

**AUSTRALIAN NGO SHADOW REPORT  
ON TRAFFICKED WOMEN  
IN AUSTRALIA**

**SUBMITTED TO THE 34<sup>TH</sup> SESSION OF THE COMMITTEE  
FOR THE CONVENTION ON THE ELIMINATION OF ALL  
FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

**UNANIMA International**

**Congregation of Sisters of the Good Shepherd**

**International Presentation Association**

**Relative to the  
Report of the Government of Australia as a State-Party to CEDAW**

**23 January 2006, New York**

*This report is dedicated to women who have been trafficked and enslaved in Australia*

## **ACKNOWLEDGEMENTS**

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The Canossian Daughters of Charity.  
Christian Brothers, Victoria and Tasmania  
Franciscan Missionaries of Mary, Australia  
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Good Shepherd Social Justice Network  
IBVM – Loreto Sisters, Australia  
Missionary Sisters of Service, Australia  
Missionary Sisters of the Sacred Heart (Hiltrup)  
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Religious Congregations Anti-Trafficking Working Group  
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Sisters of Mercy, North Sydney  
Sisters of St Joseph of the Sacred Heart  
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The Grail in Australia  
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## INTRODUCTION

This shadow report addresses Article 6 of the Convention on the Elimination of Discrimination Against Women (CEDAW) and evaluates Australia's response to the trafficking of women. Australia has made significant advances in combating human trafficking and we invite the Australian Government to consider this report and its recommendations as Government and civil society work together with the shared aim of eliminating human trafficking in Australia. We welcome the opportunity to present our findings to the CEDAW Committee and look forward to entering into a new phase of dialogue with the Australian Government, federal agencies, religious organisations, NGOs, trafficking survivors, researchers and others. We value the opportunity of learning from others through the CEDAW process and invite our colleagues and friends to join us in our discussions and in the formulation of strategies to end trafficking in our country, and to work with others to end trafficking in our region and globally.

## EXECUTIVE SUMMARY

### 1. *International Context*

Australia has made significant progress in combating human trafficking within its borders. This section summarises Australia's obligations under international instruments such as *The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* and the *Convention on the Elimination of All Forms of Discrimination Against Women*, as well as the principles enumerated in *The UN Recommended Principles and Guidelines on Human Rights and Human Trafficking* and the *Council of Europe on action Against Trafficking in Human Beings*. We conclude that anti-trafficking law and policy should be addressed in a human rights framework. While the successful prosecution of traffickers is an important element of the response to trafficking, it is the victim, not the perpetrator who should be at the centre of strategies to eliminate trafficking.

### 2. *Australia's Response to Trafficking*

Since 1999, the Australian Government has focused developing criminal law at the federal level through amendments to the Australian Criminal Code. In October 2003 the Federal Government announced a four year AUD 20 million package of reforms leading to the launch in June 2004 of the *Australian Government's Action Plan to Eradicate Trafficking in Persons (Action Plan)*. There are four central elements to the Action Plan:

- ◆ Prevention;
- ◆ Detection and Investigation;
- ◆ Criminal Prosecution;
- ◆ Victim Support and Rehabilitation.

To date, the Australian Government's primary focus has been on achieving successful prosecutions and recently, the Federal Government introduced the *Criminal Code Amendment (Trafficking in Persons*

*Offences) Act 2005* expanding the range of slavery and trafficking offences. We invite the Federal Government to strengthen its commitment to the Action Plan's focus on Prevention, Victim Support and Rehabilitation and consider the importance of supporting all victims of trafficking, not just those who are able to assist police investigations and prosecutions.

### ***Visa reform***

The current trafficking visa framework is centered on the ability of a trafficking victim as witness to assist law enforcement and prosecutorial bodies. We submit that trafficking visas be reviewed to prioritise victims' safety, security, and human rights above the needs of law enforcement. Such reforms will protect the human rights of all trafficking victims and, in addition, enhance victim cooperation and improve Australia's ability to detect, investigate and prosecute traffickers.

### ***National taskforce***

In reaffirming its commitment to the Action Plan we recommend that the Australian Government establish a national interagency taskforce to investigate, review and coordinate responses to human trafficking in Australia. Membership of the taskforce could be drawn from key Federal Government agencies, such as the Attorney-General's Department, the Department of Family and Community Services (FaCS), the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), the Australian Federal Police (AFP), and the Commonwealth Director of Public Prosecutions. Representatives from law enforcement and prosecution bodies in the States, local council representatives, and representatives from civil society including anti-trafficking NGOs, religious organisations, trade unions, health professions and sex worker advocacy groups should also be involved. It is crucial that the voice of trafficking survivors also be heard. We believe that effective strategies to address trafficking will be created through partnerships between government and civil society.

## **3. *Identifying, Investigating and Prosecuting Trafficking***

### **3.1 Identifying trafficking**

We commend DIMIA for developing guidelines to assist its officers to identify trafficking victims but we believe that the guidelines should be publicised and circulated as part of a community education program.

### **3.2 Community Awareness**

It is commendable that the Action Plan includes a Community Awareness Program targeting a wide ranging audience. This would be enhanced by expanding the scope of the campaign beyond sex trafficking to include all sectors where trafficking may occur. There is some urgency to fully develop and implement comprehensive community awareness programs.

### **3.3 Investigating Trafficking**

It is pleasing to note that in 2003 the Australian Government established, funded and implemented the training of a specialist AFP taskforce to conduct investigations leading to prosecution. Further

development is needed in coordinating Australia's law enforcement responses nationally and in building networks within civil society.

### **3.4 Prosecuting Trafficking**

The Australian Government has made a valuable contribution to law enforcement by establishing a specialist police taskforce and amending the federal Criminal Code. To date there has been one conviction of a person charged with a trafficking offence, but in that case the accused pleaded guilty. Criminal trials to date indicate that prosecutions can succeed or fail for many reasons, including the jury's impressions about the credibility of the alleged victim. The complex range of factors, including cultural factors affecting a trafficking victim, need to be understood by law enforcement officers, prosecuting and defending lawyers and judge and jury.

## **4. Victim Support**

The Action Plan sets out commendable and innovative victim support strategies.

### ***Victim Support Program***

A key development was the creation of a specific Victim Support Program that provides that some trafficking victims receive a beneficial package of support measures including assistance with accommodation, a living allowance, access to medical and counseling services and other support.

### ***Scope of Victim Support Program***

Currently a trafficking victim's ability to access the Victim Support Program is contingent on their capacity to assist police in a criminal investigation or prosecution. Trafficking victims, who are not involved in the law enforcement and criminal justice process, have been left to find care and support from members of community and religious organizations. We believe that the Program should be extended to all victims of trafficking. Victims of trafficking have many and complex needs. We recommend that the Government consider widening the Victim Support Program to guarantee that all victims of trafficking receive access to comprehensive health care services, residential and vocational support, and legal and migration advice.

### ***Independent evaluation of the Victim Support Program***

We commend the Australian Government's intention of conducting an independent evaluation of the Victim Support Program and suggest that this review include community-wide consultation about the effectiveness of the program. Interviews with trafficked women by the authors of this report about the Victim Support Program suggest that there needs to be a thorough continuing evaluation of the support provided to victims on the program. An evaluation of the Victim Support Program would assess the extent to which needs are met within the Victim Support Program. Additionally the provider of the Victim Support Program may wish to consider the development of an information strategy and complaints mechanism for those receiving assistance in the program.

## **5. Repatriation and Reintegration processes**

The Australian Government has a number of admirable international initiatives which aim to prevent trafficking abroad. We recommend that Australia continue to explore opportunities to establish bilateral agreements to facilitate the repatriation of victims of trafficking in appropriate circumstances. We further recommend that the Australian Government consider funding a pre-reintegration program for victims of trafficking who seek to return to their country of origin. Such a program would focus on providing a range of supports such as counseling, health care, vocational assistance and other appropriate measures designed to ensure a successful return and reintegration into the country of origin.

