed by the Australian Parliament on 28 June 2013, and came into force on 1 July 2013. The Act amends the Migration Act to provide a balance between the key objectives of



ensuring employment and training opportunities for Australian citizens and upholding the rights of non-citizens sponsored to work in Australia under the Temporary Work (Skilled) (subclass 457) visa program.

A number of the changes introduced increase the protections for vulnerable 457 visa holders sponsored under the program. These changes include:

- appointing FWBC Inspectors as inspectors for the purposes of the Migration Act, to significantly increase the number of inspectors that have the capacity to detect non-compliance in the sponsored visa program
- requiring sponsors to pay up front, and not recover, all costs of becoming and being a sponsor as well as all costs relating to the recruitment of any visa holder, to ensure that visa holders are not pressured into paying for these costs by their employer, and
- ensuring that visa holders are employed in a direct employer-employee relationship and that visa holders cannot be on-hired to an unrelated entity (unless under an approved Labour Agreement), to ensure visa holders receive their entitlements such as sick and annual leave and are not in a precarious employment relationship.

Building partnerships with the community

The Australian Government works to build and maintain strong partnerships with the non-government sector.

National Roundtable on Human Trafficking and Slavery

The fifth National Roundtable on Human Trafficking and Slavery (Roundtable) was convened on 28 November 2012 by the then Attorney-General, the Hon Nicola Roxon MP, and attended by the then Minister for Immigration and Citizenship, the Hon Chris Bowen MP. The Roundtable is an important consultative mechanism between Government, NGOs, unions and industry, with a focus on emerging issues related to human trafficking and slavery.

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, the International Organization for Migration (IOM), the Law Council of Australia, Master Builders Australia, Project Respect, the Australian Red Cross, the Salvation Army, Scarlet Alliance, Shakti, the Uniting Church, United Voice, and Victim Support Australia, along with the member agencies of the Interdepartmental Committee on Human Trafficking and Slavery.



Mr Iain Anderson, First Assistant Secretary, Attorney-General's Department, leads discussions at the 2012 National Roundtable on Human Trafficking and Slavery.

The Roundtable featured presentations on current issues and contemporary research, including:

- a presentation from the AIC on trafficking in persons involving marriage and partner migration
- a presentation from Shakti on early and forced marriage in migrant and refugee communities, and
- a presentation from the National Children's and Youth Law Centre on early and forced marriage.

Ministers also addressed the Roundtable and participated in a question and answer session with non-government attendees. Discussions focused on access to services for trafficked people, including minors; mechanisms to address exploitation in supply chains; training for frontline officers; and Australia's international engagement on human trafficking and slavery. Ms Roxon recognised the achievements of Roundtable members, including continued efforts to raise awareness and provide support and services to trafficked people, and thanked Roundtable members for their engagement with Government through Parliamentary inquiries held in 2012. Mr Bowen noted Australia's ability to share our experiences and skills with countries in the region in order to strengthen the collective response to human trafficking and slavery.

Members of the Roundtable also had the opportunity to provide initial input and advice on the next phase of Australia's *National Action Plan to Combat Human Trafficking and Slavery* (Action Plan) (see page 8). Roundtable members broke into small groups focusing on the prevention and deterrence; detection and investigation; prosecution and compliance; and victim support and protection pillars of Australia's strategy to combat human trafficking and slavery. Outcomes from discussions at the Roundtable prepared the foundation for the drafting of the next phase of the Action Plan.



Participants at the 2012 National Roundtable on Human Trafficking and Slavery.

National Roundtable Senior Officials' Meeting

In November 2010, Roundtable members agreed that a less formal meeting should be held annually to supplement the ministerial-level Roundtable. The third Senior Officials' Meeting of the Roundtable, chaired by AGD, took place in Melbourne on 22 May 2013.

Following initial consultations at the 2012 National Roundtable, Roundtable members discussed the draft objectives, principles and goals for the next phase of the Action Plan, including by providing advice on preferred wording. Roundtable members also discussed how the Action Plan would be monitored, reported against, and reviewed.

AGD gave Roundtable members a summary of outcomes from an April 2013 survey on service provision and awareness-raising activities focused on human trafficking and slavery. Roundtable members discussed the need to share resources to maximise the impact of awareness-raising activities in a constrained fiscal environment, and agreed to the establishment of a Roundtable working group on communication and awareness-raising.

Roundtable members also considered issues relating to exploitation in supply chains and agreed to the establishment of a Roundtable working group on addressing exploitation in supply chains.

National Roundtable Govdex Community

In November 2012, AGD launched the 'National Roundtable on Human Trafficking and Slavery Govdex Community', which is an online tool established to encourage and facilitate cooperation and information-sharing amongst Roundtable members.

Govdex is an Australian Government initiative, hosted by Finance, and is aimed at supporting collaboration across government and key private sector stakeholders. The Roundtable Govdex Community is an interactive space where Roundtable members can find information, access resources, discuss current issues, and contribute their views.

Practical support for organisations working to address human trafficking and slavery in Australia

Civil society, business, industry and unions play a key role in identifying and supporting trafficked people, as well as raising awareness of all forms of human trafficking and slavery in Australia.

Between 2008 and 30 June 2013, the Australian Government has provided \$2.4 million (\$600,000 each) to support four Australian NGOs in their efforts to combat human trafficking and slavery. Anti-Slavery Australia, the Australian Catholic Religious Against Trafficking in Humans, Project Respect and Scarlet Alliance provide outreach for trafficked people and conduct education and awareness-raising initiatives on human trafficking and slavery-related issues. The funding is provided from confiscated criminal assets under the *Proceeds of Crime Act 2002* (POCA).

As part of our commitment to combating human trafficking and slavery in all forms, and for all kinds of work, in 2011 the Australian Government awarded a total of almost \$500,000 to five organisations to undertake projects to combat labour exploitation in Australian industries.

Following a competitive expression of interest process, funding for 2011–13 was awarded to the Australian Council of Trade Unions (\$200,000), the Australian Hotels Association (\$25,000), Asian Women at Work (\$96,098), the Construction, Forestry, Mining and Energy Union (\$100,000) and the Australian Red Cross (\$64,974). The funding is provided from confiscated criminal assets under POCA.

Further information on the work of these organisations in 2012–13 is available below, along with details of activities of other Roundtable members.

Anti-Slavery Australia – University of Technology, Sydney



Outreach and training

Anti-Slavery Australia (Anti-Slavery) is using its POCA funding to continue the development of an online training resource for frontline officers and community workers. Anti-Slavery is also sourcing and creating media for the course – including sourcing images, filming short videos of case studies and filming guest speakers. Participants will be able to access the course on computers, as well as tablets and smart phones. Once the curriculum has been finalised, Anti-Slavery will undertake the user testing phase before formally launching the course in early 2014.



Stills taken from the case study videos for the online training resource.

The Anti-Slavery Australia ‘Outreach for Freedom’ program is currently raising awareness of modern-day slavery through a range of strategies. The program aims to incorporate Anti-Slavery training material into induction courses for frontline staff, such as the building inspectors employed by FWBC. In 2013, Anti-Slavery’s outreach program also reached over 1,000 secondary school students, engaging future generations with the issues of human trafficking and slavery through age appropriate presentations with a strong focus on thoughtful, ethically informed discussions.

Community engagement

Anti-Slavery, in conjunction with the Australian Red Cross, convenes the Sydney Trafficking Response Network for frontline service providers and NGOs that come into contact with people who have been trafficked or experienced slavery, as well as periodically with AFP, AGD and DIAC. The Network works collaboratively to address human trafficking and slavery, pool resources, consult on the development of policies and to build capacity in the community to assist trafficked people.

Anti-Slavery has been involved in a number of stakeholder seminars in 2012–13, including:

- a presentation at the International Association for the Study of Forced Migration Conference in Calcutta in January 2013
- speaking at a New South Wales Victims of Crime Interagency Meeting in March 2013
- a presentation at Stand Up! Australian Migrant & Refugee Women's Alliance National Conference in April 2013
- a presentation at Castan Centre for Human Rights Law, Monash University in May 2013, and
- a human rights presentation to Legal Studies teachers in May 2013.

The inaugural Anti-Slavery Freedom Dinner was held on 8 May 2013 at the White Rabbit Gallery. The night was a great success, raising funds to extend Anti-Slavery's outreach program and raising awareness of Anti-Slavery's mission to over 100 guests, many of whom were previously unconnected to the Centre or the issue.

Pro bono legal service

In 2012–13 Anti-Slavery continued to assist clients applying for and obtaining permanent visas; appealing visa refusal decisions; and obtaining visas for their family members. In 2012–13, over \$1 million was awarded to clients as a result of applications made to the New South Wales Victims Support Scheme.

Submissions to Government inquiries

Anti-Slavery provided oral evidence to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like Conditions and People Trafficking in May 2013. Anti-Slavery also made two supplementary submissions to the Inquiry during the course of 2013.

Further research

Anti-Slavery Australia also published research *Without Consent: Forced Marriage in Australia* in the Melbourne University Law Review. The article is available at the following link:

<<http://search.informit.com.au/documentSummary;dn=454665687686214;res=IELHSS>> ISSN: 0025-8938. [cited 28 Aug 13].



Dr Eman Sharobeem speaks at the Anti-Slavery Freedom Dinner, May 2013.

2012 Anti-Slavery Australia Freedom Awards

Anti-Slavery held its second annual Freedom Awards in October 2012, at the University of Technology, Sydney. Federal Agent Rebecca Corby and Dr Mark Zirnsak were recognised at the Awards for their outstanding work responding to the challenges of human trafficking and slavery. Dr Anne Gallagher AO spoke at the event, emphasising the importance of law enforcement and ethical supply chains in the fight against trafficking.

Federal Agent Rebecca Corby received a Freedom Award for her work with the AFP, where she has dedicated the last eight years to working in the Human Trafficking Team (HTT) in Sydney. Dr Mark Zirnsak also received a Freedom Award for his contribution to combating labour exploitation through his work on ethical supply chains. Dr Zirnsak has campaigned against exploitative child labour since 1999 and worked with STOP THE TRAFFIK to build up a coalition of Australian NGOs to work on human trafficking and forced labour issues.

Frances Simmons was also acknowledged and presented with an Anti-Slavery Australia Award for her significant contribution to anti-trafficking initiatives. Frances worked as a lawyer and researcher at Anti-Slavery where she dedicated herself to advocating for compensation for victims of trafficking and slavery.



Dr Mark Zirnsak and Federal Agent Rebecca Corby receive their 2012 Freedom Awards.

Asian Women at Work Inc



Asian Women at Work Inc is a network of Asian migrant women workers that empowers, resources and assists women to stand up, speak out, and take collective action to advocate for their rights. It also assists women to develop strategies that improve their lives, end exploitation in the workplace and home, obtain secure employment and enable them to understand and contribute to

Australian society. Asian Women at Work has a current membership of over 1,800 migrant women workers in low paid employment.

Asian Women at Work's project is called 'Outreach, Empowerment and Support through Education and Awareness Raising to Vulnerable Migrant Women Workers in Low Paid Employment'. Through outreach, the project facilitates access by vulnerable migrant women workers to information and resources. This contributes to breaking down isolation, building self-confidence and self-worth, increasing knowledge of Australian society, identifying and developing leaders, and working together on issues of common concern, such as employment-related issues.

Asian Women at Work continued to promote the project during the reporting period, using traditional and creative means including: a group picnic for Malaysian-Chinese women, Chinese New Year celebrations, International Women's Day events, a Harmony Day event and festivals. Asian Women at Work also established joint activities for and with other communities such as the Thai, Indonesian, Korean, Malaysian and Nepali communities. For example, Asian Women at Work ran an English class for one term for female Thai workers. Asian Women at Work also ran a 'Your rights in the workplace' workshop with the Korean community and engaged with the Nepali community. Through these activities, Asian Women at Work delivered information about the project and also about general rights at work.

Asian Women at Work continued to run information sessions on rights at work in English language classes and seminars for international students during the reporting period. Asian Women at Work ran more than 10 sessions from January to June 2013 with a total of over 320 people attending.

In 2012–13 Asian Women at Work organised two information meetings for community workers. The first session was held with DIAC and was about changes to the Temporary Work (Skilled) (subclass 457) visa. The second information meeting was held with the FWO Overseas Workers Team.



Asian Women at Work has also produced a wallet card and fridge magnet. These awareness-raising products will be distributed to the different communities that Asian Women at Work work with and to other groups that have direct links with migrant women workers in low paid employment.

Awareness-raising fridge magnets produced by Asian Women at Work.

Australian Catholic Religious Against Trafficking in Humans



The Australian Catholic Religious Against Trafficking in Humans (ACRATH) has three main objectives:

Objective 1: *Raise awareness of human trafficking, its causes and the scope for local action.*

Objective 2: *Work to ensure that the needs of people trafficked into Australia are met.*

Objective 3: *Collaborate with like-minded organisations in Australia, in the Asia-Pacific region, and globally to advocate for measures to address human trafficking.*

Highlights from ACRATH's past year include:

- creating an ACRATH group in Port Pirie and a young women's group in Melbourne, as well as interest in beginning groups in Darwin, Toowoomba and on the Gold Coast
- producing, through the ACRATH Radio Awareness Project (RAP), 20 Community Service Announcements (CSAs) in six languages (Mandarin, Thai, Vietnamese, English and Malaysian/Indonesian), with the help of Anti-Slavery Australia. The CSAs have been played during ethnic language broadcasts on community radio stations in Victoria
- developing a web-based unit of work for senior secondary students, prepared with the assistance of two volunteer educationalists and heavily based on the ACRATH website. As at 30 June 2013, 28 teachers in Victoria had been trained to use the resource
- providing support for 36 trafficked people. ACRATH members, in conjunction with Anti-Slavery Australia and the Australian Red Cross, have offered accompaniment, educational support, and assistance in preparing for Victims of Crime Assistance Tribunal (VOCAT) applications. In particular, ACRATH has advocated to ensure trafficked people's privacy is protected by the media
- celebrating success at VOCAT, including two trafficked women receiving the maximum Victims of Crime Assistance payment in Victoria in early 2013. The women were represented by a pro bono law firm for ACRATH
- providing support for young women facing forced marriages. In 2012–13 ACRATH, through its global sisters network, has assisted several young women in the Middle East and in Africa to return to Australia after they refused to be forced into marriage. ACRATH has also run training for teachers in some Australian schools where students may be especially vulnerable to forced marriage
- ACRATH Western Australia member Brianna Lee winning a Prime Minister's Asia Award for 2013. Under this award, PhD candidate Brianna Lee is studying human trafficking in Thailand for 2013

- giving evidence to the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into Slavery, Slavery-like Conditions and People Trafficking
- presenting at more than 160 events on human trafficking across Australia, and
- engaging with companies, chocolate and cotton and seafood processing, to promote slavery-free supply chains.



Participants in the 2013 ACRATH National Conference.

The Australian Chamber of Commerce and Industry



The Australian Chamber of Commerce and Industry (ACCI) represents employers at a national and international level, including representing Australian employers at the UN specialist tri-partite body, the ILO, in Geneva, Switzerland. The ILO's mandate and mission to combat forced labour began more than 80 years ago with the adoption of the *Forced Labour Convention, 1930 (No. 29)* which is the most ratified of all ILO instruments (177 of the ILO's 185 member states have ratified this Convention).

At its 316th Session in November 2012, the ILO Governing Body decided to convene a tripartite meeting of experts in February 2013. The meeting was led by an independent Chairperson and was composed of eight Government experts, eight Employer experts and seven Worker experts. ACCI's Director of Workplace Policy and Legal Affairs, Daniel Mammone, was appointed as the Employer spokesperson for the Employer group. There were also government observers from seven member states (Australia, Bangladesh, Belarus, Japan, Malaysia, Saudi Arabia and Sudan),

Continued next page

and representatives from the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC). In addition, representatives of the following intergovernmental and international NGOs attended the Meeting as observers: the UNODC, Office of the UN High Commissioner for Human Rights (OHCHR), IOM, Council of Europe, Anti-Slavery International and the Global Alliance Against Traffic in Women (GAATW).

ACCI's involvement as a longstanding member of the Roundtable was invaluable in highlighting the important initiatives which Australia has undertaken to combat human trafficking and slavery, and in particular forced labour. The meeting was an opportunity to share collective experiences in a global dialogue on the challenges faced in tackling forced labour. All participants recognised that whilst improvements have been made on some of the worst forms of forced labour, there is much more that needs to be done to significantly reduce the incidence of forced labour globally. This includes greater efforts to prevent and protect victims of forced labour, upholding the rule of law, and improving cooperation at regional, national and international levels. The Final Report of the meeting highlights a number of initiatives (see in particular paragraphs 14, 100, 108, 110) and developments that Australia has undertaken in recent years to combat all forms of human trafficking and slavery, including forced labour. The Final Report can be accessed from the ILO website at: <www.ilo.org/wcmsp5/groups/public/---ed_norm/--normes/documents/meetingdocument/wcms_207312.pdf>.

The Australian Council of Trade Unions



The Australian Council of Trade Unions (ACTU) is the peak council for the Australian Union movement. Unions affiliated to the ACTU

cover all sectors of the economy, across all States and Territories, representing more than 1.8 million workers across various industries including hospitality, agriculture, manufacturing, construction, domestic work and mining. This broad membership enables outreach to a wide range of Australian workplaces where union members are uniquely placed to identify suspected incidences of forced labour and other forms of human trafficking and slavery.