## **6. Prevention**

Human trafficking is a complex and multidimensional phenomenon and requires a multidisciplinary approach. Poverty is generally considered to be a key factor that contributes to the victim's vulnerability to trafficking. Another key factor is the prevalence of violence against women. Strategies to eliminate violence against women should be prioritised and implemented. Any analysis of the root causes of trafficking must take into account factors that are specific to the individual, the country of origin and the destination country. We recommend that the Government prioritise funding for research into the origins and extent of human trafficking in Australia and in the Asia Pacific region.

Alternatives to criminal prosecution need also to be explored. To date there have been no civil cases brought by trafficking victims to claim compensation from traffickers, and there have been no awards of sums from existing crimes compensation funds for victims. Expansion of the Victim Support Program to assist trafficking victims to access legal advice about possible civil actions as well as compensation claims would be a powerful deterrent. Another deterrent would be successful prosecutions.

## **7. Concluding Remark**

We commend the Australian government on its Action Plan. We look forward to an energetic cooperation between government and civil society in the future. We thank CEDAW for the opportunity to present this shadow report.

## **RECOMMENDATIONS**

### **RECOMMENDATION TO THE CEDAW COMMITTEE**

We recommend that the CEDAW Committee:

- A. Welcome the significant advances towards the elimination of trafficking made by the Australian Government.
- B. Encourage the Australian Government to adopt a human-rights framework in addressing the sex and race-based discrimination which increases some women's vulnerability to trafficking and sexual exploitation.
- C. Encourage the Australian Government to establish a national taskforce to investigate, review and coordinate the response to human trafficking in Australia, grounded in collaborative partnerships between government and civil society.
- D. Urge the Australian Government to review the visa framework applied to women who have been trafficked and in particular recommend that a visa be introduced for those people who are unable to testify in court proceedings, or for whom it would be unsafe to be repatriated, or for compassionate reasons.
- E. Ask the Australian Government to extend resourcing of the Victim Support package to other providers (NGOs and religious groups) that support trafficked people who do not meet the current victim support eligibility criteria.
- F. Prioritise and encourage research into the nature and extent of human trafficking in Australia and the Asia Pacific region.

### **RECOMMENDATIONS TO THE AUSTRALIAN GOVERNMENT**

#### **Australia's Response to Trafficking**

- 1. That the human rights of the victim are placed at the centre of efforts to combat trafficking in Australia and internationally and that legal and policy responses to trafficking are based upon a human rights framework.
- 2. That the Australian Government commission further research into the nature and extent of human trafficking in Australia and the Asia Pacific region.
- 3. That the Australian Government, having commissioned the development of a Community Awareness Program, implement this as soon as is possible.
- 4. That the Australian Government expand the proposed Community Awareness Program to provide education and information about human trafficking in all industry sectors and the domestic sphere.

## **Identifying, Investigating and Prosecuting Trafficking**

5. That the Government establish a national taskforce to investigate, review and coordinate responses to human trafficking in Australia. We recommend that membership of the taskforce include representatives of all levels of government (federal, state and local) as well as representatives of civil society.
6. That all Australian States and Territories introduce laws which reflect the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*. Such laws should be expanded to include statutory rights to victims' compensation.
7. That the Australian Government implement the recommendation of the supplementary report of the Parliamentary Joint Committee on the Australian Crime Commission to review the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* in 2006. We submit that consideration be given to amendments that include the provision to the court of victim impact statements specific to these offences, similar to those contained in the *NSW Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004*.
8. That the Australian Government review best practices in sexual assault prosecutions and other similar offences in state and federal criminal law jurisdictions for the purpose of evaluating the law, policies and procedures relevant to the conduct of trafficking prosecutions.
9. That, where appropriate, prosecutors in trafficking trials call qualified expert witnesses to give evidence to the court and the jury about relevant social, cultural, health and welfare factors that impact on a trafficking victim.

## **Victim Support**

10. That the existing trafficking visa framework be reformed.
11. That trafficking victims should be eligible for visas on the basis of their status as a victim of trafficking, their safety needs and their need for victim support, regardless of their involvement in the criminal justice system.
12. That the commendable Australian Government initiative of conducting an independent evaluation of the Victim Support Program be broadened to include community-wide consultation about the effectiveness of the program.
13. That upon entering the victim support program a person receives comprehensive legal advice and access to a health care program.
14. That the Australian Government develops the victim support program in Australia to provide supported accommodation and care for all trafficking survivors, and that consideration be given to the resourcing of other providers (NGOs and religious groups). That this issue be considered by the national taskforce (see recommendation 5).

## **Repatriation and Reintegration Processes**

15. That the Australian Government considers the development of appropriate pre-reintegration strategies for all victims of trafficking while they are still in Australia. This may include the possibility of developing a new pre-reintegration visa for victims of trafficking who wish to return to their country of origin.
16. That the Australian Government continues to make representations to the governments of source countries to develop reintegration programs for victims of trafficking.

17. That the Australian Government develops a Domestic Protocol to provide systematic repatriation and reintegration initiatives for all trafficking victims who wish to return to their country of origin or elsewhere.

**Prevention**

18. That the Australian Government continues its efforts to address the Millennium Development Goals in recognition of the direct link between poverty and trafficking.
19. That the Australian Government continues to promote the development of strategies to eliminate violence against women within the context of trafficking.
20. That all trafficking victims receive legal advice about possible civil remedies as well as their rights to access crimes compensation.
21. That the Australian Government continue to cooperate with other national and international authorities and police forces to combat trafficking in its country of origin.

## GLOSSARY OF TERMS

ACC	Australian Crime Commission
Action Plan	<i>Australian Government's Action Plan to Eradicate Trafficking in Persons 2004</i>
AFP	Australian Federal Police
ANAO	Australian National Audit Office
AFP	Australian Federal Police
ARCPPT	Asia Regional Cooperation to Prevent People Trafficking
AusAID program.	Australian Government agency responsible for managing Australia's overseas aid program.
BVF	Bridging Visa F
CJSV	Criminal Justice Stay Visa
CROC	The Convention on the Rights of the Child
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
FaCS	Family and Community Services
MP	Member of Parliament
NGO	Non-government organization
SET	Southern Edge Training Pty Ltd
TSETT	Transnational Sexual Exploitation and Trafficking Strike Team
TIP	Trafficking in People
PJC	Parliamentary Joint Committee
PRC	People's Republic of China
UN	United Nations
UNANIMA	Coalition of Catholic congregations committed to the charter of the UN.
UNHCR	United Nations High Commissioner for Refugees

# 1 THE INTERNATIONAL CONTEXT

The framework of analysis used in this submission to assess Australia's performance in countering human trafficking is drawn from relevant international instruments, including the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in persons, especially Women and Children*, *The UN Guidelines on Human Trafficking*, *The Convention on the Elimination of All Forms of Discrimination Against Women*, and *the Council of Europe on Action against Trafficking in Human Beings*.

Trafficking is, first and foremost, a human rights violation and it is imperative that the adequacy of Australia's response to trafficking is assessed in a human rights framework. Despite some debate and discussion regarding relevant international treaty obligations, "a core of obligations, enshrined in and protected by international law"<sup>1</sup> can be identified from these instruments and this report measures Australia's response to human trafficking against these internationally agreed standards. While the successful prosecution of traffickers is an important element of the response to trafficking, it is the victim, not the offender, who should be at the centre of measures to address trafficking.

## 1.1 The UN Protocol of Trafficking in Persons

Australia is a party to *The United Nations Protocol to Prevent and Suppress Trafficking in Persons, Especially Women and Children* ("The Trafficking Protocol"), and Australia ratified the Trafficking Protocol on the 15<sup>th</sup> of September 2005. The Trafficking Protocol defines "trafficking in persons" as:

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

Crucially the Trafficking Protocol provides that "the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) [above, defining traffic in persons] of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."<sup>2</sup>

While the Protocol does not offer an exhaustive definition of exploitation, it states that exploitation includes, at a minimum:

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<sup>1</sup> Anne Gallagher, 'Human Rights and Human Trafficking: A Preliminary Review of Australia's Response, Human Rights 2004: The Year in Review (Castan Centre for Human Rights Law, Monash University, 2005).

<sup>2</sup> The "travaux preparatoires" state that the phrase "abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved". See United Nations General Assembly, *Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, UN Doc. A/55/383/Add.1, 3 November 2000, Interpretative Note. 63

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

Article 2 outlines the Statement of Purpose of the Trafficking Protocol which aims to address human trafficking by:

1. Preventing and Combating Human Trafficking;
2. Protecting and Assisting Victims of Trafficking;
3. Ensuring that there is International Cooperation to Achieve these Ends.

## **1.2 The UN Principles and Guidelines on Human Rights and Human Trafficking**

Under the UN Principles and Guidelines on Human Rights and Human Trafficking (“The UN Guideline”) “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”. Principle 2 states under international law States have a responsibility to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons. Principle 8 requires States to “ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care [which] shall not be made conditional on the capacity or willingness of trafficked persons to cooperate in legal proceedings”.

## **1.3 The Convention on the Elimination of Discrimination Against Women**

Australia ratified *the Convention on the Elimination of Discrimination Against Women* on the 28<sup>th</sup> of July 1983. Article 6 provides that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation or prostitution of women”. General Recommendation 19 of the Committee on the Elimination of Discrimination Against Women stated:

Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.<sup>3</sup>

The Committee observed that “poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence”. The Committee also noted that wars, armed conflicts and the occupation of territories often

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<sup>3</sup> Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).

lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

#### **1.4 The Convention on the Rights of the Child**

The *Convention on the Rights of the Child* (CROC) requires States parties to: “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children of any purpose or any form”.<sup>4</sup> The Convention requires State parties to “take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of ... any form of ... exploitation ... in an environment which fosters the health, self-respect and dignity of the child”.

#### **1.5 Council of Europe Convention**

The Council of Europe recognizes trafficking as a violation of human rights and provides a framework for the enhanced protection of the human rights of trafficked persons by requiring parties to the Convention to take action to prevent trafficking, prosecute traffickers and protect the rights of trafficking victims. Under the Convention States should provide assistance and protection to all people reasonably believed to be trafficked, including at a minimum: safe and secure housing; psychological and emergency medical assistance, interpretation and translation services, information about their rights -- including compensation. Such assistance should not be conditional on the person’s willingness to act as a witness in any proceedings against those responsible for their trafficking.

The Convention also provides that states should authorize the presence of trafficked people in the state in which they are found for a period (of not less than 30 days), which is sufficient for them to begin to recover, escape the influence of their trafficker(s) and to make informed decisions about their future, and in certain situations (when their stay is necessary for their personal situation and/or for their cooperation in investigations or criminal proceedings) to grant them renewable residence permits. Finally, the Convention emphasizes that States should ensure that the trafficked persons have access to redress and receive compensation for the abuses of their human rights to which they have been subjected.

## **2 AUSTRALIA’S REPOSE TO TRAFFICKING**

### **2.1 Trafficking in Australia**

The problem of trafficking in Australia is not new. The Australian Government has worked to widen the scope of trafficking and slavery offences in the Criminal Code beginning with a major reform to the criminal law in 1999 with the introduction of the *Criminal Code Amendment (Slavery and Sexual Servitude) Offences. Act*. However, it was not until 2003 that, partly in response to community, political and media pressure, the Australian Government directed that further policy and legal reform were necessary to improve Australia’s response to trafficking. As a result of these reforms, between 2003 and 2005 there has been a substantial improvement in Australia’s response to trafficking, culminating in Australia’s ratification of the Trafficking Protocol on the 15<sup>th</sup> of September 2005.

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<sup>4</sup>Article 35, Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 *entry into force* 2 September 1990, in accordance with article 49.

The tragic death of Ms Puontong Simaplee, who died in Villawood Immigration Detention Centre on the 26<sup>th</sup> of September 2001, three days after being detected by Immigration officers in an inner city brothel and her subsequent detention in an immigration detention facility illustrated that legislation criminalising slavery will have little effect if victim identification measures, victim support programs and visa arrangements are inadequate.

The fact of Ms Simaplee's death and the resultant Coronial Inquiry in 2003 galvanised the Australian community and media and helped put trafficking on the political agenda. In June 2003 the Joint Parliamentary Committee on the National Crime Authority initiated an inquiry into the Australian Crime Commission's handling of the issue of trafficking. The Committee was a result:

[of] the emergence in the media of allegations of mishandling of cases of trafficked women by government agencies. Of particular concern was the allegation that women, who were in effect prisoners of traffickers who forced them into the sex trade against their will, were simply deported by government agencies with no regard for their condition as victims of crime.<sup>5</sup>

In October 2003 the Government revealed a four year \$20 million package<sup>6</sup>, followed by the launch in June 2004 of the *Australian Government's Action Plan to Eradicate Trafficking in Persons* and, most recently, the introduction of the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*.

The *Australian Government's Action Plan to Eradicate Trafficking in Persons* represents a clear statement that the Government will not tolerate trafficking and will work to assist victims of trafficking. The Action Plan has four central elements : Prevention; Detection and Investigation; Criminal Prosecution; Victim Support and Rehabilitation. The Action Plan includes:

- a new community awareness campaign to raise awareness of trafficking issues within Australia;
- the creation of an Australian Federal Police Transnational Sexual Exploitation and Trafficking Team to investigate trafficking and sexual servitude;
- the location of Senior Migration Officer (Compliance) in Thailand, focused on trafficking in persons;
- new visa arrangements for potentially trafficked persons who are of interest to, or can assist police investigations or prosecutions;
- a victim support program for persons who had been granted visas to assist police investigations or prosecutions;
- the development of a reintegration assistance project for trafficking victims who are returned to key source countries in South East Asia.

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<sup>5</sup> Parliamentary Joint Committee on the Australian Crime Commission *Report of the Inquiry Into the Trafficking of Women for Sexual Servitude* (the PJC report) June 2004, p vii

<sup>6</sup> See further Burn Jennifer, Blay Sam, Simmons Frances, "Combating Human Trafficking: Australia's response to Modern Day Slavery" (2005) 70 ALJ 1

## 2.2 Estimates of Trafficking in Australia

Australia is a destination country for trafficking. However, there is a lack of accurate statistical data and a clear need for independent research into human trafficking in Australia.<sup>7</sup> The 2005 US State Department's Trafficking in Persons Report lists Australia as "a destination for women from Southeast Asia, South Korea, and the People's Republic of China (P.R.C) who are trafficked for the purposes of sexual exploitation".<sup>8</sup> The Parliamentary Committee on the ACC *Supplementary Report* released in August 2005 state that "intelligence mainly concerns the trafficking of adult women, who come predominantly from South Korea, Thailand and the People's Republic of China. There appears to have been a fall in the number of Thai sex workers and an increase in the number of South Korean workers".<sup>9</sup> Australian research has suggested that women are trafficked to Australia from both South and East Asia, with smaller numbers from Latin America and former Soviet States.<sup>10</sup>

Estimates of the numbers of person trafficked to Australia vary and generally focus on the number of women trafficked to Australia to work in sexual servitude. The Government estimates that "the number of people trafficked into Australia is estimated to be well below 100".<sup>11</sup> Project Respect estimates that there are approximately 1000 trafficked women working in the Australian sex industry at any one time and about 300 women are trafficked into Australia annually.<sup>12</sup>

To date, not enough research has been conducted into the size and character of trafficking in Australia. Existing studies focus almost exclusively on trafficking into the sex industry. While this is undoubtedly a problem upon which Australia must remain focused on, it is also imperative that researchers investigate trafficking within the Australian and regional context. As trafficking is a multi-dimensional phenomena, the best research will be inter-disciplinary in nature, involving demographers, social scientists, lawyers, health professionals, members of NGOs, the media and the community.

## 2.3 The Criminal Code (Slavery and Sexual Servitude Act) 1999

In an early commendable response to the problem of human trafficking the Australian Government amended the Criminal Code through the enactment of the *Criminal Code Amendment (Slavery and Sexual Servitude) Act* 1999, creating the offences of slavery, sexual servitude and recruiting for sexual services. Sexual servitude was defined as the condition of a person who provides sexual services and, because of force or threats, is not free to cease providing those services or leave the place where they provide those

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<sup>7</sup> Carrington K and Hearn J "Trafficking and the Sex Industry: from Impunity to Protection" (2002-3) *Current Issues Brief* No. 28, Department of the Parliamentary Library

<sup>8</sup> United States State Department (2004), "Trafficking in persons report", United States State Department, <http://www.state.gov/g/tip/rls/tiprpt/2005/> accessed 30 July 2005.