In 2012–13, the ACTU used its POCA funding to develop and implement a human trafficking and slavery awareness campaign. The campaign was multi-pronged, but centred primarily on developing training materials including an awareness-raising video for use during training sessions with affiliates.

The video is approximately 11 minutes long, and is available online and as a hardcopy DVD. It provides a general overview of human trafficking and slavery, including forced labour, in our region, and contains interviews with key stakeholders including not-for-profit organisations and the AFP. It also discusses Australian cases

and provides referral information for services for trafficked people which can be harnessed by union delegates and representatives in the workplace.

The video seeks to raise awareness about some of the risk factors that contribute to the vulnerability of trafficked people in Australia, as well as drawing attention to indicators that may suggest human trafficking or slavery has taken place.

The video is accompanied by a manual which ACTU trainers and organisers will utilise in upcoming training sessions with affiliates to raise awareness about human trafficking and slavery. The manual contains holistic training options tailored to the audience's needs, such as varying time constraints, and includes hands-on educational initiatives including role plays and group discussions. The ACTU will also be distributing the video to affiliated unions so that they can utilise it in their own training and education sessions.

In addition, the ACTU has developed material as part of its labour exploitation campaign that is aimed at raising awareness among the broader public. These include a website (which also contains a link to the video), a brochure and an infosheet. The brochure and video can be accessed at <www.australianunions.org.au/humantrafficking>. Requests for hardcopies of the DVD, infosheet and/or brochure may be directed to Hannah Withers at hwithers@actu.org.au. Enquiries pertaining to the ACTU's trafficking awareness training should be directed to Anna Pupillo at apupillo@actu.org.au.



Still from the ACTU's anti-trafficking awareness video: interview with ACTU President Ged Kearney.

The Australian Hotels Association



In 2011, the Australian Hotels Association (AHA) received a grant of \$25,000 to undertake the Labour Exploitation Awareness Project, a multifaceted campaign aimed at increasing the awareness of labour exploitation and human trafficking amongst employers in the hotel industry. The Labour Exploitation Awareness Project was completed in July 2012.

As part of the Labour Exploitation Awareness Project, the AHA developed materials including a four-page educational booklet containing information explaining what labour trafficking and exploitation are, and outlining the steps an employer should take if they believe that someone in their workplace has been trafficked or is being exploited. This booklet was printed and distributed to more than 5,000 AHA member hotels.

Workplace relations officers in each AHA staff branch have also been briefed on Australia's laws to combat human trafficking and slavery, to ensure that AHA members have access to accurate and timely information from their industry association.

The AHA has also produced an online seminar able to be used as a training tool by hotel industry employers, and continues to make information available to the industry through its website at: <www.aha.org.au/trafficking>.

Australian Red Cross



In November 2011, the Australian Red Cross received \$64,974 in POCA funding for the Building Knowledge and Links project to raise awareness on labour exploitation, with a focus on the Indian community.

Based on research, the Australian Red Cross identified the Indian community as being one of the largest groups holding temporary work visas in Australia, thus highlighting the importance of empowering community members with information about their work rights.

The project focused on increasing knowledge of indicators of labour exploitation with an emphasis on identifying potential signs of human trafficking and slavery, pathways for referral and reporting, and clarifying the rights and responsibilities of trafficked people and witnesses to incidences of human trafficking and slavery.

The project consisted of two components: producing a brochure on migrant workers and labour exploitation; and conducting workshops to raise awareness. The workshops focused on how to identify labour exploitation, human trafficking and

slavery; what to do if a suspected case is identified; and how to promote anti-human trafficking and slavery messages.

Five *Migrant Workers and Labour Exploitation* workshops were held in Perth, Adelaide, Melbourne, Sydney and Brisbane between July and October 2012. The *Migrant workers' rights in Australia* brochure was developed and translated into seven Indian community languages. The brochure is available on the Support for Trafficked People Program website for download at: <www.redcross.org.au/support-for-trafficked-people.aspx>.

In implementing the project, the Australian Red Cross consulted with multicultural community organisations, partner agencies and unions across the country to assist in the project's development.



Cover image of brochure.

The Construction, Forestry, Mining and Energy Union

In 2011, the Construction, Forestry, Mining and Energy Union (CFMEU) received a grant of \$100,000 to raise awareness of labour trafficking and exploitation amongst CFMEU officials, organisers and members. The grant also enabled the CFMEU to develop the organisational capacity to identify and respond to labour trafficking.

The Law Council of Australia



Highlights from the Law Council of Australia during 2012–13 include:

- providing a submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 on 1 August 2012. The Law Council also gave evidence to the Committee on 29 August 2012
- Law Council President Catherine Gale's speech to the Presidents of Law Associations in Asia Conference on combating human trafficking and slavery, on 28 August 2012
- providing a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into Slavery, Slavery-like Conditions and People Trafficking on 2 October 2012. The Law Council also gave evidence to the Committee on 20 November 2012, and provided a supplementary submission to the Committee on 14 December 2012
- continued advocacy to Government regarding the establishment of a Commonwealth victims' compensation scheme and access to legal advice by trafficked people
- raising the international profile of human trafficking and slavery issues at the 18th Commonwealth Law Conference in Cape Town, South Africa, from 14–18 April 2013. The Law Council was represented by Fiona McLeod SC, who participated as a panellist at the 'Human Trafficking: Commerce and Slavery in the Commonwealth' session, and discussed in particular the challenges faced by Australia and the Asia-Pacific in tackling such issues
- meeting with officials from the United States Department of State and United States Embassy to discuss human trafficking and slavery issues on 26 and 28 June 2013, to discuss the Department of State's consultation on the Australian response to such issues (both domestically, and in South East Asia)
- improving the accessibility of public information on human trafficking and slavery by developing a separate webpage setting out its key submissions on these issues, and
- joining an online forum on human trafficking and corruption, facilitated by the Law Society of England and Wales, for international bar leaders to share experiences and ideas to combat the common challenges faced by all. The Law Council has contributed materials to aid this discussion.

Project Respect



Project Respect is a non-profit community organisation established in 1998 that works towards a world where women are free from trafficking and sexual exploitation.

During 2012–13, Project Respect has been grateful for the opportunity to work with the Australian Government in supporting women trafficked into and exploited within the sex industry. Highlights from Project Respect's work in 2012–13, as supported by Australian Government funding, include:

- engaging two skilled outreach and support workers, one of whom is bilingual, plus a number of skilled bilingual volunteers to provide information and support to women in the sex industry in Victoria
- developing relationships and sharing knowledge with government departments, authorities and NGOs that support women trafficked in other countries, including Sweden, Italy and the Republic of Korea. Project Respect's work in sharing knowledge and connecting internationally was further enhanced by the sponsorship from the United States Department of State to attend the International Visitor Leadership Program (Human Trafficking), and develop contacts within the United States and with 22 other countries
- regular outreach to 28 legal brothels within Victoria, supplying each with information kits containing details on human trafficking and slavery and other issues raised by women in the sex industry (in a number of languages)
- providing ongoing counselling and individual case management to 45 women, including women who attended court as witnesses in trafficking cases
- providing referrals and access to more than 50 other specialist service providers, including for counselling, housing, legal assistance, drug and alcohol assistance, family violence, immigration assistance, reporting crime to authorities, victims of crime compensation, English lessons, alternative employment, and mental health
- the continued active involvement of a number of women from the sex industry in the organisation's planning and service delivery, including on the Committee of Management, staff team and volunteers
- providing over 20 training and information sessions to ensure that other services and the wider community are aware of issues in the sex industry (including human trafficking and slavery) plus a large number of public speaking engagements and conference presentations, and
- advocacy to all levels of government, as informed by the organisation's direct work with women, around issues of the sex industry and human trafficking and slavery. This included written and verbal evidence for the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like Conditions and People Trafficking, two published opinion pieces highlighting trafficking in the Australian sex industry as a form of violence against women and active participation in the Roundtable.

In 2013 Project Respect won a HESTA Community Services Award in the Social Impact category.

Scarlet Alliance, Australian Sex Workers Association



Scarlet Alliance, Australian Sex Workers Association is a community-based organisation that provides culturally appropriate direct and indirect services to migrant sex workers, some of whom have travelled to Australia under contract or may have experienced trafficking-like conditions. Scarlet Alliance's work is underpinned by an evidence and rights-based approach that recognises the need for the people affected by responses to trafficking to be central to development of the response. In 2012–13, Scarlet Alliance's work has included:

- the provision of translated information on visas, laws and rights and responsibilities for sex workers in Australia
- direct multi-lingual peer support services to migrant sex workers who require support for specific issues such as recovering unpaid wages, visas and legal issues, referrals and support
- enhancing the capacity of peer educators to deliver support to migrant sex workers in Australia, including translation checking and language support to Scarlet Alliance membership, including peer based State and Territory sex worker organisations
- research to fill the evidence gap on migration and human trafficking and slavery-like conditions in Australia
- the promotion of rights-based policy and practices that do not adversely affect the rights of migrant sex workers
- partnerships with other sex worker organisations in Asia and the Pacific to increase provision of information and empower independent travel choices (for example, the Empower Foundation in Thailand)
- continued advocacy for the removal of legal barriers to independent travel, migrant sex workers' access to justice, services and the prevention of exploitative workplace conditions through access to industrial rights for all sex workers, access to accurate, translated information
- convening steering committees of migrant and culturally and linguistically diverse sex workers to inform the work of the project and the evidence base the project activities are built upon
- presentations and community education on issues impacting on migrant sex workers, labour migration and Australia's response to human trafficking and slavery
- increasing understandings of migrant sex workers to combat stigma and systemic and institutionalised discrimination, and
- providing training to other service providers on migrant sex workers and human trafficking.

Through the work of Scarlet Alliance's projects and membership, the organisation has the highest level of contact with sex workers and sex worker workplaces of any organisation – government or non-government – in Australia. This provides Scarlet Alliance with an incomparable project reach and understanding of the sex industry and issues for migrant sex workers in Australia.



Some members of the Scarlet Alliance Migration Project Steering Committee.

World Vision Australia



Strengthening the response to human trafficking is central to World Vision Australia's (WVA) broader work in child protection and a priority area in both WVA's international programming and advocacy work.

Through public advocacy campaigns, WVA informs Australians about the types and extent of trafficking around the world and empowers them to use their voice, votes and purchasing power to encourage government and business to combat forced, child and trafficked labour, and to protect children from other forms of exploitation and abuse. The campaigns also deepen public understanding of the complexity of these issues and encourage consideration of how individual actions can contribute to the fight against exploitation.

Recognising the role of the corporate sector, as well as the influence that Australia's whole-of-government response can have on addressing these issues, WVA advocacy has a strong emphasis on exploitation in supply chains. This emphasis includes influencing public procurement practice, including the updating of the Commonwealth Procurement Rules, to mitigate the risk of forced, child and trafficked labour in Government purchases. WVA also encourages corporate reform by engaging and influencing businesses at high-risk of rights abuses within their supply chains, most notably in the cocoa industry. In 2012–13 WVA contributed to a range of Government-led trafficking and human rights fora and roundtables, made a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like Conditions and People Trafficking, and continued to call on the Australian Government to appoint an Ambassador for Trafficking.

During the reporting period, WVA partnered with AusAID on a number of anti-trafficking and child protection initiatives, including the prevention pillar of Project Childhood, which works with governments, communities and the travel and tourism sector in the Mekong Region to raise awareness of, and build community resilience to, the risks of children becoming victims of sexual exploitation in tourism. More broadly, WVA invests nearly \$30 million across 47 child protection and anti-trafficking related projects worldwide. With support from both private donors in the Australian community and the Australian aid program, the majority of this investment lies in Asia, where more than \$12 million is committed to major World Vision programs like End Trafficking in Persons (ETIP) Program. ETIP focuses on three of the four main areas of the anti-trafficking response: prevention, protection and policy, to contribute to the mitigation of human trafficking in the Greater Mekong Sub-region and provide appropriate support to trafficked people.

Raising community awareness



The ACRATH RAP – Radio Awareness Project – Sr Michelle Goh rsm and Br David Lemewu mgl.

Australian Red Cross Training for community service providers

In October 2012, the Australian Red Cross completed a FaHCSIA-funded series of training workshops for community service workers, which were aimed at enabling workers to better support trafficked people. The workshops were delivered in all State and Territory capital cities, as well as regional centres in Queensland and New South Wales. A total of 59 workshops were delivered to 1,055 participants from 208 organisations and participant feedback was very positive. As direct result of the training, at least one trafficked person was referred to the AFP and subsequently to the Support Program.

Australian Federal Police awareness-raising initiatives

The AFP actively seeks out opportunities to engage with NGOs and community organisations for collaborative approaches to prevention, disruption, information-sharing and harm reduction to combat human trafficking and slavery in all forms.

The AFP, in consultation with the Operational Working Group and NGOs, are in the process of developing awareness-raising postcards and posters for distribution to the Australian community.

The AFP HTT located in Canberra, Sydney and Melbourne present to other Australian Government stakeholders and community groups (including discussion exercises and informal liaison sessions) on a regular basis. For example, in March 2013, the AFP Sydney Office Community Liaison team hosted informal liaison sessions with members from the Sydney Muslim community. On 8 March 2013, the AFP hosted an International Women's Day Morning Tea, which included a presentation from AGD to raise awareness of the new offences of forced marriage amongst the Sydney Muslim women's community.

Advising travellers about forced marriage

In March 2013, DFAT included a new information page on forced marriage on the Smartraveller website. The webpage provides the public with advice regarding the new forced marriage offences, including their extraterritorial application, the procedures to report suspected cases of forced marriage, and support services for people who are at risk of, or have experienced, forced marriage. The forced marriage webpage is available from the Smartraveller website.³²

Briefing the Diplomatic Corps

On 9 May 2013, AGD, DIAC and the FWO presented to members of the Diplomatic Corps in Canberra. During this session, AGD briefed members of the Diplomatic Corps about Australia's legislation relating to human trafficking and slavery, and provided advice about indicators and referral pathways should their citizens seek assistance from consular officials. AGD also provided information to the Diplomatic Corps about their obligations as employers of domestic workers.

32 The forced marriage webpage is available online at: <www.smartraveller.gov.au/>.

Building partnerships in our region and beyond

Australia takes an active role in international efforts to combat human trafficking and slavery, and is committed to regional leadership in addressing these crimes.

Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime

Australia, as co-chair with Indonesia of the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* (Bali Process), worked closely with regional partners in 2012–13 to enhance cooperation on human trafficking through the Bali Process.

In November 2012, Australia co-chaired with Indonesia a forum on advancing regional cooperation on human trafficking to mark the 10th anniversary of the Bali Process. Participants at the two-day event agreed that international and regional cooperation was critical in the criminal justice response to human trafficking, and that the Bali Process was an important forum for strengthening this cooperation.

In December 2012, Australia co-chaired with Thailand a workshop on the ratification and implementation of the *United Nations Convention against Transnational Organized Crime* (UNTOC) and its related Migrant Smuggling and Trafficking Protocols. Participants expressed interest in the development of regional policy guides to support countries in implementing obligations under the UNTOC and its Protocols.

At the Bali Process Ministerial Conference in April 2013, Ministers agreed to establish a Working Group to specifically focus on human trafficking issues. The Working Group will provide an opportunity for more effective and coordinated responses to prevention, investigation and prosecution, and victim protection. It will also tap into the expertise and experience of community, industry and private sector groups. By connecting the Bali Process with a range of community and private sector groups, Australia will be able to help ensure that the Bali Process remains responsive to emerging trends. Australia together with Indonesia will work with Bali Process members to establish the Working Group.

Ministers also agreed to take forward the recommendation from the Bali Process workshop on the UNTOC and its Protocols to develop policy guides to assist policy makers and practitioners to criminalise people smuggling and human trafficking. The guides will help to promote a consistent understanding of international legal obligations and assist in developing effective domestic legislation. Australia and Thailand will work with the Bali Process Regional Support Office and other interested Bali Process members to develop these guides.

United Nations

Australia continues to actively engage on human trafficking and slavery issues at UN Human Rights Council (HRC) sessions and in the UN General Assembly.

At the 23rd session of the HRC on 28 May 2013, Australia participated in an interactive dialogue with the UN Special Rapporteur on trafficking in persons, especially women and children, Dr Joy Ngozi Ezeilo OON. Australia thanked the Special Rapporteur for her analysis on measures to discourage the demand that fosters exploitation and leads to human trafficking, and sought her views on whether initiatives highlighting positive efforts of businesses to produce products free from exploitation could be useful in reducing consumer demand.

From 13–14 May 2013, the UN General Assembly convened a High-Level Meeting on enhancing the implementation of the *Global Plan of Action to Combat Trafficking in Persons* (Plan of Action). The Plan of Action was adopted by the General Assembly on 30 July 2010, and aims to urge Governments worldwide to take coordinated and consistent measures to combat human trafficking and slavery. At the High-Level Meeting, Australia participated in a panel discussion and interactive briefing, and made a statement to the General Assembly encouraging continued international cooperation to address these crimes.