<sup>9</sup> Parliamentary Joint Committee on the Australian Crime Commission. *Supplementary Report to the Inquiry into the Trafficking of Women for Sexual Servitude*, August 2005.

<sup>10</sup> Yea, Sallie and Jennifer Burn 2005. 'Sex Trafficking of Thai Women and Girls to Australia'. In Pierre Legros et al (eds.), *The Trade in Human Beings for Sex: A study of prostitution and trafficked women and children within the Mekong Sub-region*, UNODC, Phnom Penh (in press).

<sup>11</sup> The Government Action Plan does not state on what information this estimate is based. It is noted that the Action Plan states that this is the number of people estimated to have been trafficked in Australia, not the number of people trafficked annually. Government Action Plan on Trafficking, p6

<sup>12</sup> Project Respect, "One victim of trafficking is one victim too many: Counting the human cost of trafficking", March 2004. Project Respect's analysis is based on a 3 month project in which they documented 300 trafficking victims' stories. See <http://www.projectrespect.org.au/>

services. The Act provided the offence of ‘deceptive recruiting’ for sexual service was established only where the victim was deliberately deceived about the nature of the work, not where the victim was deceived about the conditions of work. This provision functioned to exclude the experience of women who consented to migrate in the sex industry but did not consent to the conditions of work despite the fact that commentators believe that the majority of trafficked women know they are coming to Australia to work in the sex industry.<sup>13</sup> The *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* did not contain a definition of trafficking. Despite the introduction of the laws, no charges were laid in Australia under these laws until 2003.

## **2.4 The Criminal Code (Trafficking in Persons) Amendment Act**

In 2005, the Attorney-General reviewed Australian criminal law dealing with human trafficking and subsequently the Federal Parliament enacted the *Criminal Code Amendment (Trafficking in Persons Offences) (Cth)*. While retaining a strong focus on trafficking in women for sexual servitude, the Act adopts a broad definition of trafficking as conduct which causes the victim to enter into slavery, forced labour or sexual servitude or causes an organ of the victim to be removed.<sup>14</sup>

The Act expands the existing catalogue of trafficking related offences<sup>15</sup> with the introduction of a new Subdivision B on ‘Offences relating to trafficking in persons’<sup>16</sup>. This new subdivision categorizes trafficking offences into:

- a general offence of trafficking and the aggravated offence of trafficking;
- the offence of trafficking in children in general;
- the offence of domestic trafficking in children;
- a general offence of domestic trafficking in persons and the aggravated offence of domestic trafficking in persons; and
- the offence of debt bondage.

The Act broadens the ‘deceptive recruiting for sexual services’ offences in the section 270.7 of the Criminal Code (1995) to cover deception about the conditions of work as well as deception about the nature of work.

The new offence of trafficking reflects to a large degree the Trafficking Protocol definition. It provides that a person commits an offence of trafficking in persons if he or she organizes or facilitates the entry/exit or proposed entry/exit, or the receipt, of another person into Australia; and uses force or threats

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<sup>13</sup> Carrington K, Hearn J, ‘Trafficking and the Sex Industry: from Impunity to Protection’ *Current Issues Brief* no. 28 2002-03, Department of the Parliamentary Library, p9

<sup>14</sup> Burn Jennifer, Blay Sam, Simmons Frances, “Combating Human Trafficking: Australia’s response to Modern Day Slavery” (2005) 70 ALJ 1

<sup>15</sup> The *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* created the offences of slavery, sexual servitude and deceptive recruiting for sexual services. The Act did not provide a specific offence for trafficking and the offence of deceptive recruiting for sexual services only applied if the victim was deceived about the fact that she would be working in the sex industry and not, as was more commonly the case, if the victim agreed to work in the sex industry but did not agree to the working conditions.

<sup>16</sup> Sections 271.2-271.12

to obtain the other person's compliance in respect of that entry/exit or proposed entry/exit or in respect of that receipt. (s271.2;). The Act broadens the *mens rea* of trafficking by providing that, a person commits the offence where they facilitate the entry or exit of another person, and 'the person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt' (s271.2 (1B) (b)).<sup>17</sup> The general offence of trafficking also includes *deceit* regarding the true purposes of the recruitment of the victim for entry into or exit from Australia.

The Act does not prohibit recruitment of a person for the purposes of providing sexual services. However to ensure that trafficking does not take on the guise of 'legitimate' recruitment, s 271.2(2B) of the Act provides that a person commits the offence of trafficking where 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;
  - (vi) The extent to which the other person will be free to leave his or her place of residence;
- (iv) 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.

Sections 271.5-271.7 thus address the question of *domestic* trafficking by making it an offence to 'traffic' a person 'from one place in Australia to another place in Australia'.<sup>18</sup>

Of particular importance is the introduction of a new offence of debt bondage (s271.8).

Importantly, the offence of debt bondage also recognizes the differential power relationship that often exists between traffickers and their victims. Under section 271.8 (2) a court or jury, determining whether a person has committed the offence of debt bondage, can have regard to evidence about: the economic relationship between the accused and the alleged victim; evidence of any written or oral contract or agreement; the personal circumstances of the alleged victim including whether they are entitled to be in Australia under the Migration Act, his or her ability to speak English and his or her physical and social dependence on the accused. This evidence is also admissible in relation to the deceptive recruiting for sexual services offence (s270.1).

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<sup>17</sup> According to the Act's definition of exploitation, exploitation occurs if: "(a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; or (b) the exploiter's conduct causes an organ of the victim to be removed and: (i) the removal is contrary to the law of the State or Territory where it is carried out; or (ii) neither the victim nor the victim's legal guardian consented to the removal and it does not meet a medical or therapeutic need of the victim." Interestingly, debt bondage is not included in the definition of exploitation or forced labour.

<sup>18</sup> See Burn Jennifer, Blay Sam, Simmons Frances, "Combating Human Trafficking: Australia's response to Modern Day Slavery" (2005) 70 ALJ 1

In relation to the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* the Parliamentary Joint Committee on the Australian Crime Commission Supplementary Report on the Inquiry into Trafficking of Women for Sexual Servitude recommended:

That a review of the new legislation take place a year after its implementation, and as part of that review, consideration be given to amendments to include the provision to the court of victim impact statements specific to these offences, similar to those contained in the NSW *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004*.<sup>19</sup>

Broadening the range and scope of trafficking offences is an important element of enabling effective prosecutions of traffickers but it does not address the root causes of trafficking. Recognizing that pursuing criminal justice will not necessarily lead to justice for trafficking victims is important. Criminal prosecutions of trafficking offenders are notoriously hard to prove. The criminal prosecution of trafficking victims can only be one aspect of attempts to seek justice for the victims of trafficking.<sup>20</sup>

### **3 IDENTIFYING, INVESTIGATING AND PROSECUTING TRAFFICKING**

#### **3.1 Identifying the Victims of Trafficking**

Logically, finding and identifying trafficking victims is a precondition to protecting and assisting them and to pursuing trafficking criminal investigations. The UN Guidelines state:

A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place.<sup>21</sup>

The Department of Immigration and Multicultural Affairs (DIMIA) has now developed guidelines for immigration officers to identify potential victims of trafficking. These guidelines have not been made public<sup>22</sup>. Mr. McMahon, Executive Coordinator, Border Control and Compliance Division, DIMIA, stated:

When we interview a person we do not ask them if they have been trafficked. When we conduct interviews we ask a series of questions which establish whether they have been trafficked. This is quite important because many women who have been trafficked have been schooled through intimidation et cetera not to answer the questions ...<sup>23</sup>

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<sup>19</sup> Parliamentary Joint Committee on the Australian Crime Commission, "Supplementary report to the Inquiry into trafficking of women in sexual servitude", August 2005, p 7

<sup>20</sup> Burn Jennifer, Blay Sam, Simmons Frances, "Combating Human Trafficking: Australia's response to Modern Day Slavery" (2005) 70 ALJ 1

<sup>21</sup> United Nations Economic and Social Council Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 2

<sup>22</sup> DIMIA Submission 38, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the Trafficking of women for Sexual Servitude*, p 5. See Mr Lawler, Acting Deputy Commission, Australian Federal Police, *Official Committee Hansard Joint Committee on the Australian Crime Commission*, 26 February 2004 at ACC12

<sup>23</sup> See Mr McMahon, DIMIA, *Official Committee Hansard Joint Committee on the Australian Crime Commission*, 26 February at ACC33.