Conference of Parties to the *United Nations Convention against Transnational Organized Crime*

Australia participated in the 22nd session of the Commission on Crime Prevention and Criminal Justice (CCPCJ), held in Vienna on 22–26 April 2013. Human trafficking was the subject of the following resolution at that meeting, *Integration and coordination of efforts by the United Nations Office on Drugs and Crime and by Member States in the field of crime prevention and criminal justice: ratification and implementation of the United Nations Convention against Transnational Organized Crime and Protocols thereto*. The resolution was co-sponsored by Belarus, Bolivia, Ecuador, El Salvador, Kazakhstan, Nicaragua, the Philippines, Russian Federation, Turkey and Venezuela and was agreed to at the CCPCJ. The Secretary-General of the CCPCJ is to report back to the CCPCJ at its 23rd session on the implementation of the Resolution.

Australia's sixth report under the *International Covenant on Civil and Political Rights*

As a signatory to the *International Covenant on Civil and Political Rights* (ICCPR) Australia is required to periodically report on how we are meeting our ICCPR obligations. Australia's fifth report under the ICCPR was submitted to the UN on 25 July 2007, and our sixth report is due to be submitted on 21 December 2013.

The sixth report will respond to the List of Issues Prior to Reporting (LOIPR), issued by the UN HRC on 21 December 2012. The LOIPR is compiled by the HRC based on previous reports and appearances, submissions by the Australian Human Rights Commission (AHRC), NGOs, other UN bodies and independent research. The LOIPR includes questions about Australia's efforts to eliminate human trafficking and slavery under Article 8 of the ICCPR.

Australia's fifth report under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Australia's fifth report under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) will be lodged with the UN Committee against Torture in late 2013. The report will focus on key initiatives and developments since 2005, including Australia's efforts to prevent and punish human trafficking and slavery and provide effective remedies for trafficked people. Australia's fifth report will be informed by State and Territory governments, Australian Government agencies, the AHRC, and the public.

UN Committee on the Elimination of Discrimination against Women

In November 2012, Australia submitted an interim report to the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) on our efforts under the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW). The interim report is a follow-up from Australia's appearance before the CEDAW Committee on 20 July 2010 to discuss our combined sixth and seventh periodic reports under CEDAW. In its concluding observations at the 2010 appearance, the CEDAW Committee identified the two most pressing issues facing Australia in the field of gender equality as violence against women and the disadvantages faced by Indigenous women. The interim report is a whole-of-government report containing input from Commonwealth, State and Territory agencies, and outlines the Government's efforts to address violence against women and promote Indigenous women's human rights.³³

Australia's next periodic report is due to the CEDAW Committee in July 2014.

³³ The Interim Report is available from the UN website at: <www2.ohchr.org/english/bodies/cedaw/followup.htm>. The Non-Government Organisations' Follow-up Report, coordinated by the Australian Women against Violence Alliance and the National Aboriginal and Torres Strait Islander Women's Alliance, and the AHRC's Independent Interim Report on CEDAW are also available from the UN Website at: <www2.ohchr.org/english/bodies/cedaw/followup.htm>.

UN Commission on the Status of Women

The UN Commission on the Status of Women (CSW) is the principal global policy-making body dedicated exclusively to the advancement of women. Its annual meetings are designed to evaluate progress, identify challenges and determine the way forward for international action on gender equality.

The then Minister for the Status of Women, the Hon Julie Collins MP, led the Australian delegation to the 57th session of CSW, held from 4–15 March 2013 in New York. The priority theme of this session was the elimination and prevention of all forms of violence against women and girls. The Australian delegation worked with other nations, world leaders and civil society to push for a strong, global response to ending violence against women, and promoting the rights of women more broadly. Australia's commitment was reflected in a comprehensive set of Agreed Conclusions, the key policy recommendations which set the international standard for action on these important issues.

In particular, the Agreed Conclusions include specific recommendations for states to prevent, address and eradicate human trafficking and slavery, urging states to:

- strengthen national efforts to address the rights and needs of women and girls affected by trafficking in persons – including appropriate protection and care
- strengthen international cooperation to implement the Trafficking Protocol and the UN Global Plan of Action to Combat Trafficking in Persons
- address the root factors that contribute to trafficking in women and girls
- criminalise all forms of trafficking in persons
- ensure that identified victims of trafficking in persons are not penalised for having been trafficked, and
- accelerate public awareness, education and training to discourage the demand that fosters all forms of exploitation.

Consultation on the draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons

During the reporting period, Australia contributed to consultations undertaken by the UN Special Rapporteur on trafficking in persons, especially women and children, Dr Joy Ngozi Ezeilo OON, on the draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons. The right to an effective remedy is an essential component of a number of the core international human rights treaties, including all of the rights set out in the ICCPR. The HRC has stated that the right to an effective remedy encompasses an obligation to bring perpetrators to justice, and to provide appropriate reparation to victims. Reparation can involve measures including compensation, restitution, rehabilitation, public apologies, guarantees of non-repetition and changes in relevant laws and practices.

The draft Basic Principles were presented by the Special Rapporteur to the HRC in June 2011, and are intended to provide states with useful guidance in operationalising the right to an effective remedy. The Special Rapporteur is undertaking consultations on the draft Basic Principles pursuant to HRC Resolution 20/1, as a means to further develop them prior to submitting her report to the 26th session of the HRC.

OSCE Conference on improving the security of women and girls

Australia is an Asian Partner to the Organization for Security and Co-operation in Europe (OSCE). Australia hosted the 2013 OSCE Asian Partners Conference in Adelaide, from 18–19 March 2013. The theme of the conference was improving the security of women and girls, with the opening address given by Australia's then Ambassador for Women and Girls, Ms Penny Williams.

The conference provided a forum for government, non-government and academic experts to discuss gender-based violence against women and girls, the economic empowerment of women and combating all forms of human trafficking and slavery. During the conference, delegates discussed the impact of anti-trafficking policies on the human rights of vulnerable and trafficked persons, connections between economic growth and the trafficking of women and girls and efforts to address human trafficking and slavery in the Asia-Pacific region. Sixteen OSCE participating states took part in the Conference.

National Human Rights Action Plan

At the HRC Universal Periodic Review (UPR) of Australia in January 2011, the Australian Government committed to the preparation of a National Human Rights Action Plan. The Action Plan was released on Human Rights Day, 10 December 2012. It was tabled in the Australian Parliament in May 2013 and presented to the HRC on 7 June 2013.

Australia committed to providing an interim report to the HRC prior to our next UPR appearance in 2015. The Action Plan fulfills this commitment as it details the work being progressed by governments to address each UPR recommendation accepted or accepted-in-part by Australia.

The Action Plan includes detailed information on Australia's efforts to combat human trafficking and slavery, including through:

- the Support for Trafficked People Program
- support for investigations and prosecutions, and
- partnerships with the community, in the region, and beyond.

AGD will monitor overall implementation of the Action Plan. Reporting on progress will be timed to coincide with the Australian Government's next UPR report, expected in 2015.

Global Ambassador for Women and Girls

In 2012–13, the then Global Ambassador for Women and Girls continued to work across government and with civil society to promote gender equality and advance the political, economic and social empowerment of women and girls.

The Ambassador has promoted measures to combat trafficking of women and girls and to support trafficked people through her bilateral, regional and multilateral engagement. The Ambassador moderated a senior-level panel on violence and human trafficking at the Lower Mekong Initiative on Gender Equality and Women's Empowerment Dialogue hosted by the United States and Cambodia in July 2012. The Ambassador also delivered the keynote address at the OSCE Asian Partners Conference on Improving the Security of Women and Girls hosted by Australia in March 2013. In her address, the Ambassador noted that human trafficking and slavery are among the most abhorrent of all crimes and highlighted the importance of strong cooperation across governments and civil society to combat human trafficking and slavery and support trafficked people.

Ambassador for People Smuggling Issues

The Ambassador for People Smuggling Issues is responsible for high-level advocacy of Australia's interests in promoting effective and practical international cooperation to combat people smuggling and human trafficking, particularly in the Asia-Pacific region. The Ambassador has continued to promote Australia's enduring interests on human trafficking with key regional partners through the Bali Process and has encouraged the development of a strong anti-trafficking agenda in the Bali Process. The Ambassador co-chaired a forum on advancing regional cooperation on human trafficking to mark the 10th anniversary of the Bali Process in 2012. Domestically, the Ambassador participated alongside government and civil society partners at the National Roundtable on Human Trafficking and Slavery in November 2012, and the Senior Officials' Meeting in May 2013, where he provided members with an update on his work in the region.

The Commonwealth

Australia participated in the Commonwealth High-Level Meeting on Ending Child Marriage in London on 26 June 2013. The meeting explored ways that Commonwealth member states can address early and forced marriage and was coordinated by the Royal Commonwealth Society and the global children's charity Plan UK. Relevant Commonwealth High-Commissioners, senior officials, academics and practitioners from across the Commonwealth attended the meeting. The meeting followed a commitment by Commonwealth Leaders to improve gender equality and the empowerment of women at the 2011 Commonwealth Heads of Government Meeting in Perth. Forced and servile marriage issues were also considered at the 2011 Commonwealth Law Ministers Meeting.

2013 Quintet Meeting of Attorneys General

Quintet meetings involve the Attorneys General of Australia, Canada, New Zealand, the United Kingdom and the United States, and provide an important forum to share relevant experience and knowledge, and improve cooperation on complex and cross-border legal issues.

The central theme of the 2013 Quintet Meeting of Attorneys General was sexual violence against women and children, with additional topics on support for victims of crime and the use of technology in prosecutions. During the meeting Australia discussed our work to expand Commonwealth protections available to vulnerable witnesses, including victims of human trafficking and slavery-related offences (see page 6). Australia also noted our initiatives to address challenges in prosecuting human trafficking and slavery-related offences involving sexual exploitation.

Building regional capability

Human trafficking and slavery are complex crimes that occur within countries and across borders. Victims of human trafficking and slavery include women and men, girls and boys. Combating these crimes requires regional cooperation – no country can tackle the issues alone. The Association of Southeast Asian Nations (ASEAN) and Bali Process members support regional responses.

East Asia is the fastest growing region in the world and has seen the greatest reductions in poverty in human history. However, despite impressive economic growth, development has been uneven between and within countries. There is inequality in income, education and access to basic services.

The ability to migrate for work has created new opportunities for many people in East Asia – including the poorest. However, as migrant workers cross borders to take up jobs in informal or poorly regulated labour markets, they are at risk of exploitation. There are large numbers of trafficked people and a high incidence of exploitative labour conditions in the East Asia region.

Tourism also plays an important role in promoting new opportunities for economic growth in East Asia. However, increasing flows of tourists can have adverse effects on vulnerable groups and communities, including the sexual exploitation of children who live in thriving tourism areas.

Australia's response

Australia is internationally recognised as a leader in combating human trafficking and slavery in East Asia. Over the past decade, Australia has invested significant resources to improve the capacity of partner countries' criminal justice sectors to tackle these crimes. AusAID's programs incorporate both regional and national approaches to strengthen legal and justice

systems, promote law enforcement cooperation, support information campaigns and provide technical training and assistance on victim protection.

In 2012–13, AusAID provided more than \$8.2 million to address transboundary issues such as human trafficking, labour exploitation and the sexual exploitation of children in tourism.

Australia-Asia Program to Combat Trafficking in Persons

Australia's new, \$50 million flagship program, the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP), will commence in late 2013. AAPTIP will work with law enforcement and justice officials to strengthen criminal justice responses in the ASEAN region to reduce the incentives and opportunities for human trafficking. Partner countries are Cambodia, Indonesia, Lao People's Democratic Republic (PDR), Myanmar, the Philippines, Thailand and Vietnam.

AAPTIP will run for the next five years (2013–18) and will build on the achievements of the Asia Regional Trafficking in Persons Project, which ended in March 2013 following a scaled-back transition phase.

AAPTIP will:

- strengthen criminal justice responses to human trafficking at both regional and national levels
- train more than 1,900 judges and prosecutors, and help investigators to increase convictions
- establish a research fund to improve the collection of statistics to inform policy
- boost regional coordination and exchange of information, and
- focus on the needs of trafficked people as they move through the criminal justice process to ensure better alignment with protection efforts.

Asia Regional Trafficking in Persons Project: best practice examples of international and cross-border cooperation

The AusAID-funded Asia Regional Trafficking in Persons Project (ARTIP) project helped build regional cooperation and coordination to combat human trafficking. In Vietnam, ARTIP focused its work on provinces bordering China (Dien Bien province, Lai Chau province, Lao Cai province, Cao Bang province, Ha Giang province, Lang Son province) in view of the high incidence of trafficking-related crimes reported in these provinces. Police and prosecutors received training to improve their identification of, and response to, trafficking cases. In June 2011, ARTIP also supported an International Cooperation Meeting on human trafficking between INTERPOL Vietnam and INTERPOL China in Beijing. Since that meeting there has been a substantial improvement in the frequency and quality of cross-border cooperation in trafficking cases between Vietnam and China. China and Vietnam have conducted 45 cross-border meetings to share intelligence and have cooperated on 27 cross-border joint investigations on transnational crimes, including on human trafficking cases. The improvement in cross-border cooperation led to the rescue of more than 500 victims of human trafficking and the arrest and prosecution of more than 300 traffickers between 2011 and 2013.

Tripartite Action to Protect Migrants from Labour Exploitation in the Greater Mekong Sub-Region

AusAID works with the ILO to reduce the exploitation of migrant workers and their families through the Tripartite Action to Protect Migrants in the Greater Mekong Sub-Region (TRIANGLE) Project (\$10.9 million; 2010–2015). Partner countries are Cambodia, Lao PDR, Thailand and Vietnam, with Malaysia as a key destination country. From January 2013, TRIANGLE was extended to cover Myanmar.

TRIANGLE works to improve labour protection measures, increase community awareness of exploitative practices, promote legal and safe migration and create decent work opportunities. It supports Migrant Resource Centres in five Mekong countries, which provide people with information and skills about how to migrate safely, and information on their rights and entitlements. Over 13,000 labour migrants have been provided with advice and/or legal support.

In March 2013, an independent mid-term review of TRIANGLE found it to be an effective project and highly relevant to the needs of the region. TRIANGLE is on track to reach its target of 25,000 migrant workers by 2015.

TRIANGLE Migrant Worker Resource Centres

The AusAID funded TRIANGLE project aims to prevent labour exploitation and create decent work opportunities for migrant workers in the Greater Mekong SubRegion. Through a network of Migrant Worker Resource Centres in key locations, migrants and potential migrants have access to services including counselling, training and legal assistance to support safe migration and rights at work.

As migrants are often dependent on each other for information on safe migration and labour rights, peer-to-peer assistance is a key part of the project strategy. Migrant paralegals have been trained to provide assistance within the migrant community. Migrant leaders have been identified and trained to organise activities and ‘labour exchanges’ to share experiences and identify solutions that can better inform and protect migrants.

These centres are a powerful alternative to the often-misleading information provided by unscrupulous brokers and employers that can lead a migrant worker into an exploitative situation, or result in them being trafficked.

MTV End Exploitation and Trafficking Program

AusAID partners with the United States Agency for International Development to support Music Television’s (MTV) End Exploitation and Trafficking (EXIT) Program (\$10 million, 2010–16). The program aims to raise awareness, change attitudes and behaviour and combat human trafficking in countries with a high incidence such as Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Thailand and Vietnam.

MTV EXIT has engaged with over 700,000 people in person, its television content has been viewed more than 60 million times, and campaign materials have been provided to local NGOs for continued use. In the last two years, more than 850 young people in Cambodia, Myanmar, the Philippines and Vietnam have been trained to deliver anti-trafficking messages in their local areas.

An independent review of the program found that it was effective in raising awareness, that it had significant reach and that it had the potential to affect change. The current phase of MTV EXIT (Phase 4) from 2013 to 2016 (\$6.9 million AusAID) will enable the program to implement the findings of the review, consolidate its successes, and continue to build sustainable local capacity to address human trafficking and slavery.

AusAID and MTV EXIT empower Myanmar's youth against trafficking

As one of the poorest nations in South East Asia, Myanmar is a source country for women, men and children to be trafficked into sexual or other forms of labour exploitation. An estimated two million people have crossed the border to work in Thailand, looking for better employment opportunities in the region, outside of their home country. Migration is a sign of a dynamic regional economy. However, it also provides opportunities for offenders to prey on the vulnerable or uninformed.

With a pregnant wife and just \$3 per day income, Min Aung paid an 'employment agent' to arrange work in a Thailand factory to better his economic security. The result was two years of forced labour in a prawn peeling factory, working 19 hours a day, seven days a week. Min Aung's passport was confiscated and he received no salary. Unfortunately, his story is all too common. In 2012, the ILO received 68 complaints of forced labour from Myanmar. It is likely that many more cases go unreported.

As the Mekong economies continue to grow, efforts to ensure safe migration and reduce human trafficking and slavery are increasingly important. Empowering at-risk groups, especially young people, with information about their rights and the risks of trafficking is essential. Min Aung now shares his story with other young people in South East Asia through the MTV EXIT program. In December 2012, MTV EXIT brought its anti-trafficking message to 70,000 people in Myanmar's first ever international music festival. Through our support to MTV EXIT, Australia is helping empower Myanmar's youth and raise awareness about the dangers of human trafficking and slavery.

Project Childhood

Project Childhood is a \$7.5 million program (2010–2014) to combat child sexual exploitation in tourism in partnership with governments of Cambodia, Lao PDR, Thailand and Vietnam. Project Childhood builds on more than 10 years of Australian Government efforts to combat child sexual exploitation in tourism in East Asia.