This submission commends DIMIA for developing guidelines for identifying trafficking victims. Implementation of these policies has changed the way that victims of trafficking are perceived and treated by key DIMIA staff. Additionally the Australian Federal Police (AFP) have engaged in substantial training programs of key officers – especially in the AFP key trafficking police unit (Transnational Sexual Exploitation and Trafficking Strike Team – TSETT). We recommend that all levels of government: federal, state and local as well as law enforcement agencies, include trafficking awareness and related socio-cultural issues as a necessary part of staff training.

### **3.2 Community Awareness**

The Australian Government’s Action Plan to Eradicate Trafficking included a community awareness strategy ‘to encourage greater awareness of matters related to trafficking, the reporting of suspicious activity, and the availability of support for victims’. However, two years later, this community awareness campaign is yet to be implemented. The PJC on the ACC reported:

...the community awareness strategy that was intended to be implemented has been very slow in its implementation. A sum of \$400,000 was to be spent on the community awareness strategy to combat sex trafficking, but government consultant Open Mind Research are finding it difficult to get appointments with the targets of the advertising—the sex industry workers and their clients. Stage 1, which is to determine the focus of the strategy and identify target audiences and to develop key messages, is still where the campaign is at. A task as obviously important as developing key messages has now dragged on for nearly two years.<sup>24</sup>

Open Mind Research are encouraged to liaise or continue liaising with existing anti-trafficking NGOs such as Project Respect (Melbourne), the UTS Anti-Slavery Project (Sydney), the Community Response Network (Sydney) and the National Network against Trafficking in Women for Prostitution (Melbourne); Scarlett Alliance and other sex worker advocacy groups to inform the development of the community awareness program.

After Stage one is completed, the Attorney General will tender for an agency to undertake the design, marketing and publication outcomes of that strategy.

According to the Attorney General’s Department the community awareness strategy will target:

Victims of trafficking who are working in the legal or illegal sex industry in Australia, as well as people who are likely to come into regular contact with them, such as other sex workers, clients, brothel owners and managers, brothel regulators, migration agents, sex worker outreach organizations and sexual health service providers. The strategy will also encourage greater awareness of people trafficking issues in the general community by working with the media to address trafficking in a responsible, culturally appropriate and context sensitive manner. A range of information will be produced and disseminated, including indications of trafficking, victims’ rights

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<sup>24</sup> Mr Kerr, *Hansard*, 5 September 2005, p 11

and available assistance and support. As well, the strategy will seek to sensitize clients of the sex industry to the situation of women who are trafficked for the purposes of sexual exploitation.<sup>25</sup>

We recommend that the Australian government, having commissioned the development of a Community Awareness Program, implement this as soon as is possible.

It is important to note that the planned community awareness campaign focuses exclusively on sex trafficking rather than providing education and information about the broader issue of human trafficking. Unfortunately, there have been no initiatives to increase the awareness of trade unions, migrant resource centres, ethnic communities, local councils, community legal centres, sexual assault centres, health professionals, schools or rural communities about human trafficking generally.

### **3.3 Investigating Trafficking**

It is pleasing to note that the Australian Government established, funded and implemented the training of a specialist AFP taskforce to work on human trafficking investigations and prosecutions in 2003. This is a welcome advance in the area of prosecution. However, there are concerns that, in an area which involves multiple federal agencies, there is no central body which co-ordinates responses and is ultimately accountable for successes or failures. The Supplementary Report to the Inquiry into the trafficking of women into sexual servitude stated:

Concern remains that in any situation such as this, where multiple agencies share responsibility, no-one has either the authority to ensure that actions are taken, nor is it necessarily clear who was responsible for an action or a failure.<sup>26</sup>

One idea canvassed by the PJC was that the Australian National Audit Office (ANAO) conducts an audit of the overall National Action Plan.<sup>27</sup> The Report also noted that six states have introduced sexual servitude offences and emphasized the need for all states to introduce anti-trafficking legislation which reflect the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*. We recommend that all Australian State and Territories introduce laws which reflect the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*. Such laws should be expanded to include rights to victims' compensation.

There is a need for a national taskforce to coordinate Australia's response to trafficking at a federal, state, local and international level. The national taskforce should include representatives from civil society in addition to governmental and inter-governmental representation. One of the first objectives of this taskforce should be to investigate and report on the adequacy of relevant trafficking legislation in each state, as well as federal and state law enforcement training and coordination.

The potential benefits of cooperation between law enforcement and civil society in combating human trafficking have not been explored in Australia.

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<sup>25</sup> [http://www.dfat.gov.au/illegal\\_immigration/ag.html](http://www.dfat.gov.au/illegal_immigration/ag.html)

<sup>26</sup> Parliamentary Joint Committee on the Australian Crime Commission, "Supplementary Report to the Inquiry into the trafficking of women for sexual servitude", August 2005, p 12

<sup>27</sup> Ibid

There is a lack of coordination of the efforts of governments, law enforcement, lawyers, NGO's, unions, the sex industry, academics, researchers and unions to fight trafficking. In particular, there are no committees which could bring together representatives and leaders from these groups to exchange information and establish case referral protocols.<sup>28</sup>

The 2005 Asia Pacific Forum Regional Workshop on Human Trafficking recommended that “due to their specific role, immigration officials, border control officials, labour inspectorates, police, prosecutors and the judiciary require specific training on an ongoing and regular basis” Specifically the workshop also recommended training for law enforcement officers that advocates “investigatory techniques and processes which do not rely exclusively on the evidence of victim witnesses”.<sup>29</sup>

### **3.4 Prosecuting Trafficking**

The Australian Government has made a valuable contribution to the trafficking prosecution framework by establishing a specialist police taskforce and amending the Criminal Code. To date there has been one conviction of a person charged with a trafficking offence and, in that case, the accused pleaded guilty.<sup>30</sup> In May 2005 two high profile sexual slavery cases in Melbourne and Sydney ended in deadlock.<sup>31</sup> The prosecution in Sydney, the first test of the sexual servitude offences introduced in 1999, ended in a hung jury after two days of deliberation. In June 2005 the PJC on the ACC was advised:

In the Sydney trial the jury failed to reach a verdict against the primary person who was accused, and the two co-accused, on 10 sexual servitude charges. In Melbourne one defendant was acquitted of eight out of 10 sexual servitude charges and the jury failed to reach a verdict on the charges against the co-accused in that case.<sup>32</sup>

The PJC was also told that the Commonwealth Director of Public Prosecutions is presently considering whether it will take action to seek a retrial in the cases where the jury failed to reach a verdict.

In criminal trials prosecutions can succeed or fail for many reasons. In trafficking cases stigma against the sex industry can influence a jury to doubt the credibility of alleged victims of trafficking. Trafficking cases are often complex: trafficked women often consent to work in the sex industry but do not consent to the conditions of work; women are often physically free to leave the premises but psychologically unable to escape. Despite the complex nature of trafficking, prosecutors in Australia have not provided expert evidence to the court to explain relevant cultural, social and psychological aspects of the people trafficking process.<sup>33</sup> Observers of recent Australian trafficking trials reported analogies between trafficking and sexual assault cases. We propose that the Australian Government review best practices in sexual assault prosecutions and other similar offences in state and federal criminal law jurisdictions for

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<sup>28</sup> Georgina Costello, 2005, *Report of 2004 Donald McKay Winston Churchill Fellowship to study people trafficking law and policy in Italy and the USA*, p16

<sup>29</sup> Asia Pacific Forum – Workshop on Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and to Secure Justice for Trafficked People, Sydney, 21-23 November 2005.

<sup>30</sup> R v DS [2005] VSCA.