The project consists of two distinct but linked pillars of work covering both prevention and protection activities. World Vision Australia implements the Prevention Pillar and works with partner governments to develop awareness of child sexual exploitation in tourism. This includes raising awareness about the conditions that make children vulnerable to exploitation, such as selling flowers or souvenirs to tourists.

The UNODC and INTERPOL implement the Protection Pillar. UNODC works with law enforcement agencies to strengthen their ability to protect children, and arrest and convict child sex tourists. During 2012–13, over 1,000 community leaders and government officials were trained to keep children safe from sexual abuse and provide counselling to more than 6,000 vulnerable children in Cambodia.

DIAC capacity building activities

DIAC undertakes capacity building activities and provides technical assistance to a number of countries to support efforts to address all forms of irregular migration, with particular focus on human trafficking and people smuggling.

In 2012–13, DIAC continued its targeted capacity building programs with immigration agencies in the Middle East, Asia and Pacific regions. These programs include:

- document examination equipment and training to frontline immigration officers at airports and land borders. The training and equipment contribute to deterring human trafficking and people smuggling by enabling more officers to confidently and accurately detect fraudulent travel documentation at borders
- facial image comparison training to enhance agencies' ability to prevent irregular movement by developing immigration officers' skills in detecting fraudulent use of travel documents by impostors
- intelligence analysis capacity building activities to boost agencies' capacity to capture data, analyse and report on trends in irregular migration throughout the region. Immigration intelligence capacity building initiatives are currently underway with several high priority countries. These activities encourage information and intelligence sharing between DIAC and other immigration agencies, which is crucial to investigating human trafficking and people smuggling activities, and
- immigration investigations training to strengthen officers' capacity to investigate criminal activity related to irregular migration, such as human trafficking and people smuggling.

DIAC also continues to build relevant capacity through activities including border assessments, alert systems design and implementation, and development of border management systems including biometric capabilities, passport systems, identity verification, legal and regulatory frameworks, and protection frameworks.

DIAC has committed over \$11 million over four years to fund four projects being managed by the UNODC, which will terminate in 2014. These projects are designed to detect, prevent and respond to people smuggling in our region. The projects seek to establish an intelligence and data collection capability; provide a comprehensive range of online training modules targeted at people smuggling and promoting increased cooperation between border liaison officers. The projects also focus on training and increasing the capabilities of immigration officials throughout several countries in South East Asia. While the UNODC projects target people smuggling specifically, these activities are also effective in addressing other forms of irregular movement, including human trafficking.

Preventing human trafficking to Australia

In 2012–13, DIAC had three positions at overseas posts in the Asia-Pacific (Bangkok, Manila, and Guangzhou) focused on preventing human trafficking at its source. These positions are part of DIAC's overseas compliance network and provide regional coverage.

DIAC's overseas compliance staff are known as 'integrity officers' and the three specialised positions as Senior Migration Officers (Integrity) (Trafficking), or SMOITs.

The SMOITs vet visa applications for evidence of fraud that may indicate potential trafficking and analyse trends in visa processing, including:

- applicants' travel patterns
- suspicious activity/patterns by migration agents, and
- the visa classes being targeted by trafficking organisations.

In addition, the SMOITs analyse data relating to non-compliance with visa conditions for use in screening for immigration fraud, as well as to identify possible human trafficking cases. They also lend key support and liaison services to onshore compliance officers in the investigation of allegations concerning possible trafficked people in Australia.

The SMOITs work closely with the AFP liaison officer at post to identify trafficking links with Australia and liaise with local government and non-government agencies to identify ways to prevent trafficking.

SMOITs are part of a larger network of compliance officers attached to key overseas posts to identify, respond to and counter immigration fraud and malpractice. They also work closely with local police and immigration officials to combat people smuggling, human trafficking and irregular migration.

Key achievements for 2012–13 include:

- identifying a potential Thai trafficked person in the visa application stage due to changes to system alert profiles introduced as a result of a 2012 trafficking investigation
- delivering presentations to the Royal Thai Police, Bangkok International Police Liaison Group, and NGOs; Hong Kong Immigration Department; Philippine Overseas Employment Administration staff; and Philippine immigration officers
- funding and conducting a Border Crossing Immigration Officer workshop in Davao City, the Philippines to enhance knowledge and skills in border security issues including trafficking
- contributing to ongoing investigations, including interviewing at post as a result of intelligence held by DIAC, and
- liaising with representatives of other foreign governments on issues of common concern including human trafficking.

Building legal and law enforcement capacity in our region

As part of our holistic approach to combating human trafficking and slavery, Australia works with partner countries in the region to strengthen legal frameworks and capacity to prevent human trafficking and slavery, prosecute the perpetrators, and ensure trafficked people are protected.

Regional legal assistance

In 2012–13, AGD continued its work with countries in the region to strengthen legal frameworks and capacity to address human trafficking and related issues. AGD has driven regional initiatives through the Bali Process and worked bilaterally with partner countries to share experience and expertise on combating human trafficking and related issues, such as through the annual Malaysia-Australia Working Group on People Smuggling and Trafficking in Persons. AGD continued productive cooperation with partner countries to strengthen anti-money laundering and proceeds of crime frameworks in order to target the financial incentive of human trafficking and slavery and associated money laundering.

In 2012–13, AGD also developed a practitioner's guide to assist the African Union and policy makers in African Union member countries to develop effective legal frameworks to combat human trafficking and slavery, in line with international obligations. The guide has been produced in four different languages (Arabic, English, French, and Portuguese) and draws on AGD's experience in working with partner countries to develop effective laws to criminalise human trafficking and slavery.

AGD works collaboratively with other agencies such as DIAC and AusAID, and with intergovernmental organisations such as UNODC and the International Organization for Migration to maximise the effectiveness of the Australian Government's investment in regional capacity building on human trafficking and slavery.

In August 2012 members of the AFP Human Trafficking Team (HTT) attended the International Law Enforcement Academy (ILEA) to deliver a two week International Human Trafficking Investigation Workshop to 48 participants from eleven South East Asian countries (see page 22). The program will be delivered again in August 2013.

In October 2012, the AFP HTT National Coordinator presented at the regional conference on the links between organised crime and terrorism, specifically human trafficking and slavery financing terrorism, in Brunei.

The Pacific Transnational Crime Network (PTCN) plays an integral role across the Pacific region by enhancing the capacity of Pacific nations to combat transnational crime, including human trafficking. The PTCN consists of 18 Transnational Crime Units (TCUs) in 13 countries across the Pacific. The AFP provides six TCU Advisors to the PTCN. The primary role of an Advisor is to mentor TCU members and to identify and implement capacity building opportunities. The 2012 PTCN Transnational Crime Assessment identifies human trafficking and slavery as being associated with the sex industry. It is suspected that this crime type is significantly under-reported in the Pacific region due to trafficked people being reluctant or unable to report their experiences to authorities.

In 2012–13, members from PNG TCU and Cook Islands TCU attended two AFP supported PTCN training courses; a PTCN Fundamental Course in March 2013 in Fiji; and a PTCN Advanced Course in May 2013 in Samoa. The course subject matter provided learning outcomes relevant to all transnational crime types including human trafficking.

DIAC works closely with other whole-of-government and international stakeholders through the Bali Process to develop regional responses to current challenges and implement a practical workshop program on border control, law enforcement and human trafficking. Under the auspices of the Bali Process's Regional Cooperation Framework and the associated Regional Support Office, DIAC supports a range of initiatives that pursue the reduction of irregular migration through enhancing migration management and border security, and promoting mechanisms to improve access to protection and durable solutions for refugees and other vulnerable people in the region.

Trafficking in children for adoption

A commitment of Australia as a contracting State under the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* is to prevent the abduction, sale of, or traffic in children for the purposes of intercountry adoption through the implementation and observance of Convention safeguards. The *Guide to Good Practice* to the Convention defines the term 'trafficking' as referring to the payment of money or other compensation to facilitate the illegal movement of children for the purposes of illegal adoption or other forms of exploitation.³⁴ While there are differing interpretations of the term 'trafficking' within intercountry adoption and broader international frameworks, illicit practices in adoption are clearly inconsistent with the principles of the Hague Convention.

In 2012–13, AGD, as the Australian Central Authority under the Hague Convention, has continued in its endeavours to address child trafficking and illicit practices in intercountry adoption at the domestic and international level.

In early 2011, Australia convened a working group to develop cooperative measures to prevent illicit practices in intercountry adoption cases. The working group, led by Australia, developed a discussion paper on *Cooperation between the Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption*.³⁵ This paper was published by the Permanent Bureau of the Hague Conference on Private International Law in October 2012 and distributed to all member states.

At the domestic level, Australia has developed a *Protocol for Responding to Allegations of Child Trafficking in Intercountry Adoption* (the Protocol).³⁶ The Protocol provides information about assistance and support available to adoptive parents and adoptees where there are allegations or concerns about child trafficking within a country of origin, from where a child has been adopted to Australia, or there have been specific concerns raised in an individual case.

34 The *Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice No. 1* is available online at: <www.hcch.net/index_en.php?act=publications.details&pid=4388>.

35 The discussion paper on *Cooperation between the Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption* is available online at: <[www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Discussion%20paper%20Cooperation%20between%20Central%20Authorities%20\[DOC%20118KB\].docx](http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Discussion%20paper%20Cooperation%20between%20Central%20Authorities%20[DOC%20118KB].docx)>.

36 The *Protocol for Responding to Allegations of Child Trafficking in Intercountry Adoption* is available online at: <[www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Protocol%20for%20responding%20to%20allegations%20of%20child%20trafficking%20in%20intercountry%20adoption%20\[DOC%202084KB\].doc](http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Protocol%20for%20responding%20to%20allegations%20of%20child%20trafficking%20in%20intercountry%20adoption%20[DOC%202084KB].doc)>.

To assist when cases of concern arise, Australia has developed *Guidelines for Raising Cases of Concern*. These provide guidance around information sharing between Australian Central Authorities regarding intercountry adoption cases of concern.

To maintain the integrity of our intercountry adoption programs, Australia only has programs with a limited number of countries where it can be satisfied that the principles of the Hague Convention are in place. This is the case even where the country concerned is not a signatory. Australia regularly reviews its programs to ensure a country's ongoing compliance with these principles, and to identify risks of child trafficking. Where cases of concern arise, consideration is given to whether there are broader program implications and whether it is necessary to prioritise a review of the program concerned. Australia may consider introducing safeguard measures for a program, such as suspending a program or limiting new adoption applications.

Educating prospective adoptive parents about the realities and risks of intercountry adoption is identified in the Convention's *Guide to Good Practice* as an important measure to prevent undue pressure on sending countries. To inform Australian families of the realities and inherent risks in intercountry adoption, Australia has prepared an Information Statement on the Realities of Intercountry Adoption (Information Statement) which is provided to prospective adoptive families when they are first considering intercountry adoption.³⁷

In the past, Australia has also contributed to the work of the Intercountry Adoption Technical Assistance Program (ICATAP). ICATAP, which is operated by the Permanent Bureau of the Hague Conference, provides assistance to governments of certain states planning to ratify or accede to the Hague Convention, or which have ratified or acceded but are experiencing difficulties with implementation of the Convention. The provision of this assistance is an important way for Australia, as a receiving country, to support countries of origin.

³⁷ The *Information Statement on the Realities of Intercountry Adoption* is available online at: <[www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Information%20statement%20on%20the%20realities%20of%20intercountry%20adoption%20\[DOC%2068KB\].doc](http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Information%20statement%20on%20the%20realities%20of%20intercountry%20adoption%20[DOC%2068KB].doc)>.

Understanding human trafficking, slavery and related exploitation

Australian Institute of Criminology research

In 2012, the AIC commenced its second four-year Human Trafficking and Slavery Program. Key areas of focus for 2012–13 included:

- improved monitoring of human trafficking and slavery in Australia and the Asia-Pacific region
- further examination of the nature of human trafficking and slavery in non-sex industry contexts, specifically marriage and construction
- examining the nature of offending and offenders, and
- examining human trafficking and slavery in the Asia-Pacific region.

A summary of the work undertaken by the AIC in 2012–13 is provided below.

Monitoring human trafficking and slavery

A key objective of the AIC's Human Trafficking and Slavery Research Program is to establish a regular monitoring program on human trafficking and slavery in Australia. The AIC has released two Monitoring Reports on human trafficking and slavery to date, covering the periods July 2007–December 2008³⁸ and January 2009–June 2011.³⁹

In finalising these reports, the AIC determined that further monitoring activity undertaken by the AIC should be underpinned by a broader conceptual representation of human trafficking and slavery, yet be mindful of the inherent challenges attached to such an undertaking. These challenges include the absence of international and national measurement and data collection standards for human trafficking and slavery and the variable reliability, utility and comparability of data that is currently collected.

38 Joudo Larsen J, Lindley J & Putt J 2009. *Trafficking in persons monitoring report: July 2007–December 2008*. Monitoring report no. 6. Canberra: AIHW.

39 Joudo Larsen J, Renshaw L, Gray-Barry S, Andrevski H & Corsbie T 2012. *Trafficking in persons monitoring report: January 2009–June 2011*. Monitoring report no. 19. Canberra: AIHW.

The development of the enhanced Human Trafficking, Slavery and Slavery-Like Practices Monitoring Program therefore will involve four steps:

- the establishment and refinement of a conceptual framework, indicator themes and associated indicators
- a stock-take and evaluation of administrative and other data that are collated or otherwise available from relevant government and non-government agencies
- the development of a data dictionary and Minimum Data Set (MDS) or similar collection tool, and
- an assessment of the framework's readiness for implementation, including pilot testing.

The first two steps were finalised in June 2013 and an interim report is being prepared for relevant stakeholders describing the findings from the initial investigation and the next steps in the development process. Steps 3 and 4 will be completed in 2013–14 involving further stakeholder consultation, preparation of proposed data collection items and pilot testing data compilation and transmission with identified data providers.

It is anticipated that the Human Trafficking, Slavery and Slavery-Like Practices Monitoring Program will be a living document, and that improvements to the scope and quality of the quantitative and qualitative data collected will occur periodically as wider data collection practices are refined and additional information is made available. By following the appropriate processes for establishing a monitoring program, and accounting for the array of factors that are involved in human trafficking and slavery, the monitoring activity aims to:

- advance knowledge and measurement of the identified issues
- produce credible and reliable findings, and
- facilitate recommendations for decision-making around reducing the risks associated with human trafficking and responding to the victims and offenders involved.

Human trafficking involving marriage and partner migration

In response to increasing concern, and anecdotal and officially reported evidence of trafficking within marriage arrangements, the AIC initiated a research project focusing on the role of marriage in trafficking-related exploitation of migrant women. While the issue of forced and servile marriage has received a great deal of government and academic attention, this research reveals that marriage relates to human trafficking in another critical way; that is, it can be used as a means to traffic women into Australia for exploitation.

In carrying out this research, an understanding of the following was sought:

- whether and how marriage and the Partner visa system are used for the human trafficking and related exploitation of migrant women in Australia
- the risk factors that increase vulnerability to human trafficking for migrant women entering Australia under the Partner Migration program
- the protective factors that reduce vulnerability to human trafficking for migrant women moving to Australia under the Partner Migration program, and

- possible implications this crime has for Australia, including for prevention, detection, legislation, prosecution and victim services.

A mixed methodology approach was adopted for the study. The AIC consulted with government and non-government representatives, law enforcement agencies, and relevant victim service providers. Interviews were also conducted with eight migrant women where marriage played a role in their exploitation or related victimisation. This analysis was supplemented by case file analysis and analysis of Australian immigration and Partner visa data supplied by DIAC.

The research provides a detailed description of the characteristics and experiences of the women interviewed, how they entered into their marriage and the nature of that marriage, and the help-seeking strategies they used in attempting to exit their situation. It also addresses issues related to the misidentification of trafficked people, and recommends a range of effective prevention and response mechanisms.

A final report, and shorter paper on help-seeking strategies, will be released in 2013–14.

Human trafficking in the Australian construction industry: risks and protections for migrant workers

Previous AIC research on labour exploitation⁴⁰ raised concerns around human trafficking and slavery in various labour sectors, including the construction industry. In response to these concerns, the AIC partnered with the Sisters of the Sacred Heart Josephite Counter-trafficking Project and the Catholic Archdiocese of Sydney to examine human trafficking and slavery in the Australian construction industry, with a particular focus on migrant workers. The research combined a review of Australian (and international) literature and semi-structured interviews with stakeholders representing Australian government, regulatory, union and industry bodies as well as NGOs engaged in anti-trafficking initiatives.

The study sought to examine the full spectrum of exploitative practices that may occur in the Australian construction industry – from unpaid wages at one end of the spectrum to human trafficking and slavery at the other – and stakeholders' understanding of what constitutes labour exploitation. It also identifies risks and protective factors within the industry that might affect vulnerabilities and protection of workers, particularly migrant workers, to exploitative scenarios related to human trafficking and slavery. This latter area of inquiry included obtaining stakeholder perspectives on industry-specific factors that may contribute to exploitation, including: visa categories and arrangements; employment practices (for example, contracting arrangements); skills shortages; the informal economy; and current compliance, regulatory and enforcement practices. Risks specific to migrant workers were also investigated, such as legal status, access to and knowledge of rights and entitlements (or lack thereof) and social isolation.

A final report will be released in 2013–14.

40 David F 2010. *Labour trafficking*. Research and public policy series no. 108. Canberra: AIC.

Examining understandings of human trafficking offending and offenders

Following an earlier report on organised crime and human trafficking,⁴¹ the second component of AIC research on human trafficking and slavery offending examined the nature of offenders in Australia. Based on analysis of court judgments from the 15 convictions recorded as of 30 June 2012, the research describes the:

- characteristics and motivations of offenders
- evidence for prior victimisation histories
- levels of organisation in human trafficking and slavery operations
- the intersection of offending with other forms of criminal activity, and
- methods used to control or exploit the victims.

The findings from the analysis were compared with patterns of trafficking offending described in the international literature, to determine commonalities and differences in offender characteristics, organisation and modes of operation.

A paper will be released in 2013–14.

Assisting the International Organization for Migration with analysis of human trafficking data

In 1999, the International Organization for Migration (IOM) developed and implemented the Counter-Trafficking Module (CTM), which is the largest global database containing primary data on trafficked people. The CTM facilitates the management of the IOM's Return, Recovery and Reintegration Program as well as mapping the experience of trafficked people.

The AIC collaborated with the IOM to analyse the CTM database, which holds qualitative and quantitative information relating to 3,701 Indonesian trafficked people identified between January 2005 and January 2010. Five papers were generated from this analysis, three of which were released in 2013. These three papers examined respectively:

- the demographics and experiences of Indonesian trafficked people, including type of exploitation, methods of recruitment and reasons for leaving, type of work, salary and conditions, incidence of child trafficking and prevalence of transnational versus domestic trafficking (Joudo Larsen, Andrevski & Lyneham 2013)
- support needs and nature of assistance that should be provided to trafficked people, based on age, gender and the type of exploitation experienced (Lyneham & Joudo Larsen 2013), and
- barriers to trafficked people's involvement in criminal justice proceedings (such as fear of authorities, identification and reprisals, stigma, criminalisation and re-victimisation) and factors that exacerbate these barriers (such as inadequate support and treatment, legislative deficiencies, and corruption) (Andrevski, Lyneham & Joudo Larsen 2013).

41 David F 2012. Organised crime and trafficking in persons. *Trends and issues in crime and criminal justice* no. 436. Canberra: AIC.

Two further papers for release in 2013–14 describe the experiences and exploitation of Indonesian domestic workers, and the challenges and processes of return and reintegration for trafficked people.

Parliamentary inquiries

Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into Slavery, Slavery-like Conditions and People Trafficking

On 13 August 2012, the then Minister for Foreign Affairs, Senator the Hon Bob Carr, asked the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade to inquire into and report on slavery, slavery-like conditions and human trafficking. The committee was asked to focus on three main issues:

- Australia's efforts to address human trafficking and slavery, including through prosecuting offenders and protecting and supporting victims
- ways to encourage effective international action to address all forms of human trafficking and slavery, and
- international best practice to address all forms of human trafficking and slavery.

The Committee undertook extensive consultations. It received 82 public submissions and held 10 public hearings. A number of agencies from the Interdepartmental Committee on Human Trafficking and Slavery provided submissions and appeared at public hearings. On 24 June 2013, the Committee tabled its report on the inquiry entitled *Trading Lives: Modern Day Human Trafficking*. The committee made eight recommendations including on the use of international mechanisms to combat human trafficking and slavery, support for trafficked people and exploitation in supply chains.

The report of the Human Rights Sub-Committee is available from the Australian Parliament House website.⁴²

As at 30 June 2013, the Government was considering the Committee's recommendations.

Senate inquiry into the Prospective Marriage visa Program

On 26 June 2013, the Government tabled its response to the Senate Legal and Constitutional Affairs Committee inquiry into the Prospective Marriage (subclass 300) visa Program. The inquiry, which had been referred to the Committee by the Australian Senate on 23 November 2011, examined a range of issues, including:

- whether existing procedures for protecting against fraud are sufficient and whether the procedures for ascertaining the consent of an applicant for a Prospective Marriage visa are reliable, and

⁴² The report of the Human Rights Sub-Committee is available online at: <www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfact/slavery_people_trafficking/report.htm>.

- ways in which protections against fraud and forced marriage could be strengthened for women in other countries applying for a Prospective Marriage visa.

The inquiry received submissions from DIAC, the AIC, the Australian Law Reform Commission and a range of other Government agencies, NGOs and individuals. The inquiry also held a public hearing in Canberra on 25 May 2012. DIAC, AGD, the AIC and other agencies gave evidence at the hearing, along with NGOs including the Immigration Advice & Rights Centre.

The final report of the inquiry was released on 26 June 2012. The report made seven recommendations which the Committee considered would improve existing systems in relation to Prospective Marriage visas. These recommendations include that the Government:

- institute a formal requirement for Prospective Marriage visa program decision-makers to separately interview all applicants and sponsors under the age of 18, and increase the minimum age of visa holders within the Prospective Marriage visa program to 18 years of age to help minimise the incidence of forced marriage and trafficking in Australia
- investigate and implement a way in which to record the non-consent of one party to a Prospective Marriage visa application, which takes into account the safety and well-being of that party should the other party or the members of either party's family become aware of the disclosure of a forced marriage, and
- develop an information package for newly arrived migrants on a Prospective Marriage visa or Partner visa, which informs such migrants about: the law in Australia with respect to family violence and forced marriages; factors which might indicate the existence of a forced marriage; and how migrants experiencing family violence or a potential or actual forced marriage can seek assistance.

The Government tabled its response to the Committee's recommendations on 26 June 2013. The Government accepted five of the seven recommendations either in full or in principle.

During the reporting period, DIAC commenced implementation of the Committee's recommendations. As at 30 June 2013:

- the Australian Parliament had amended the Prospective Marriage visa legislation, to commence 1 July 2013, to require Prospective Partner visa applicants and sponsors to be at least 18 years of age
- DIAC had inserted a question in the application and sponsorship forms to ascertain if the applicant and sponsor consented to the relationship, and
- DIAC had inserted information on forced marriage in *Booklet 1: Partner migration*, to raise awareness among potential visa applicants.

Further information on the inquiry, including its final report and the Government's response, is available from the Australian Parliament House website.⁴³

⁴³ Further information on the inquiry, including its final report and the Government's response, is available online at: <www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/marriagevisa/classes/index>.

Mapping exercise on service provision and awareness-raising

In response to a recommendation of the November 2012 meeting of the National Roundtable on Human Trafficking and Slavery, in April 2013 AGD circulated a survey to map the efforts of Australian organisations which provide services to trafficked people and/or raise awareness about human trafficking and slavery. A total of 32 organisations responded to the survey, 69 per cent of whom were from the non-government sector.

Education and awareness-raising initiatives were undertaken by 78 per cent of respondents, with their target audiences including frontline service providers, migrant workers and migrant resource centres, professionals including employers and peak bodies, government personnel, students, media, and the general public. Respondents indicated that the most important areas for future education and awareness-raising work included:

- the new criminal offences, including forced marriage
- the identification of labour exploitation including amongst migrant workers
- provision of information to trafficked people, including on legal rights and responsibilities
- campaigns targeting safe migration pathways
- industry-specific outreach campaigns
- training for frontline service providers of human trafficking and slavery indicators
- relationship building with key communities and their leaders, including involving them in initiatives
- broader community awareness-raising of all forms of human trafficking and slavery to reduce stereotypes, and
- awareness-raising amongst consumers with respect to the use of exploited labour in supply chains.

The results of the survey will be used to inform the revision of Australia's *Communication and Awareness Strategy for Human Trafficking and Slavery* in 2013–14.

UNODC Global Report on Trafficking in Persons

The 2012 UNODC Global Report on Trafficking in Persons was released on 12 December 2012. The report provides an overview of patterns and flows of human trafficking at global, regional and national levels. The Australian Government provided information about Australia's response to human trafficking and slavery to the UNODC to assist with the production of the report.

The year ahead

In 2013–14, the Australian Government will advance a strong program of work aimed at supporting the four pillars under the strategy, and cementing our role as a regional leader in combating human trafficking and slavery.

In collaboration with stakeholders including members of the National Roundtable on Human Trafficking and Slavery (Roundtable), AGD will finalise consultations on the *National Action Plan to Combat Human Trafficking and Slavery* (Action Plan) ahead of its launch, expected in late 2014. The Action Plan will set the strategic aims of Australia's whole-of-community response to human trafficking and slavery, and contain measures to measure the impact and effectiveness of our collective efforts to combat these crimes.

In the next year, improving general community awareness of human trafficking and slavery, and developing strategies to increase resilience amongst groups identified as particularly vulnerable to these crimes, will be a key focus of the revision of Australia's *Communication and Awareness Strategy for Human Trafficking and Slavery*. We will also build on the work undertaken to ensure Australian Government procurement is not tainted by human trafficking or slavery by more broadly examining ways to address human trafficking and related exploitative practices in supply chains. These issues will be progressed through two working groups, established under the Roundtable. AGD will drive the outcomes under the working groups in collaboration with civil society, unions, business and industry bodies.

The Australian Government is also expected to respond to the *Trading Lives: Modern Day Human Trafficking* report by the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. The report was tabled in Parliament on 24 June 2013, following the Committee's inquiry into Slavery, Slavery-like Conditions and Human Trafficking.

In addition to its ongoing role in investigating human trafficking and slavery matters, and training frontline officials in this capacity, in 2013–14, the AFP will review the *Australian Policing Strategy to Combat Trafficking in Persons 2011–13* and consider options to extend or amend the strategy. The CDPP has a number of ongoing prosecutions in relation to human trafficking and slavery-related offences, and will continue in its role of assessing new briefs of evidence referred to it by the AFP.

In 2013–14, DIAC will progress internal awareness-raising and education initiatives amongst counter staff and visa processing officers, particularly those in the protection and partner visa areas. Standard Operating Procedures for the State and Territory network and other support tools for frontline staff will be updated, and a quality assurance framework for the Human Trafficking Visa Framework, currently at the design stage, will be progressed. Work will also continue on enhancing DIAC systems capability to allow for more efficient collection and analysis of data to support the identification of trafficked people and offenders.

In 2013–14, FaHCSIA looks forward to working with the Australian Red Cross and the Operational Working Group on innovative approaches to getting the best value out of Support Program funding. This includes a forced marriage scoping exercise and the development of a Support Program client information kit.

AusAID will continue to focus efforts in areas where Australia can make a difference and where our resources can most effectively and efficiently be deployed. Australia's new, \$50 million flagship program, the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP), will commence in late 2013. AAPTIP will work with law enforcement and justice officials to strengthen criminal justice responses in the ASEAN region to reduce the incentives and opportunities for human trafficking and slavery.

In 2013–14, Australia will also continue to actively engage in our region and further afield on human trafficking issues.

Under the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*, Australia will work with Indonesia to establish a Working Group to specifically focus on human trafficking issues, and with Thailand to develop regional policy guides to support policy makers and practitioners to criminalise human trafficking.

In 2014, Australia is also expected to submit our sixth period report on the implementation of our obligations under the *International Covenant on Civil and Political Rights* (ICCPR), including information about Australia's response to human trafficking and slavery under Article 8 of the ICCPR. In 2013, Australia will also lodge our fifth report under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The report will focus on key initiatives and developments since 2005, including Australia's efforts to prevent and punish human trafficking and slavery and provide effective remedies for trafficked people.

Appendix 1: Convictions in 2012–13, and ongoing matters

Convictions

K

On 16 April 2013, Ms 'K' pleaded guilty to one count of trafficking in children contrary to subsection 271.4(1) of the Commonwealth *Criminal Code Act 1995* (Criminal Code). Ms K also pleaded guilty to 19 charges under Queensland's *Criminal Code Act 1899*, including maintaining a sexual relationship with a child. Due to the number and gravity of the charges under Queensland criminal law, the CDPP referred the prosecution of the Commonwealth trafficking offence to the Queensland Director of Public Prosecutions (Queensland DPP).

The charges relate to Ms K's daughter, who was brought to Australia from Thailand in 2006 to reside permanently. Ms K's daughter was subsequently subjected to sexual exploitation in the illegal sex industry in Brisbane. Ms K's name is suppressed to protect the identity of her daughter.

Ms K was sentenced to nine years' imprisonment, with a non-parole period of four years. Justice David Boddice of the Queensland Supreme Court noted that Ms K's early pleas of guilty, remorse and cooperation with authorities were taken into account in determining her sentence. As at 30 June 2013, Ms K had appealed against her sentence.

Ms K's de facto partner and six people who procured the victim for sexual services have also been charged with various offences by the Queensland DPP.

Chee Mei Wong

On 11 August 2010, Chee Mei Wong was charged with conducting a business involving sexual servitude contrary to subsection 270.6(2) of the Criminal Code, organising or facilitating the entry of a person to Australia reckless as to whether the person will be exploited contrary to subsection 271.2(1B) of the Criminal Code, and several offences under the *Migration Act 1958* (Migration Act). The charges relate to 11 women from Malaysia who worked for Ms Wong as sex workers under very harsh circumstances. Ms Wong was charged following the AFP's Operation Burlywood investigation into human trafficking, sexual servitude and migration-related offences, and committed for trial on 13 September 2011.

The original trial date of 18 June 2012 was vacated because Ms Wong was unrepresented. The trial was set down for 28 January 2013 in the New South Wales District Court. On 27 March 2013, Ms Wong was convicted of one count of conducting a business involving sexual servitude contrary to subsection 270.6(2) of the Criminal Code, four aggravated counts of allowing non-citizens to work in breach of their visa conditions contrary to subsection 245AC(2) of the Migration Act, and two counts of allowing non-citizens to work in breach of their visa conditions contrary to section 245AC of the Migration Act. Sentencing was set down for July 2013.

Ongoing matters

Song Chhoung Ea

On 2 February 2012, the AFP charged a Sydney man with two counts of trafficking in persons contrary to subsection 271.2(1B) of the Criminal Code, one count of conducting a business involving sexual servitude contrary to subsection 270.6(2) of the Criminal Code, three counts of debt bondage contrary to subsection 271.8(1) of the Criminal Code, and one count of allowing a non-citizen to work in breach of visa conditions contrary to subsection 245AC(1) of the Migration Act. Mr Ea pleaded not guilty to all charges.

The charges relate to three women from Thailand who were allegedly told they were travelling to Australia on student visas, but who allege that on arrival they had their passports confiscated and were taken to a brothel where they were held against their will.

The trial commenced on 8 April 2013 in the Criminal Justice Division of the District Court of New South Wales. After lengthy deliberations the jury were unable to reach a verdict on any of the charges and they were discharged on 20 June 2013. The matter will proceed to a retrial in 2014.

Watcharaporn Nantakhum

On 11 April 2012, an Australian Capital Territory Supreme Court jury found Watcharaporn Nantakhum guilty of one count of slavery contrary to subsection 270.3(1) of the Criminal Code, two counts (one being aggravated) of allowing a non-citizen to work in breach of a visa condition contrary to section 245AC of the Migration Act, two counts (one being aggravated) of allowing an unlawful non-citizen to work contrary to section 245AB of the Migration Act, and one count of attempting to pervert the course of justice contrary to section 43 of the Commonwealth *Crimes Act 1914*.

The slavery offence relates to a Thai woman recruited by Ms Nantakhum to work as a sex worker in Canberra, under exploitative conditions. The woman was forced to pay off a debt to Ms Nantakhum of \$43,000. Ms Nantakhum also allowed the woman and another sex worker to work in contravention of their visa conditions, and offered the woman money to keep quiet about her circumstances.

On 24 May 2012, Ms Nantakhum was sentenced to eight years and ten months' imprisonment, with a non-parole period of four years and nine months. Ms Nantakhum's appeal against her sentence was heard on 13 February 2013. At 30 June 2013, judgment in Ms Nantakhum's sentencing hearing was reserved.

Andres Tamleht

On 20 March 2013, Estonian Andres Tamleht was charged with two counts of trafficking in persons contrary to subsection 271.2(1B) of the Criminal Code, two counts of debt bondage contrary to subsection 271.8(1) of the Criminal Code, and three counts of intent to extort money and personal identification particulars contrary to subsection 397(2) of Western Australia's *Criminal Code Act 1913*.

The charges relate to two Eastern European men who were allegedly recruited by Mr Tamleht's company through a recruitment website. The men were allegedly told to apply for working holiday visas while Mr Tamleht's company arranged airfares, accommodation and employment for a fee. Both men were employed as welders at a factory that allegedly paid the company a fee to find the workers overseas. The men lived in backpackers' hostels and were allegedly told they would be given about \$100 a week from their pay to cover the basic costs of living. They were allegedly threatened with violence if they did not repay their debts. It is further alleged there were implied threats of violence to the men's families if they did not comply with the demands. As at 30 June 2013, Mr Tamleht's matter was before the courts in Western Australia.