<sup>31</sup> “Sex Slave cases end with deadlocked juries”, AAP News (Australia), May 27 2005

<sup>32</sup> Blackburn, Committee *Hansard*, 23 June 2005, p16

<sup>33</sup> *Ibid*

the purpose of evaluating the law, policies and procedures relevant to the conduct of trafficking prosecutions.

The conduct of prosecution proceedings in trafficking cases was the subject of recent criticism by Judge Robert Keleman after he was forced to abort a sexual slavery trial on the 68<sup>th</sup> day of hearing.<sup>34</sup> Justice Keleman, whose comments were reported in *The Sunday Telegraph*, said failures by DIMIA and the AFP to provide relevant documents had led to the trial becoming “untenable”.<sup>35</sup> The prosecution managed to call only one witness and the rest of the time was spent on legal argument and the production of relevant documents that should have been handed to the defence before the trial started, leading Justice Keleman to describe the trial as an “appalling waste of money and court time”.<sup>36</sup>

## 4 VICTIM SUPPORT

### 4.1 “Witnesses/victims”: the visa framework for trafficked persons

A clear understanding of human trafficking involves a complex appreciation of many layers of human activity – from global trade to local demand. The Australian Government’s response to trafficking has been characterized by a strong law enforcement focus.<sup>37</sup> The solution to trafficking is often presented as simply the apprehension and prosecution of individual perpetrators, reflecting the belief that, as Malcolm Turnbull MP explained,

...the real battle against trafficking of women for sexual exploitation will be won operationally, in the field, by police officers.<sup>38</sup>

This approach is reflected in *The Australian Government’s Action Plan to Eradicate Trafficking in Persons*, a \$20 million package, which emphasizes the importance of successful prosecutions of trafficking offenders<sup>39</sup> and is embodied in the new visa regime for trafficking victims introduced in January 2004 which offers a gateway to victim support services but only if victims are deemed able to assist police.

From 1 January 2004, the *Migration Regulations* were amended by the *Migration Amendment Regulations* (No.11) 2003. The amendments established two new witness protection (trafficking) visas providing temporary or permanent stay to persons who had made a significant contribution to the prosecution or investigation of alleged trafficking offences and who may be in danger upon returning to their home country.

The Witness protection (trafficking) visas are part of a four-stage package consisting of:

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<sup>34</sup> “Slavery Trial ends in uproar”, *The Sunday Telegraph*, 2 October 2005

<sup>35</sup> Ibid.

<sup>36</sup> Ibid

<sup>37</sup> See Segrave M, “Surely Something is better than nothing? The Australian response to the trafficking of women into sexual servitude in Australia”, *Current Issues in Criminal Justice*, (2004) Vol. 16. No.1 85 -92; See also Sullivan B “Prostitution Policies in Australia” in Outshoorn J (ed) *The Politics of Prostitution: Women’s Movements, Democratic States and the Globalisation of Sex Commerce* Cambridge University Press Cambridge 2004 21-40 p 36

<sup>38</sup> Malcom Turnbull, House of Representatives, *Hansard*, 14 March 2005, p11

<sup>39</sup> For an analysis of how *The Australian Government’s Action Plan to Eradicate Trafficking in Persons* has focused on the criminal prosecution of traffickers see Segrave M 2004 supra n.49

Stage 1: A new bridging visa (Bridging Visa F) (subclass 060)

Stage 2: The existing criminal justice stay visa (Pt 2, Division 4 of the *Migration Act* 1958)

Stage 3: Class UM, Subclass 787 (Witness Protection (Trafficking) (Temporary) Visa under Regulation 2.07AJ); and

Stage 4: Class DH, Subclass 852 (Witness Protection (Trafficking) (Permanent) Visa under Regulation 2.07AK.)

. From 1999 to 31 December 2003, 11 suspected victims of trafficking were granted Criminal Justice Stay visas, and 1 suspected victim of trafficking was granted a Criminal Justice Entry visa.<sup>40</sup> From 1 January 2004 to 30 June 2005, 42 suspected victims of trafficking have been granted Bridging F visas. During the same period 28 suspected victims of trafficking have been granted Criminal Justice Stay visas, and 2 suspected victims of trafficking have been granted Criminal Justice Entry visas. At the time of writing, two Witness Protection (trafficking) visas had been granted.<sup>41</sup>

#### **4.1.1 The Bridging Visa F: the gateway to victim support**

The Migration Act (1958) is the sole authority regulating the travel to and stay in Australia of non-citizens. The Act provides for mandatory detention of people who do not have permission (a visa) to be in the Australian community.<sup>42</sup> The bridging visa system was introduced to allow those who would otherwise be detained to be released into the community. A special bridging visa has been introduced for some trafficking victims and for those victims, the Bridging Visa F is the gateway to victim support services. Where BVF holders are alleged victims of trafficking, they are given access to the Southern Edge Training Support for Victims of People Trafficking Program. If a person in immigration detention is granted a BVF, he or she will be released and allowed to stay lawfully in the community while the law enforcement agency assesses whether the person is able and willing to assist with investigations into people trafficking, sexual servitude and/or deceptive recruiting. The grant of a BVF is inextricably tied to the criminal justice process.<sup>43</sup>

While DIMIA policy recognizes that “a trafficking victim/witness with confidence in government authority is more likely to reveal they have been trafficked and be willing to assist with the investigation and prosecution of people trafficking offenders”<sup>44</sup> not all BVF holders are given the maximum 30 day period to receive victim support and develop confidence to tell their stories. Under the *Migration Regulations* a BVF can expire at a date specified by the Minister or if the Minister, acting on the advice of the AFP or a law enforcement agency, tells the BVF holder that their BVF is no longer in effect because they have ceased to be of interest to police.<sup>45 46</sup>

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<sup>40</sup> Source: DIMIA, personal communication, August 2005.

<sup>41</sup> Asia Pacific Forum Conference Sydney November 2005 – communication from AFP representative.

<sup>42</sup> Migration Act, section 189.

<sup>43</sup> The applicant must be the subject of written advice from Federal, State or Territory police stating that the applicant is a person of interest in relation to an offence or alleged offence involving people trafficking, sexual servitude or deceptive recruiting or the member of the immediate family of such a person. See *Migration Regulations*, Schedule I, Item 1306 Bridging Visa F; Migration Series Instruction 391: People Trafficking, para 8.2.3

<sup>44</sup> Migration Series Instruction 391: People Trafficking, para 4.1.5.

<sup>45</sup> Migration Regulations, Schedule 2, 060.5 .

<sup>46</sup> The Bridging Visa F was recently amended by the *Migration Amendment Regulations 2005 (No. 10)* to facilitate the grant of the visa in some circumstances.

#### 4.1.2 Criminal Justice Stay Visas

If a law enforcement agency certifies that a person on a BVF is required in Australia to assist in the administration of justice, the person will probably be granted a Criminal Justice Stay Visa (CJSV).<sup>47</sup> The grant of a CJSV is discretionary. CJSV holders may remain in Australia while they are required for law enforcement purposes. This time frame is decided by law enforcement agencies and not the needs of trafficking victims.

Once the investigation or prosecution is over, trafficking victims cannot apply for a Witness Protection (Trafficking) (Temporary) Visa unless invited to apply by the Minister. A holder of a criminal justice stay visa is prohibited from applying from any other visa except a protection visa.<sup>48</sup> This restriction prevents trafficked persons, who often have complex immigration histories, from applying for other visas.<sup>49</sup>

#### 4.1.3 Witness Protection (Trafficking) Visas

When a CJSV has expired a person may be eligible for a Subclass 787 Witness Protection (Temporary) Trafficking Visa. The grant of this visa is discretionary. A person who has assisted a police investigation or prosecution in a trafficked matter may be granted this visa if:

- (a) the person is in Australia; and
- (b) the person holds a criminal justice stay visa; and
- (c) the Attorney-General has issued a certificate in relation to the person to the effect that:
  - (i) the person made a significant 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
  - (ii) the person made a significant 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; and
- (d) the Attorney-General's certificate is in force; and
- (e) 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
- (f) the Minister is satisfied that the person would be in danger if he or she returned to his or her home country; and
- (g) an offer of temporary stay in Australia is made to the person by an authorized officer; and
- (h) the person indicates, in writing, to an officer that he or she accepts the Australian Government's offer of a temporary stay in Australia.