Appendix 2: AIC research

AIC human trafficking and slavery outputs in 2012–13

Publications

Andrevski H Joudo Larsen J & Lyneham S 2013. Barriers to trafficked persons' involvement in criminal justice proceedings: an Indonesian case study. *Trends & issues in crime and criminal justice* no 451. Canberra: Australian Institute of Criminology

Joudo Larsen J, Andrevski H & Lyneham S 2013. Experiences of trafficked persons: an Indonesian sample. *Trends & issues in crime and criminal justice* no 449. Canberra: Australian Institute of Criminology

Lyneham S 2013. Forced and servile marriage in the context of human trafficking. *Research in practice* no. 32. Canberra: Australian Institute of Criminology

Lyneham S & Joudo Larsen J 2013. Exploitation of Indonesian trafficked men, women and children and implications for support. *Trends & issues in crime and criminal justice* no. 450. Canberra: Australian Institute of Criminology

Submissions, presentations, papers and unpublished material

AIC 2012. Inquiry into Slavery, Slavery-like Conditions and People Trafficking. Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, 28 September

AIC 2012. Inquiry into Slavery, Slavery-like Conditions and People Trafficking. Witness to the Joint Standing Committee on Foreign Affairs, Defence and Trade, 21 November

AIC 2012. Inquiry into Slavery, Slavery-like Conditions and People Trafficking. Response to Questions on Notice to the Joint Standing Committee on Foreign Affairs, Defence and Trade, 18 December

Beacroft L & Renshaw 2012. Sex work and vulnerabilities to exploitation and/or coercion linked to slavery-like situations in Australia, paper to the AIC Trafficking in Persons Research Forum, 29 November

Lyneham S 2012. Trafficking in persons involving marriage and partner migration, paper to the National Roundtable on People Trafficking, Canberra, 28 November

Lyneham S 2012. Experiences of exploitation, implications for support and participation in the criminal justice system: a case study of Indonesia, paper to the AIC Trafficking in Persons Research Forum, 29 November

Lyneham S 2013. Marriage trafficking: forced, servile and sham marriages involving CALD women and their children, paper presented to the First National Conference on Eliminating Violence Against CALD Women and their Children, Canberra, 28–30 April

Lyneham S & Richards K 2012. Trafficking in persons involving marriage and partner migration, paper to the AIC Trafficking in Persons Research Forum, 29 November 2012

Renshaw L & Beacroft L 2012. Sex work and vulnerabilities to trafficking in persons and related exploitation: preliminary survey results, paper presented to the 25th Annual Conference of the Australian and New Zealand Society of Criminology, Auckland, 27–29 November

Renshaw L & Lyneham 2012. Trafficking in persons, presentation to the University of the Third Age, Canberra, 19 September

Rosevear L 2012. Proposals for developing a better practice framework for monitoring of trafficking in persons in Australia and its regions, paper to AIC Trafficking in Persons Research Forum, 29 November

Information sessions, workshops and research forums

AIC 2012. Australian Institute of Criminology Trafficking in Persons Research Forum 2012, Canberra, 29 November

Appendix 3: Extracts of the Commonwealth *Criminal Code Act 1995* and the Commonwealth *Crimes Act 1914*

Criminal Code Act 1995

Division 270 – Slavery and slavery-like conditions

Subdivision A – Preliminary

Subdivision B – Slavery

Subdivision C – Slavery-like conditions

Subdivision D – Offences against Division 270: general

Division 271 – Trafficking in persons and debt bondage

Subdivision A – Definitions

Subdivision B – Offences relating to trafficking in persons

Subdivision BA – Organ trafficking

Subdivision BB – Harboursing a victim

Subdivision C – Offences relating to debt bondage

Subdivision D – Offences against Division 271: general

Division 279 – Video link evidence

Division 270 – Slavery and slavery-like conditions

Subdivision A – Preliminary

270.1A Definitions for Division 270

In this Division:

coercion includes coercion by any of the following:

- (a) force;
- (b) duress;
- (c) detention;
- (d) psychological oppression;
- (e) abuse of power;
- (f) taking advantage of a person's vulnerability.

conducting a business includes:

- (a) taking any part in the management of the business; and
- (b) exercising control or direction over the business; and
- (c) providing finance for the business.

deceive has the same meaning as in Division 271 (see section 271.1).

Note: **Deception** has a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

forced labour has the meaning given by section 270.6.

forced marriage has the meaning given by section 270.7A.

servitude has the meaning given by section 270.4.

slavery has the meaning given by section 270.1.

slavery-like offence means an offence against any of the following provisions:

- (a) section 270.5 (servitude offences);
- (b) section 270.6A (forced labour offences);
- (c) section 270.7 (deceptive recruiting for labour or services);
- (d) section 270.7B (forced marriage offences).

threat means:

- (a) a threat of coercion; or
- (b) a threat to cause a person's deportation or removal from Australia; or
- (c) a threat of any other detrimental action, unless there are reasonable grounds for the threat of that action in connection with the provision of labour or services by a person.

Note: **Threat** includes a threat made by any conduct, whether express or implied and whether conditional or unconditional (see the definition in the Dictionary).

Subdivision B – Slavery

270.1 Definition of **slavery**

For the purposes of this Division, **slavery** is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

270.2 Slavery is unlawful

Slavery remains unlawful and its abolition is maintained, despite the repeal by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* of Imperial Acts relating to slavery.

270.3 Slavery offences

- (1) A person who, whether within or outside Australia, intentionally:
 - (aa) reduces a person to slavery; or
 - (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or
 - (b) engages in slave trading; or
 - (c) enters into any commercial transaction involving a slave; or
 - (d) exercises control or direction over, or provides finance for:
 - (i) any act of slave trading; or
 - (ii) any commercial transaction involving a slave;is guilty of an offence.

Penalty: Imprisonment for 25 years.

- (2) A person who:
 - (a) whether within or outside Australia:
 - (i) enters into any commercial transaction involving a slave; or
 - (ii) exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or

(iii) exercises control or direction over, or provides finance for, any act of slave trading; and

(b) is reckless as to whether the transaction or act involves a slave, slavery, slave trading or the reduction of a person to slavery;

is guilty of an offence.

Penalty: Imprisonment for 17 years.

(3) In this section:

commercial transaction involving a slave includes a commercial transaction by which a person is reduced to slavery.

slave trading includes:

(a) the capture, transport or disposal of a person with the intention of reducing the person to slavery; or

(b) the purchase or sale of a slave.

(4) A person who engages in any conduct with the intention of securing the release of a person from slavery is not guilty of an offence against this section.

(5) The defendant bears a legal burden of proving the matter mentioned in subsection (4).

Subdivision C – Slavery-like conditions

270.4 Definition of *servitude*

(1) For the purposes of this Division, **servitude** is the condition of a person (the **victim**) who provides labour or services, if, because of the use of coercion, threat or deception:

(a) a reasonable person in the position of the victim would not consider himself or herself to be free:

(i) to cease providing the labour or services; or

(ii) to leave the place or area where the victim provides the labour or services; and

(b) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.

(2) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

(3) The victim may be in a condition of servitude whether or not:

(a) escape from the condition is practically possible for the victim; or

(b) the victim has attempted to escape from the condition.

270.5 Servitude offences

Causing a person to enter into or remain in servitude

- (1) A person commits an offence if:
- the person engages in conduct; and
 - the conduct causes another person to enter into or remain in servitude.

Penalty:

- in the case of an aggravated offence (see section 270.8) – imprisonment for 20 years; or
- in any other case – imprisonment for 15 years.

Conducting a business involving servitude

- (2) A person commits an offence if:
- the person conducts any business; and
 - the business involves the servitude of another person (or persons).

Penalty:

- in the case of an aggravated offence (see section 270.8) – imprisonment for 20 years; or
- in any other case – imprisonment for 15 years.

Alternative verdict of forced labour

- (3) Subsection (4) applies if, in a prosecution for an offence (the **servitude offence**) against a provision listed in column 1 of the following table, the trier of fact:
- is not satisfied that the defendant is guilty of that offence; but
 - is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the **forced labour offence**) against the corresponding provision listed in column 2 of the table.

Servitude and forced labour offences		
Item	Column 1 Servitude offences	Column 2 Forced labour offences
1	Subsection (1) of this section	Subsection 270.6A(1)
2	Subsection (2) of this section	Subsection 270.6A(2)

- (4) The trier of fact may find the defendant not guilty of the servitude offence, but guilty of the forced labour offence, so long as the defendant has been afforded procedural fairness in relation to that finding of guilt.

270.6 Definition of *forced labour*

- (1) For the purposes of this Division, ***forced labour*** is the condition of a person (the ***victim***) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:
 - (a) to cease providing the labour or services; or
 - (b) to leave the place or area where the victim provides the labour or services.
- (2) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.
- (3) The victim may be in a condition of forced labour whether or not:
 - (a) escape from the condition is practically possible for the victim; or
 - (b) the victim has attempted to escape from the condition.

270.6A Forced labour offences

Causing a person to enter into or remain in forced labour

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct causes another person to enter into or remain in forced labour.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8) – imprisonment for 12 years; or
- (b) in any other case – imprisonment for 9 years.

Conducting a business involving forced labour

- (2) A person commits an offence if:
 - (a) the person conducts any business; and
 - (b) the business involves the forced labour of another person (or persons).

Penalty:

- (a) in the case of an aggravated offence (see section 270.8) – imprisonment for 12 years; or
- (b) in any other case – imprisonment for 9 years.

Note: On a trial for an offence against section 270.5 (servitude offences), the trier of fact may find a defendant not guilty of that offence but guilty of the corresponding offence under this section (see subsections 270.5(3) and (4)).

270.7 Deceptive recruiting for labour or services

A person (the **recruiter**) commits an offence if:

- (a) the recruiter engages in conduct; and
- (b) the recruiter engages in the conduct with the intention of inducing another person (the **victim**) to enter into an engagement to provide labour or services; and
- (c) the conduct causes the victim to be deceived about:
 - (i) the extent to which the victim will be free to leave the place or area where the victim provides the labour or services; or
 - (ii) the extent to which the victim will be free to cease providing the labour or services; or
 - (iii) the extent to which the victim will be free to leave his or her place of residence; or
 - (iv) if there is or will be a debt owed or claimed to be owed by the victim in connection with the engagement – the quantum, or the existence, of the debt owed or claimed to be owed; or
 - (v) the fact that the engagement will involve exploitation, or the confiscation of the victim's travel or identity documents; or
 - (vi) if the engagement is to involve the provision of sexual services – that fact, or the nature of sexual services to be provided (for example, whether those services will require the victim to have unprotected sex).

Penalty:

- (a) in the case of an aggravated offence (see section 270.8) – imprisonment for 9 years; or
- (b) in any other case – imprisonment for 7 years.

270.7A Definition of forced marriage

- (1) For the purposes of this Division, a marriage is a **forced marriage** if, because of the use of coercion, threat or deception, one party to the marriage (the **victim**) entered into the marriage without freely and fully consenting.
- (2) For the purposes of subsection (1), **marriage** includes the following:
 - (a) a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;
 - (b) a marriage recognised under a law of a foreign country;
 - (c) a relationship registered (however that process is described) under a law of a foreign country, if the relationship is of the same, or a similar, type as any registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

- (d) a marriage (including a relationship or marriage mentioned in paragraph (a), (b) or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:
 - (i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or agerelated incapacity);
 - (ii) a party to the marriage is married (within the meaning of this subsection) to more than one person.

Note: Section 2E of the *Acts Interpretation Act 1901* covers relationships registered under a law of a State or Territory that are prescribed by regulations under that Act.

- (3) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

270.7B Forced marriage offences

Causing a person to enter into a forced marriage

- (1) A person (the **first person**) commits an offence if:
 - (a) the first person engages in conduct; and
 - (b) the conduct causes another person to enter into a forced marriage as the victim of the marriage.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8) – imprisonment for 7 years; or
- (b) in any other case – imprisonment for 4 years.

Being a party to a forced marriage

- (2) A person commits an offence if:
 - (a) the person is a party to a marriage (within the meaning of section 270.7A); and
 - (b) the marriage is a forced marriage; and
 - (c) the person is not a victim of the forced marriage.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8) – imprisonment for 7 years; or
- (b) in any other case – imprisonment for 4 years.

- (3) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1.

- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).

270.8 Slavery-like offences – aggravated offences

- (1) For the purposes of this Division, a slavery-like offence committed by a person (the **offender**) against another person (the **victim**) is an **aggravated offence** if any of the following applies:
 - (a) the victim is under 18;
 - (b) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (c) the offender, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) If, on a trial for an aggravated offence, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is otherwise satisfied that the defendant is guilty of the corresponding slavery-like offence, it may find the defendant not guilty of the aggravated offence, but guilty of the corresponding slavery-like offence.
- (4) Subsection (3) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the corresponding slavery-like offence.

270.9 Slavery-like offences – jurisdictional requirement

Section 15.2 (extended geographical jurisdiction – category B) applies to a slavery-like offence.

270.10 Slavery-like offences – relevant evidence

- (1) For the purposes of proceedings for a slavery-like offence, the trier of fact may have regard to any of the matters covered by subsection (2) in determining whether a person (the **alleged victim**) against whom the offence is alleged to have been committed has been coerced, threatened or deceived.
- (2) The following matters are covered by this subsection:
 - (a) the economic relationship between the alleged victim and the alleged offender;
 - (b) the terms of any written or oral contract or agreement between the alleged victim and the alleged offender;
 - (c) the personal circumstances of the alleged victim, including but not limited to:
 - (i) whether he or she is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) his or her ability to speak, write and understand English or another language; and

- (iii) the extent of his or her social and physical dependence on the alleged offender.
- (3) Subsection (1) does not:
 - (a) prevent the leading of any other evidence in the relevant proceedings; or
 - (b) limit the manner in which evidence may be given or the admissibility of evidence.

Subdivision D – Offences against Division 270: general

270.11 Offences against Division 270 – no defence of victim consent or acquiescence

To avoid doubt, it is not a defence in a proceeding for an offence against this Division that a person against whom the offence is alleged to have been committed consented to, or acquiesced in, conduct constituting any element of the offence.

270.12 Offences against Division 270 – other laws not excluded

- (1) This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.
 Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.
- (2) Without limiting subsection (1), this Division is not intended to exclude or limit the concurrent operation of any other law of the Commonwealth, or a law of a State or Territory, that makes:
 - (a) an act or omission that is an offence against a provision of this Division; or
 - (b) a similar act or omission;
 an offence against the law of the Commonwealth, State or Territory.
- (3) Subsection (2) applies even if the other law of the Commonwealth, or the law of the State or Territory, does any one or more of the following:
 - (a) provides for a penalty for the offence that differs from the penalty provided for in this Division;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Division;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Division.

270.13 Offences against Division 270 – double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

Division 271 – Trafficking in persons and debt bondage

Subdivision A – Definitions

271.1 Definitions

In this Division:

coercion has the same meaning as in Division 270 (see section 270.1A).

confiscate, in relation to a person's travel or identity document, means to take possession of the document, whether permanently or otherwise, to the exclusion of the person, or to destroy the document.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

deceive means mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

Note: **Deception** has a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

exploitation has the meaning given by section 271.1A.

threat has the same meaning as in Division 270 (see section 271.1A).

271.1A Definition of *exploitation*

For the purposes of this Division, **exploitation**, of one person (the **victim**) by another person, occurs if the other person's conduct causes the victim to enter into any of the following conditions:

- (a) slavery, or a condition similar to slavery;
- (b) servitude;
- (c) forced labour;
- (d) forced marriage;
- (e) debt bondage.

Note: Division 270 (slavery and slavery-like offences) deals with slavery, servitude, forced labour and forced marriage. Subdivision C of this Division deals with debt bondage.

Subdivision B – Offences relating to trafficking in persons

271.2 Offence of trafficking in persons

- (1) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) the first person uses coercion, threat or deception; and
 - (c) that use of coercion, threat or deception results in the first person obtaining the other person's compliance in respect of that entry or proposed entry or in respect of that receipt.

Penalty: Imprisonment for 12 years.

- (1A) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) the first person uses coercion, threat or deception; and
 - (c) that use of coercion, threat or deception results in the first person obtaining the other person's compliance in respect of that exit or proposed exit.

Penalty: Imprisonment for 12 years.

- (1B) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 12 years.

- (1C) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) in organising or facilitating that exit or proposed exit, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 12 years.

- (2) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and

- (b) the first person deceives the other person about the fact that the other person's entry or proposed entry, the other person's receipt or any arrangements for the other person's stay in Australia, will involve the provision by the other person of sexual services or will involve the other person's exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2A) A person (the **first person**) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) the first person deceives the other person about the fact that the other person's exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Australia or will involve the other person's exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2B) A person (the **first person**) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) there is an arrangement for the other person to provide sexual services in Australia; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services – the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (2C) A person (the **first person**) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) there is an arrangement for the other person to provide sexual services outside Australia; and

- (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services – the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (3) Absolute liability applies to paragraphs (1)(c) and (1A)(c).

271.3 Trafficking in persons – aggravated offence

- (1) A person (the **first person**) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the **victim**) and any of the following applies:
 - (a) the first person commits the offence intending that the victim will be exploited, either by the first person or another:
 - (i) if the offence of trafficking in persons is an offence against subsection 271.2(1), (1B), (2) or (2B) – after entry into Australia; or
 - (ii) if the offence of trafficking in persons is an offence against subsection 271.2(1A), (1C), (2A) or (2C) – after exit from Australia;
 - (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (c) the first person, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.2, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.2.

Note: Section 271.2 provides for offences of trafficking in persons.

271.4 Offence of trafficking in children

- (1) A person (the **first person**) commits an offence of trafficking in children if:
- (a) the first person organises or facilitates the entry or proposed entry into Australia, or the receipt in Australia, of another person; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that entry or proposed entry, or that receipt, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 25 years.

- (2) A person (the **first person**) commits an offence of trafficking in children if:
- (a) the first person organises or facilitates the exit or proposed exit from Australia of another person; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that exit or proposed exit, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 25 years.

271.5 Offence of domestic trafficking in persons

- (1) A person (the **first person**) commits an offence of domestic trafficking in persons if:
- (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
 - (b) the first person uses coercion, threat or deception; and

- (c) that use of coercion, threat or deception results in the first person obtaining the other person's compliance in respect of that transportation or proposed transportation.

Penalty: Imprisonment for 12 years.

- (2) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
 - (b) in organising or facilitating that transportation or proposed transportation, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that transportation.

Penalty: Imprisonment for 12 years.

- (2A) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person's exploitation or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2B) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) there is an arrangement for the other person to provide sexual services; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services – the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (3) Absolute liability applies to paragraph (1)(c).

271.6 Domestic trafficking in persons – aggravated offence

- (1) A person (the **first person**) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the **victim**) and any of the following applies:
- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;
 - (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (c) the first person, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.5, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.5.

Note: Section 271.5 provides for offences of domestic trafficking in persons.

271.7 Offence of domestic trafficking in children

A person commits an offence of domestic trafficking in children if:

- (a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
- (b) the other person is under the age of 18; and
- (c) in organising or facilitating that transportation, the first-mentioned person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty: Imprisonment for 25 years.

Subdivision BA – Organ trafficking

271.7A Removal of organs contrary to this Subdivision

The removal of a person's organ is contrary to this Subdivision if:

- (a) the removal, or entering into an agreement for the removal, would be contrary to the law of the State or Territory where it is, or is to be, carried out; or
- (b) neither the victim, nor the victim's guardian, consents to the removal, and it would not meet a medical or therapeutic need of the victim.

271.7B Offence of organ trafficking – entry into and exit from Australia

Entry into Australia

- (1) A person (the **offender**) commits an offence of organ trafficking if:
 - (a) the offender engages in conduct consisting of the organisation or facilitation of the entry or proposed entry, or the receipt, of another person (the **victim**) into Australia; and
 - (b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that entry or receipt.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

Exit from Australia

- (2) A person (the **offender**) commits an offence of organ trafficking if:
 - (a) the offender engages in conduct consisting of the organisation or facilitation of the exit or proposed exit of another person (the **victim**) from Australia; and
 - (b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that exit.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

271.7C Organ trafficking – aggravated offence

- (1) A person (the **offender**) commits an aggravated offence of organ trafficking if the offender commits an offence of organ trafficking in relation to another person (the **victim**) and any of the following applies:
 - (a) the victim is under 18;
 - (b) the offender commits the offence intending that an organ of the victim will be removed contrary to this Subdivision, either by the offender or another person:

- (i) if the offence of organ trafficking is an offence against subsection 271.7B(1) – after or in the course of entry into Australia; or
- (ii) if the offence of organ trafficking is an offence against subsection 271.7B(2) – after or in the course of exit from Australia;
- (c) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
- (d) the offender, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.

Penalty:

- (a) if this subsection applies because the victim is under 18 – imprisonment for 25 years; or
- (b) in any other case – imprisonment for 20 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.7B, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7B.

Note: Section 271.7B provides for offences of organ trafficking.

271.7D Offence of domestic organ trafficking

A person (the **offender**) commits an offence of domestic organ trafficking if:

- (a) the offender engages in conduct consisting of the organisation, or facilitation, of the transportation or proposed transportation of another person (the **victim**) from one place in Australia to another place in Australia; and
- (b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that transportation.

Penalty: Imprisonment for 12 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

271.7E Domestic organ trafficking – aggravated offence

- (1) A person (the **offender**) commits an aggravated offence of domestic organ trafficking if the offender commits an offence of domestic organ trafficking in relation to another person (the **victim**) and any of the following applies:

- (a) the victim is under 18;
- (b) the offender commits the offence intending that an organ of the victim will be removed contrary to this Subdivision, either by the offender or another person, after arrival at the place to which the person has been transported, or in the course of transportation;
- (c) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
- (d) the offender, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.

Penalty:

- (a) if this subsection applies because the victim is under 18 – imprisonment for 25 years; or
- (b) in any other case – imprisonment for 20 years.

Note: For when the removal of an organ is contrary to this Subdivision, see section 271.7A.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.7D, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7D.

Note: Section 271.7D provides for offences of domestic organ trafficking.

Subdivision BB – Harbours a victim

271.7F Harbours a victim

- (1) A person (the **offender**) commits an offence of harbouring a victim if:
 - (a) the offender harbours, receives or conceals another person (the **victim**); and
 - (b) the harbouring, receipt or concealing of the victim:
 - (i) assists a third person in connection with any offence committed by the third person (the **third person offence**); or
 - (ii) furthers a third person's purpose in relation to any offence committed by the third person (the **third person offence**); and
 - (c) the third person offence is an offence against this Division (apart from this section) or Division 270.

Penalty: Imprisonment for 4 years.

- (2) Recklessness applies in relation to paragraph (1)(b).
- (3) Absolute liability applies in relation to paragraph (1)(c).
- (4) A person may be found guilty of an offence against subsection (1) even if the third person has not been prosecuted for, or has not been found guilty, of any other offence.

271.7G Harboursing a victim – aggravated offence

- (1) A person (the **offender**) commits an aggravated offence of harboursing a victim if:
 - (a) the offender commits an offence of harboursing a victim in relation to another person (the **victim**); and
 - (b) the victim is under 18.

Penalty: Imprisonment for 7 years.

- (2) If, on a trial for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that the defendant is guilty of an offence against section 271.7F, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.7F.

Note: Section 271.7F provides for the offence of harboursing a victim.

Subdivision C – Offences relating to debt bondage

271.8 Offence of debt bondage

A person commits an offence of debt bondage if:

- (a) the person engages in conduct that causes another person to enter into debt bondage; and
- (b) the person intends to cause the other person to enter into debt bondage.

Penalty: Imprisonment for 4 years.

271.9 Debt bondage – aggravated offence

- (1) A person (the **offender**) commits an offence of aggravated debt bondage if the offender commits an offence of debt bondage in relation to another person (the **victim**) and any of the following applies:
 - (a) the victim is under 18;
 - (b) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;

- (c) the offender, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
 - (ii) is reckless as to that danger.

Penalty: Imprisonment for 7 years.

- (2) If, on a trial for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that the defendant is guilty of an offence against section 271.8, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.
- (3) Subsection (2) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence against section 271.8.

Note: Section 271.8 provides for the offence of debt bondage.

Subdivision D – Offences against Division 271: general

271.10 Jurisdictional requirements – offences other than domestic trafficking in persons or organs

Section 15.2 (extended geographical jurisdiction – category B) applies to an offence against section 271.2, 271.3, 271.4, 271.7B, 271.7C, 271.7F, 271.7G, 271.8 or 271.9.

271.11 Jurisdictional requirements – offences of domestic trafficking in persons or organs

A person commits an offence against section 271.5, 271.6, 271.7, 271.7D or 271.7E only if one or more of the following paragraphs applies:

- (a) the conduct constituting the offence occurs to any extent outside Australia;
- (b) the conduct constituting the offence involves transportation across State borders, either for reward or in connection with a commercial arrangement;
- (c) the conduct constituting the offence occurs within a Territory or involves transportation to or from a Territory;
- (d) the conduct constituting the offence is engaged in by, or on behalf of, a constitutional corporation, or in circumstances where the victims of the trafficking conduct were intended to be employed by a constitutional corporation;
- (e) some of the conduct constituting the offence is engaged in by communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(v) of the Constitution;
- (f) the victim of the conduct constituting the offence is an alien for the purposes of paragraph 51(xix) of the Constitution.

271.11A Offences against Division 271 – relevant evidence

- (1) For the purposes of proceedings for an offence against this Division, the trier of fact may have regard to any of the matters covered by subsection (2) in determining whether, in relation to a person (the **alleged victim**) against whom the offence is alleged to have been committed:
 - (a) in the case of an offence against Subdivision B or BB – the alleged victim has been coerced, threatened or deceived; or
 - (b) in the case of an offence against Subdivision BA – the alleged victim, or the alleged victim’s guardian, has consented to the removal of an organ of the alleged victim; or
 - (c) in the case of an offence against Subdivision C – another person has caused the alleged victim to enter into debt bondage.
- (2) The following matters are covered by this subsection:
 - (a) the economic relationship between the alleged victim and the alleged offender;
 - (b) the terms of any written or oral contract or agreement between the alleged victim and the alleged offender;
 - (c) the personal circumstances of the alleged victim, including but not limited to:
 - (i) whether he or she is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) his or her ability to speak, write and understand English or another language; and
 - (iii) the extent of his or her social and physical dependence on the alleged offender.
- (3) If subsection (1) applies in relation to the consent of an alleged victim’s guardian to the removal of an organ of the alleged victim, a reference in subsection (2) to the alleged victim is taken to include a reference to the alleged victim’s guardian.
- (4) Subsection (1) does not:
 - (a) prevent the leading of any other evidence in the relevant proceedings; or
 - (b) limit the manner in which evidence may be given or the admissibility of evidence.

271.11B Offences against Division 271 – no defence of victim consent or acquiescence

To avoid doubt, it is not a defence in a proceeding for an offence against this Division that a person against whom the offence is alleged to have been committed consented to, or acquiesced in, conduct constituting any element of the offence.

271.12 Offences against Division 271 – other laws not excluded

- (1) This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

- (2) Without limiting subsection (1), this Division is not intended to exclude or limit the concurrent operation of any other law of the Commonwealth, or a law of a State or Territory, that makes:
- (a) an act or omission that is an offence against a provision of this Division; or
 - (b) a similar act or omission;
- an offence against the law of the Commonwealth, State or Territory.
- (3) Subsection (2) applies even if the other law of the Commonwealth, or the law of the State or Territory, does any one or more of the following:
- (a) provides for a penalty for the offence that differs from the penalty provided for in this Division;
 - (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Division;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Division.

271.13 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

Division 279 – Video link evidence

279.1 Proceedings to which this Division applies

This Division applies to a proceeding for an offence against any of the following Divisions of this Chapter:

- (a) Division 270 (slavery and slavery-like conditions);
- (b) Division 271 (trafficking in persons and debt bondage);
- (c) Division 272 (child sex offences outside Australia);
- (d) Division 273 (offences involving child pornography material or child abuse material outside Australia).

279.2 When court may take evidence by video link

In a proceeding, the court may, on application by a party to the proceeding, direct that a witness give evidence by video link if:

- (a) the witness will give the evidence from outside Australia; and
- (b) the witness is not a defendant in the proceeding; and
- (c) the facilities required by section 279.3 are available or can reasonably be made available; and
- (d) the court is satisfied that attendance of the witness at the court to give the evidence would:
 - (i) cause unreasonable expense or inconvenience; or
 - (ii) cause the witness psychological harm or unreasonable distress; or
 - (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
- (e) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.

279.3 Technical requirements for video link

- (1) A witness can give evidence under a direction only if:
 - (a) the courtroom or other place in Australia where the court is sitting (the **Australian location**); and
 - (b) the place where the evidence is given (the **overseas location**);
 are equipped with video facilities that:
 - (c) enable appropriate persons at the Australian location to see and hear the witness give the evidence; and
 - (d) enable appropriate persons at the overseas location to see and hear appropriate persons at the Australian location.
- (2) In subsection (1):

appropriate persons means such persons as the court considers appropriate.

279.4 Application of laws about witnesses

A person who gives evidence under a direction is taken to give it at the courtroom or other place in Australia where the court is sitting.

Note: This section has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of court and perjury.

279.5 Administration of oaths and affirmations

An oath or affirmation to be sworn or made by a witness who is to give evidence under a direction may be administered either:

- (a) by means of the video link, in as nearly as practicable the same way as if the witness were to give the evidence at the courtroom or other place in Australia where the court is sitting; or
- (b) as follows:
 - (i) on behalf of the court and as directed by it;
 - (ii) by a person (whether an Australian official or not) authorised by the court;
 - (iii) at the place where the witness is to give the evidence.

279.6 Expenses

A court may make such orders as are just for payment of expenses incurred in connection with giving evidence under a direction by the court under this Division.

279.7 Other laws about foreign evidence not affected

This Division does not prevent any other law about taking evidence of a witness outside Australia from applying for the purposes of a proceeding.

Crimes Act 1914

Part IAD – Protecting vulnerable persons

Division 1 – Introduction

Division 2 – Admissibility of evidence

Division 3 – Cross-examination

Division 4 – Special facilities for vulnerable persons to give evidence

Division 5 – Use of video recordings

Division 5A – Special rules for later trials

Division 6 – Miscellaneous

Part IAD – Protecting vulnerable persons

Division 1 – Introduction

15Y Proceedings to which this Part applies

Proceedings involving children

- (1) This Part contains special rules for children involved in proceedings to which this subsection applies. This subsection applies to proceedings for any of the following offences:
 - (b) an offence against section 71.8 of the **Criminal Code** (sexual assault of United Nations and associated personnel);
 - (c) an offence against Division 270 of the **Criminal Code** (slavery and slavery-like conditions);
 - (caa) an offence against Division 271 of the **Criminal Code** (trafficking in persons and debt bondage);
 - (cab) an offence against Division 272 of the **Criminal Code** (child sex offences outside Australia);
 - (cac) an offence against Division 273 of the **Criminal Code** (offences involving child pornography material or child abuse material outside Australia);
 - (ca) an offence against Subdivision B or C of Division 471 of the **Criminal Code** (offences relating to use of postal or similar service involving sexual activity with person under 16);
 - (cba) an offence against Subdivision D or F of Division 474 of the **Criminal Code** (offences relating to use of carriage service involving sexual activity with person under 16);
 - (cb) an aggravated offence against Subdivision C of Division 12 of Part 2 of the *Migration Act 1958*;
 - (d) a sexual offence specified in the regulations;
 - (e) an offence that includes the commission of, or the intention to commit, an offence of a kind referred to in one of the preceding paragraphs of this subsection;
 - (f) an offence of:
 - (i) attempting to commit; or
 - (ii) conspiring to commit; or
 - (iii) inciting the commission of;
 an offence of a kind referred to in one of the preceding paragraphs of this subsection.

Proceedings involving adult complainants

- (2) This Part contains special rules for adult complainants involved in proceedings to which this subsection applies. This subsection applies to proceedings for any of the following offences:
- (a) an offence against Division 270 of the **Criminal Code** (slavery and slavery-like conditions);
 - (b) an offence against Division 271 of the **Criminal Code** (trafficking in persons and debt bondage);
 - (c) an offence that includes the commission of, or the intention to commit, an offence of a kind referred to in paragraph (a) or (b);
 - (d) an offence of:
 - (i) attempting to commit; or
 - (ii) conspiring to commit; or
 - (iii) inciting the commission of;
 an offence of a kind referred to in paragraph (a), (b) or (c).

Proceedings involving special witnesses

- (3) This Part contains special rules that can apply for special witnesses involved in proceedings for any Commonwealth offence.

Related proceedings included

- (4) Each of subsections (1), (2) and (3) also applies to any proceedings connected with a proceeding referred to in that subsection.
Example: Committal proceedings.
- (5) Similarly, subsection 15YAB(1) (about special witnesses) also applies to any proceedings connected with a proceeding for a Commonwealth offence.

15YA Definitions

In this Part, unless the contrary intention appears:

adult means a person who is 18 or over.

child means a person who is under 18.

child complainant, in relation to a child proceeding, means a child who is, or is alleged to be, a victim of an offence, of a kind referred to in subsection 15Y(1), to which the proceeding relates. The child need not be involved in the proceeding or the initiation of the proceeding.

child proceeding means a proceeding to which subsection 15Y(1) applies.

child witness, in relation to a child proceeding, means a child (including a child complainant) who is a witness in the proceeding.

closed-circuit television includes any similar technology specified in the regulations.

credibility has the meaning given by the *Evidence Act 1995*.

cross-examination has the meaning given by the *Evidence Act 1995*.

evidence in chief means evidence given in examination in chief within the meaning of the *Evidence Act 1995*.

party to a proceeding includes the prosecutor, each defendant and each person named in evidence given in the proceeding.

proceeding means a proceeding to which one or more of subsections 15Y(1), (2) and (3) apply.

special witness has the meaning given by subsection 15YAB(1).

special witness proceeding means a proceeding to which subsection 15Y(3) applies.

vulnerable adult complainant has the meaning given by section 15YAA.

vulnerable adult proceeding means a proceeding to which subsection 15Y(2) applies.

15YAA *Vulnerable adult complainants*

- (1) A **vulnerable adult complainant**, in relation to a vulnerable adult proceeding, is an adult who is, or is alleged to be, a victim of an offence, of a kind referred to in subsection 15Y(2), to which the proceeding relates.
- (2) However, the adult is not a **vulnerable adult complainant** if the adult informs the court that he or she does not wish to be treated as such a complainant.
- (3) A vulnerable adult complainant need not be involved in the vulnerable adult proceeding or the initiation of that proceeding.