The temporary visa is valid for a maximum of 3 years. If a person has held the temporary visa for at least 2 years they may be eligible for a permanent visa. .

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<sup>47</sup> A CJSV is granted after the issue of a Criminal Justice Stay Certificate

<sup>48</sup> See ss46 and 61 of the *Migration Act* 1958. However, trafficking victims may be able to apply for and meet the criteria for a protection visa under s36 of the *Migration Act* 1958.

<sup>49</sup> For example, victims in genuine and continuing relationships with Australian citizens or permanent residents will be precluded from applying for a partner visa.

#### 4.1.4 Evaluating the new visa framework

The policy rationale for the witness protection (trafficking) visas appears to be, at least in part, that witnesses in trafficking cases are often reluctant to testify in a trafficking case if they fear that they may be required to return to their home country at the end of the trial, possibly to face their traffickers.<sup>50</sup> On a pragmatic level by failing to allay the fears of trafficking victims the new visa framework fails to meet its own policy objectives. More broadly, the new visa framework reflects a law enforcement agenda where the human rights of trafficking victims are incidental to the main game: prosecutions.

A temporary Witness Protection (trafficking) visa can only be granted at the conclusion of the criminal justice process while the victim still holds a criminal justice stay visa.<sup>51</sup> This approach fails to provide trafficking victims who are in the process of giving evidence with the feeling that their long term security is important to police. To support trafficking victims and build trust between survivors and law enforcement agencies, victims should be allowed to apply for witness protection visas, while they are in process of assisting authorities.

The grant of the witness protection (trafficking) visas is highly discretionary: there are no application forms enabling the applicant to apply for a visa.<sup>52</sup> Trafficked persons must wait for the Minister of Immigration to exercise her discretion and offer the trafficking victims the chance to apply for the visa. The discretionary nature of the visas and absence of a transparent application process undermines the effectiveness of the visa system. A better approach would be to enable trafficked persons to apply for a witness protection (trafficking) visa through a transparent and accessible process, instead of relying on the discretion of the minister.

In practice, the standard of evidence that suspected trafficking victims need to provide to obtain visas and gain access to victim support services has proved too arduous. At the BVF and Criminal Justice Stay Visa stages suspected trafficking victims have been told their evidence is “not good enough”.

Fundamentally, trafficking visas should not be tied to the criminal justice process. However, in the event that visas and victim support for trafficking victims remains contingent on trafficking victims providing assistance in police investigations or prosecutions, the level of assistance trafficking victims are required to provide to gain access to visas and victim support should be reassessed. In particular, the requirement that a trafficking victim must have made a “significant contribution” to, and “cooperated closely with”, an investigation or prosecution is unduly onerous. Surely, the most that can be expected of trafficking victims is that they cooperate, to the best of their ability, with police investigations and prosecutions.

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<sup>50</sup> *Supra* n. 8

<sup>51</sup> DIMIA has stated "The Witness Protection (Trafficking) visa allows trafficking victims to remain in Australia following the conclusion of a criminal justice process where the victim has significantly contributed to the prosecution or investigation of people trafficking matters and who may be in danger if they return to their home country". See DIMIA, Submission No. 16, Senate Legal and Constitutional Committee Inquiry in the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005].

<sup>52</sup> See, *Migration Regulations*, Schedule 1, Item 1224AA. Witness Protection (Trafficking) (Temporary) (Class UM) and Item 1133. Witness Protection (Trafficking) (Permanent) Class DH

While the question of what exactly is a “significant contribution” is a matter for ministerial discretion it seems possible that a trafficking victim may provide all the evidence in her power and yet still be found to fall short of making a significant contribution. Any trafficking victim who undertakes to assist police in any way is undertaking a psychologically difficult and potentially dangerous task. If trafficking visas continue to be contingent on victims providing assistance to police investigations or prosecutions, the words “significant contribution” and “cooperated closely with” should be removed and replaced by the requirement that the person provided reasonable assistance to police investigations or prosecutions to the best of their ability.

However, ultimately, the best way to allay the fears of trafficking victims is to provide protection and support on the basis of their status as victims, not their ability as witnesses.

Protection for trafficking victims should not be contingent on their capacity to act as witnesses in a criminal investigation or prosecution. The vagaries of criminal investigations and prosecutions mean that, for a multitude of reasons that have nothing to do with the person’s status as a trafficking victim, a trafficking victim’s evidence may not be deemed to be useful. The Human Rights and Equal Opportunity Commission has observed that making visas and victim support contingent on the standard of evidence provided could backfire in criminal proceedings:

...[if] a person’s evidence is required to be of a sufficient standard to allow them to receive support, it could well be argued during criminal proceedings that the evidence was fabricated in order to achieve that standard.<sup>53</sup>

With the exception of criminal justice visas, Australian visas are granted when visa criteria are satisfied according to the civil standard of proof, that is whether visa criteria are satisfied on the balance of probabilities. The decision making framework for the granting of the trafficking visas imports the criminal standard of proof, ‘beyond reasonable doubt’. The operation of these visas requires a determination that the criminal standard has been satisfied rather than the more appropriate civil standard.

The submission that visas and victim support be provided to trafficking victims is consistent with the UN *Recommended Principles and Guidelines on Human Rights and Human Trafficking* which states that the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. In particular, recommendation 8 states:

States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.<sup>54</sup>

The UNHCR High Commissioner has stated that victim protection must be considered separately from witness protection and that:

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<sup>53</sup> Ms Sally Moyle, HREOC, Senate Legal and Constitutional Committee Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005] p 9

<sup>54</sup> United Nations, Recommended Principles and Guidelines on Human Rights and Human Trafficking. Recommendation 8

.... [trafficking victims] should be entitled to adequate protection under any circumstances irrespective of any decision to instigate judicial proceedings.<sup>55</sup>

The UN Special Rapporteur on Violence Against Women expressed concern that the international instrument dealing with trafficking, the UN Trafficking Protocol, "is being elaborated in the context of crime control, rather than with a focus on human rights." <sup>56</sup>

A visa system where the protection and support of trafficking victims is conditional on victims being both able and willing to make a "significant contribution" to a criminal investigation or prosecution does not fit squarely within a human rights framework. It leaves open the possibility that trafficking victims will not be protected: women, who are so psychologically terrified that the thought of giving evidence cannot even be contemplated may be removed from Australia. The same fate awaits those willing witnesses whose evidence is deemed "not enough". While DIMIA has stated:

It is not reasonable to expect that every person who claims to be trafficked should be allowed to stay in Australia and it is very difficult to test such claims if there is no judicial process. Some trafficking claims have not been substantiated and in some cases people may have been both trafficked and participated in trafficking. Allowing ready access to residence may facilitate trafficking or increase the level of fraudulent claims, diverting criminal justice resources.<sup>57</sup>

There is no evidence to support the claim that if visas (and victim support) for trafficking victims are not contingent on the victim providing adequate assistance to a criminal investigation or prosecution, the floodgates will be opened to a raft of fraudulent claims, diverting criminal justice resources. Many trafficking victims wish to be repatriated (although they may require victim support before repatriation). In other countries, such as Italy, where visas are not linked to a criminal justice process there is no evidence that there has been any significant abuse of trafficking visas by fraudulent claims<sup>58</sup>.

While many, trafficked victims want to go home, Australia has an obligation to ensure that the process of repatriation is safe and that trafficking victims receive victim support prior to repatriation, regardless of whether or not they are involved in assisting police investigations or prosecutions. An independent process is needed to assess when trafficking victims are safe to return home.

While recognizing that some trafficking victims will wish to return home, others will not. The Parliamentary Joint Committee on the Australian Crime Commission into the trafficking of women into sexual servitude recommended:

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<sup>55</sup> As quoted in ECPAT "Briefing on a proposal for European Council Directive (COM (2002) 71 FINAL) on the Short-Term Residence Permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities", 2002.

<sup>56</sup> UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy (2000), Integration of the Human Rights of Women and the Gender Perspective. Violence Against Women, para 6.

<sup>57</sup> DIMIA, Submission No. 16, Senate Legal and Constitutional Committee Inquiry in the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005].