15YAB *Special witnesses*

Meaning of special witness

- (1) In a proceeding for a Commonwealth offence, the court may declare a person to be a **special witness** in relation to the proceeding if satisfied that the person is unlikely to be able to satisfactorily give evidence in the ordinary manner because of:
 - (a) a disability; or
 - (b) intimidation, distress or emotional trauma arising from:
 - (i) the person's age, cultural background or relationship to a party to the proceeding; or
 - (ii) the nature of the evidence; or
 - (iii) some other relevant factor.

Note: Such a declaration can also be made in a related proceeding (see subsection 15Y(5)).

- (2) A declaration under subsection (1) may be made on the court's own initiative or on application by or on behalf of a party to the proceeding.

Orders that certain protections apply to a special witness

- (3) In a special witness proceeding, the court may order that one or more of the following sections apply to a special witness:
 - (a) section 15YG (about unrepresented defendants);
 - (b) section 15YH (about represented defendants);
 - (c) section 15YI (about closed-circuit television);
 - (d) section 15YL (about alternative arrangements);
 - (e) section 15YM (about use of video recordings);
 - (f) section 15YO (about accompanying adults);
 - (g) section 15YP (about excluding people from the courtroom).
- (4) An order under subsection (3) may be made on the court's own initiative or on application by or on behalf of the special witness.

Division 2 – Admissibility of evidence

15YB Evidence of sexual reputation

- (1) Evidence of a child witness' or child complainant's reputation with respect to sexual activities is inadmissible in a child proceeding, unless the court gives leave.
- (2) The court must not give leave unless satisfied that the evidence is substantially relevant to facts in issue in the proceeding.
- (3) The evidence is not to be treated as substantially relevant to facts in issue merely because of inferences it may raise as to the child witness' or child complainant's general disposition.
- (4) If the evidence is admitted, it must not be treated as relevant to the child witness' or child complainant's credibility.
- (5) This section does not apply if the child is a defendant in the proceeding.

15YC Evidence of sexual experience

- (1) Evidence of a child witness' or child complainant's experience with respect to sexual activities is inadmissible in a child proceeding, unless:
 - (a) the court gives leave; or
 - (b) the evidence is of sexual activities with a defendant in the proceeding.

- (2) The court must not give leave unless satisfied that:
 - (a) the evidence is substantially relevant to facts in issue in the proceeding; or
 - (b) if the evidence relates to the credibility of a child witness and is to be adduced in cross-examination of the child – the evidence has substantial probative value.
- (3) The evidence is not to be treated as being substantially relevant to facts in issue merely because of inferences it may raise as to the child witness' or child complainant's general disposition.
- (4) Without limiting the matters to which the court may have regard in deciding whether the evidence has substantial probative value, it is to have regard to:
 - (a) whether the evidence tends to prove that the witness knowingly or recklessly made a false representation when the witness was under an obligation to tell the truth; and
 - (b) the period that has elapsed since the acts or events to which the evidence relates were done or occurred.
- (5) This section does not apply if the child is a defendant in the proceeding.

15YD Leave under this Division

- (1) An application for leave under this Division:
 - (a) must be in writing; and
 - (b) if there is a jury in the proceeding in question – must be made in the jury's absence; and
 - (c) must not be determined before the court has considered such submissions and other evidence as it thinks necessary for determining the application.
- (2) If the court gives leave under this Division, the court must:
 - (a) state its reasons in writing; and
 - (b) cause those reasons to be entered in the court's records.

Division 3 – Cross-examination

15YE Disallowing inappropriate or aggressive cross-examination

- (1) The court must disallow a question put to a person in cross-examination in a proceeding if:
 - (a) the question is inappropriate or unnecessarily aggressive; and
 - (b) the person is a person to whom subsection (3) applies.
- (2) In considering whether a question is inappropriate or unnecessarily aggressive, the court is to have regard to the person's personal characteristics, including his or her age, culture, mental capacity and gender.

- (3) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness;
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
 - (c) for a special witness proceeding – a special witness.

15YF Unrepresented defendants – cross-examination of child complainants

- (1) A defendant in a child proceeding who is not represented by counsel is not to cross-examine a child complainant.
- (2) A person appointed by the court is to ask the child any questions that the defendant requests the person to ask the child.

15YG Unrepresented defendants – cross-examination of vulnerable persons

- (1) A defendant in a proceeding who is not represented by counsel is not to cross-examine a person to whom subsection (1A) applies (the **vulnerable person**), unless the court gives leave.
 - (1A) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness (other than a child complainant);
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
 - (c) for a special witness proceeding – a special witness for whom an order under subsection 15YAB(3) is in force for this section.
 - (2) The court must not give leave under subsection (1) unless satisfied that the vulnerable person's ability to testify under cross-examination will not be adversely affected if the defendant conducts the cross-examination.
 - (3) In considering whether that ability will be adversely affected, the court is to have regard to any trauma that could be caused if the defendant conducts the cross-examination.
 - (4) An application for leave under this section:
 - (aa) if the vulnerable person is a vulnerable adult complainant – may be made by or on behalf of the defendant or the vulnerable person; and
 - (a) must be in writing; and
 - (b) must not be determined before the court has considered such submissions and other evidence as it thinks necessary for determining the application.
 - (5) If the court refuses leave, a person appointed by the court is to ask the vulnerable person any questions that the defendant requests the person to ask the vulnerable person.

15YH Represented defendants – cross-examination of vulnerable persons

- (1) A defendant in a proceeding who is represented by counsel is not to cross-examine, except through counsel, a person to whom subsection (2) applies.
- (2) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness;
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
 - (c) for a special witness proceeding – a special witness for whom an order under subsection 15YAB(3) is in force for this section.

Division 4 – Special facilities for vulnerable persons to give evidence**15YI Closed-circuit television**

- (1) Evidence in a proceeding from a person to whom subsection (1A) applies (the **vulnerable person**) must be given by means of closed-circuit television unless:
 - (a) the vulnerable person is at least 16 and chooses not to give evidence by that means; or
 - (b) the court orders that the vulnerable person is not to give evidence by that means; or
 - (c) the court is not equipped with facilities for evidence to be given by means of closed-circuit television.

Note: Section 15YL provides for alternative arrangements if a vulnerable person does not give evidence by means of closed-circuit television.

- (1A) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness;
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
 - (c) for a special witness proceeding – a special witness for whom an order under subsection 15YAB(3) is in force for this section.
- (2) The court must not make an order under paragraph (1)(b) unless satisfied that it is not in the interests of justice for the vulnerable person's evidence to be given by means of closed-circuit television.
- (3) This section does not affect the operation of any law in relation to the competence of a person to give evidence.

15YJ Giving evidence by closed-circuit television

- (1) If the vulnerable person's evidence is given by means of closed-circuit television from a location outside a courtroom:
 - (a) that location is taken to be part of the courtroom in which the proceeding is being held; and
 - (b) the court may order that a court officer be present at that location; and
 - (c) the court may order that another person be present with the vulnerable person:
 - (i) to act as an interpreter; or
 - (ii) to assist the vulnerable person with any difficulty in giving evidence associated with a disability; or
 - (iii) to provide the vulnerable person with other support.
- (2) An order under paragraph (1)(b) or (c) does not limit the operation of section 15YO (about accompanying adults).
- (3) The court may adjourn the proceeding, or a part of the proceeding, to a court or other place that is equipped with facilities for evidence to be given by means of closed-circuit television if:
 - (a) the court is not equipped with facilities for evidence to be given by means of closed-circuit television; or
 - (b) the court otherwise considers it appropriate to do so.

15YK Viewing evidence given by closed-circuit television

If the vulnerable person's evidence is given by means of closed-circuit television, the facilities used are to be operated in such a way that the people who have an interest in the proceeding can see the vulnerable person, and any person present with the vulnerable person, on one or more television monitors.

15YL Alternative arrangements for giving evidence

- (1) If evidence in a proceeding from a person to whom subsection (3) applies is not to be given by means of closed-circuit television, the court:
 - (a) must make arrangements in order to restrict contact (including visual contact) that the person may have with any defendant while giving evidence; and
 - (b) may make arrangements in order to restrict contact (including visual contact) that the person may have with members of the public while giving evidence.
- (2) The arrangements may include either of the following:
 - (a) using screens;
 - (b) planning seating arrangements for people who have an interest in the proceeding, including:

- (i) the level at which they are seated; and
- (ii) the people in the person's line of vision.

Persons to whom these alternative arrangements apply

- (3) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness;
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
 - (c) for a special witness proceeding – a special witness for whom an order under subsection 15YAB(3) is in force for this section;
 unless that person is at least 16 and chooses not to give evidence under the arrangements.

Division 5 – Use of video recordings

15YM Use of video recordings

- (1) A video recording of an interview of a person to whom subsection (1A) applies in a proceeding may be admitted as evidence in chief if:
 - (a) a constable, or a person of a kind specified in the regulations, conducted the interview; and
 - (b) the court gives leave.
- (1A) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness;
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
 - (c) for a special witness proceeding – a special witness for whom an order under subsection 15YAB(3) is in force for this section;
- (2) The court must not give leave under subsection (1) if satisfied that it is not in the interest of justice for the person's evidence in chief to be given by a video recording.
- (3) An application for leave under this section:
 - (a) must be in writing; and
 - (b) must not be determined before the court has considered such submissions and other evidence as it thinks necessary for determining the application.
- (4) The person must be available for cross-examination and re-examination if he or she gives evidence in chief by a video recording.

Note: Division 4 provides for this evidence to be given using closed-circuit television or other arrangements.

15YN Admissibility of evidence given using video recordings

- (1) The admissibility of the evidence given by video recording is not affected by the fact that it is evidence of previous representations that the person made in the interview that was being recorded.
- (2) Evidence given by video recording under section 15YM is not admissible if the court is satisfied that:
 - (a) any defendant in the proceeding (other than the person if the person is a defendant); or
 - (b) the defendant's lawyer (if any);
 was not given a reasonable opportunity to listen to and view the recording.
- (3) The court may refuse to admit the whole or part of the contents of a recording adduced as evidence under section 15YM.

Division 5A – Special rules for later trials

15YNA When this Division applies

This Division applies if a proceeding (the **original proceeding**) involving the trial of one or more defendants:

- (a) concludes and, on appeal, a new proceeding involving the trial of any or all of the defendants is ordered; or
- (b) is discontinued and a new proceeding involving the trial of any or all of the defendants is ordered.

15YNB Original evidence admissible in new proceeding

- (1) For the new proceeding, the prosecutor may prepare a record of all the evidence given by any person to whom subsection (4) applies (the **vulnerable person**) in the original proceeding if:
 - (a) the record is in a form, and is authenticated in a way, prescribed under subsection (5); and
 - (b) the prosecutor gives written notice to the court, and to the defendants in the new proceeding, of the prosecutor's intention to tender that record as evidence in the new proceeding; and
 - (c) that notice is so given:
 - (i) at least 21 days before the court commences hearing the new proceeding; or
 - (ii) within such other period as the court allows.

Note: The record would include all the evidence given in the original proceeding by the vulnerable person (whether evidence on examination in chief, on cross-examination or on re-examination).

- (2) However, the prosecutor may alter or edit that record with the agreement of each defendant in the new proceeding.
- (3) Both of the following are admissible as evidence in the new proceeding:
 - (a) a record of evidence prepared under subsection (1) and (2);
 - (b) the exhibits tendered in the original proceeding in connection with that evidence.
- (4) This subsection applies to the following persons:
 - (a) if the original proceeding was a child proceeding – a child complainant;
 - (b) if the original proceeding was a vulnerable adult proceeding – a vulnerable adult complainant.
- (5) The Minister may, in writing, prescribe the form, and ways for authenticating, records prepared under subsection (1).

15YNC Vulnerable person not to be made to give further evidence

- (1) A vulnerable person whose evidence is included in a record admitted under section 15YNB need not give any further evidence in the new proceeding unless the court orders that this is necessary:
 - (a) to clarify the vulnerable person's evidence given in the original proceeding; or
 - (b) to give proper consideration of information or material that has become available since the original proceeding; or
 - (c) in the interests of justice.

Note: This subsection covers further evidence that could otherwise be given on examination in chief, on cross-examination or on re-examination.

- (2) If the court makes an order under subsection (1), the court is to ensure that the vulnerable person is questioned in the new proceeding only about the matters specified in the order.
- (3) An order under subsection (1) may be made on the court's own initiative or on application by or on behalf of a party to the new proceeding.
- (4) Despite subsection (1), the vulnerable person may seek leave of the court to give further evidence in the new proceeding. Subsections (1) and (2) cease to apply to the person if leave is given.

15YND Defendants' access to video recordings

- (1) If a record prepared under subsections 15YNB(1) and (2) includes a video recording, neither:
 - (a) the defendants in the new proceeding; nor
 - (b) their legal representatives in the new proceeding;
 are entitled to be given the video recording or a copy of it.

- (2) However, they must be given reasonable access to the video recording in order to view it.

Note: This may require access on more than one occasion.

15YNE Warnings etc. not to be given about vulnerable persons' evidence

If there is a jury in the new proceeding, the judge is not to warn the jury, or suggest to the jury in any way, that the law requires greater or lesser weight to be given to evidence that is included in a record admitted under section 15YNB.

15YNF Division applies despite other rules of evidence

This Division has effect despite the *Evidence Act 1995*, any other law and any other rules of evidence or procedure.

Division 6 – Miscellaneous

15YO Adults accompanying vulnerable persons

- (1) A person to whom subsection (1A) applies may choose an adult to accompany the person while the person is giving evidence in a proceeding (including while giving evidence by closed-circuit television).
- (1A) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness;
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
 - (c) for a special witness proceeding – a special witness for whom an order under subsection 15YAB(3) is in force for this section;
- (2) The adult chosen under subsection (1) may accompany the person as mentioned in subsection (1), unless the court determines that it is not appropriate for the adult to accompany the person.
- (3) The court may permit more than one adult to accompany the person if the court considers it in the interests of justice to do so.
- (4) An adult accompanying the person under this section must not:
 - (a) prompt the person or otherwise influence the person's answers; or
 - (b) disrupt the questioning of the person.
- (5) Any words spoken by an adult accompanying the person under this section must be able to be heard by:
 - (a) the judge; and
 - (b) if there is a jury in the proceeding – the members of the jury.

15YP Excluding people from the courtroom

The court may order that some or all of the members of the public be excluded from the courtroom in which any of the following persons is giving evidence in a proceeding:

- (a) for a child proceeding – a child witness;
- (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
- (c) for a special witness proceeding – a special witness for whom an order under subsection 15YAB(3) is in force for this section.

15YQ Warnings etc. not to be given about vulnerable persons evidence

- (1) If there is a jury in a proceeding in which a person to whom subsection (2) applies has given or will give evidence, the judge is not to warn the jury, or suggest to the jury in any way:
 - (a) that the law regards persons to whom subsection (2) applies as an unreliable class of witness; or
 - (b) that the law requires greater or lesser weight to be given to evidence that is given by closed-circuit television or alternative arrangements under Division 4; or
 - (c) that the law requires greater or lesser weight to be given to evidence that is given by a video recording under Division 5; or
 - (d) that the law requires greater or lesser weight to be given to evidence because an adult accompanies the person under section 15YO.
- (2) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness;
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant;
 - (c) for a special witness proceeding – a special witness.

15YR Publication identifying child witnesses or vulnerable adult complainants

- (1) A person commits an offence if:
 - (a) the person publishes any matter; and
 - (b) the person does not have the leave of the court to publish the matter; and
 - (c) the matter:
 - (i) identifies another person, who is a person to whom subsection (1A) applies (the **vulnerable person**) in relation to a proceeding, as being a child witness or vulnerable adult complainant; or
 - (ii) is likely to lead to the vulnerable person being identified as such a person; and
 - (d) the vulnerable person is not a defendant in the proceeding.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

- (1A) This subsection applies to the following persons:
 - (a) for a child proceeding – a child witness;
 - (b) for a vulnerable adult proceeding – a vulnerable adult complainant.
- (2) This section does not apply if the publication is in:
 - (a) an official publication in the course of, and for the purpose of, the proceeding;
or
 - (b) a document prepared for use in particular legal proceedings (whether or not the legal proceedings are a proceeding within the meaning of this Part).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- (3) The court may give leave to a person to publish the matter.
- (4) In deciding whether to give leave, the court is to have regard to:
 - (a) any trauma to the vulnerable person that the publication could cause; and
 - (b) any damage to the reputation of the vulnerable person that the publication could cause; and
 - (c) whether the publication is:
 - (i) for the purpose of supplying transcripts of the proceedings to persons with a genuine interest in the proceedings; or
 - (ii) for genuine research purposes.
- (5) Leave may be given after the proceedings have finished. For this purpose, the court need not be constituted by the same judicial officers who constituted the court in the proceedings.
- (6) An application for leave under this section:
 - (a) must be in writing; and
 - (b) must not be determined before the court has considered such submissions and other evidence as it thinks necessary for determining the application.

15YS General powers of a court

- (1) The power of a court to control the conduct of a proceeding is not affected by this Part, except so far as this Part provides otherwise expressly or by necessary intendment.
- (2) In particular, the powers of a court to control the questioning of witnesses are not affected.
- (3) The power of a court to give leave under this Part includes the power to give such leave subject to conditions.

15YT Other video link evidence provisions are unaffected

Nothing in this Part affects the operation of Division 279 of the *Criminal Code* (about video link evidence in offences against humanity).