<sup>58</sup> See further discussion in Georgina Costello, *The Churchill Report*, May 2005, p14.

...all trafficked women accepted onto the victim support program or receiving the Criminal Justice Stay Visa be exempt from compulsory return to their country of origin.<sup>59</sup>

This recommendation was repeated in the PJC's 2005 Supplementary report to the Inquiry into the trafficking of women for sexual servitude which states:

that benefits payable to women under the victim support scheme be reassessed urgently; that all trafficked women accepted onto the victim support program or receiving criminal justice stay visas be exempt from compulsory return to their country of origin; and that the government review current visa provisions and include changes to provide for a ministerial discretion to allow witnesses to return to their country of origin for short periods for contact with their families.<sup>60</sup>

Creating a victim support programme which operates only in the narrow confines of a criminal justice framework does not adequately protect the human rights of trafficking victims. This failure is part of a broader trend to focus on the fight against trafficking as a law and order issue which can only be won by prosecuting the perpetrators. While prosecution is undoubtedly important, addressing trafficking with a criminal justice framework, limits our ability to address the more difficult and complex issues of prevention and protection. Currently, Australia's response to trafficking, with its emphasis on prosecution and witness protection, falls short of protecting the human rights of trafficking victims.

On a pragmatic level, the new visa framework fails to achieve its own objectives of creating a secure, trusting environment in which trafficking victims will be willing to testify against their traffickers. On a more fundamental level, if we are serious about addressing trafficking as a human rights issue, we need to separate the issues of victim support and witness protection. Until the visa framework is based on a person's status as a victim instead of their ability as a witness, criminals will not be prosecuted and victims will continue to be punished.

## **4.2 The Victim Support Program**

The Support for Victims of People Trafficking Program (victim support program) forms part of the \$20 million Government's Action against Trafficking package. The victim support program's aim is to provide "support services to clients around Australia who are of interest to the Australian Federal Police (AFP) or assisting with criminal investigations and prosecutions in Australia".<sup>61</sup> Trafficking victims who are on either the Bridging Visa F or the Criminal Justice Stay Visas are eligible for the benefit of the victim support package.

### **4.2.1 Scope of the Program**

The Office for Women states the program provides victims of trafficking with individualized case management services, including assistance in finding secure accommodation, access to Medicare and

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<sup>59</sup> PJCA, *Inquiry into trafficking of women for sexual servitude*, June 2004, recommendation 8, p. 57

<sup>60</sup> Parliamentary Joint Committee on the Australian Crime Commission, "Supplementary report to the Inquiry into the trafficking of women for sexual servitude", August 2005,

<sup>61</sup> Australian Government. Department of Family and Community Services. Tender for the Provision of Contract Services for the Management of the Support for Victims of People Trafficking Program.2005.

medical services, counseling and legal services, training in essential skills such as literacy and numeracy, social support and counseling, and access to legal services.<sup>62</sup>

Women on the Victim Support Program receive different levels of support. *Phase One* involves intensive support for up to the first 30 days. During Phase One, trafficking victims on the Program should expect their case manager to assist with:

- arranging and paying for food and accommodation;
- assisting with access to medical services (including arranging access to the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme);
- paying a living allowance;
- arranging training;
- assisting with access to legal services;
- providing social support;
- providing vocational guidance where appropriate; and
- assisting with any DIMIA visa reporting requirements.

*Phase Two* involves on-going support after the “intensive support” period until the women are no longer assisting with a criminal investigation and prosecution. It is available to persons who are able to further assist with trafficking investigations and prosecutions and persons on the program should expect this assistance with:

- arranging access to Special Benefit and Rent Assistance;
- continuing to assist with access to the Medicare Benefits Scheme, the Pharmaceutical Benefits Scheme, training and legal services; and
- continuing to provide social support and vocational guidance where applicable.

#### **4.2.2 Women’s experience of the Victim Support Program**

While the creation of the victims support program is a real tribute to the Australian Government it seems timely to ensure that the operation of the scheme is guided by good governance principles. As part of a major research project, a number of women have been interviewed about their experiences of the Victim Support Program.<sup>63</sup> Several themes emerged during the interview and evaluation process that raise questions about the operation of the victim support program. The major concern was that women’s experience of the program seemed to depend on the individual case-worker allocated to their care. If a woman felt that she had been treated unfairly or that she required more assistance then she was uninformed about the appropriate avenue for information or redress. We recommend that all those receiving the benefit of the program are given information about the operation of the program including the outline of a procedure for requesting information and making complaints about matters that concern the recipients.

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<sup>62</sup> Although BVF holders are not eligible for social security payments, hotel accommodation is provided as well as a \$500 emergency allowance, a food allowance of \$80 per week and a living allowance of \$80 per week. See Malcom Turnbull, House of Representatives, *Hansard*, 14 March 2005, p12

<sup>63</sup> Burn J, and Simmons F, [2005] Public Space – in press

## **5 REPATRIATION AND REINTEGRATION PROCESSES**

### **5.1 Repatriation / Removal from Australia**

The Migration Act (the Act) is the sole authority for non-citizens to travel to and stay in Australia. The Act provides for the mandatory detention of unlawful non-citizens unless the non-citizen meets the eligibility criteria for a visa. The Act sets out removal provisions that require DIMIA officers to remove or repatriate unlawful non-citizens as soon as practicable after their entitlement to remain in Australia ceases.<sup>64</sup> As explained in 4.1, trafficked women deemed willing and able to assist authorities with a prosecution are granted a Bridging Visa F or a Criminal Justice Stay Visa, entitling them to remain in Australia. Together the visa framework and the Victim Support Package (see 4.2) is active for as long as the women are required to assist with an investigation and/or prosecution, and they are willing to provide evidence. When women are no longer required to assist Australian authorities and their visa is cancelled or ceases, women will be removed as soon as practicable by DIMIA officers pursuant to the Migration Act. Some women leave voluntarily. At any stage during an investigation or prosecution trafficked women may return to their country of origin voluntarily and at their own expense. Some victims of trafficking who have assisted law enforcement may be eligible for a Witness Protection Visa.

The UN Trafficking Protocol states that States Parties should protect victims of trafficking in persons, especially women and children, from re-victimization (article (9), subparagraph 1(b)). The CEDAW (article 6) states that, ‘States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women’. The Government’s Action Plan does not include initiatives that address the repatriation and reintegration of all trafficked women. While women are in Australia their repatriation needs are dealt with through the Victim Support Package currently administered by Southern Edge Training (SET). The SET support package provides women who are returning to their country of origin with; 1) a phone card with a reverse 1800 number so they can contact case managers in Australia if women want assistance, 2) a list of contacts in the country of origin for women to call and establish assistance, and 3) possible contact people to meet them at the airport when they arrive in the country of origin, for women who want this option. There are problems with these repatriation processes and they include; 1) only women who have BVF can receive assistance, 2) some women do not want to utilise services offered to them by Australian authorities because they do not want to be labelled or stigmatised when they return to their country of origin,<sup>65</sup> 3) women are required to establish contact with the NGOs and support services themselves when they return to their country of origin.

There are no Australian NGO programs that address the repatriation and pre-reintegration needs of trafficked women. Currently, trafficked women who do not receive the SET support package rely on NGOs to provide them with complete material aid and support, accommodation, health care and welfare services on a case-by-case basis. The Government’s omission of a systematic approach to repatriation and

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<sup>64</sup> Migration Act, s199.

<sup>65</sup> Field Notes: Margaret Ng, October, 2005, Thailand

pre-reintegration for all trafficked women, irrespective of whether they can assist authorities with an investigation or prosecution, contravenes the UN Trafficking Protocol and CEDAW (article 6) because it fails to foster psycho-social support for women to restore their human dignity, self-esteem and sense of worth. Instead the current model places trafficked women in a position where they are vulnerable to re-victimization when they are in Australia and when they return to their country of origin. By not providing all trafficked women with access to comprehensive services to address their psycho-social, health and welfare needs while in Australia, and on return to their country of origin, denies women their basic human rights and impairs their ability to reintegrate and function in society.

## **5.2 Reintegration**

The AusAID funded *Return and Reintegration of Trafficking Victims from Australia to South East Asia* project is the Government's main reintegration initiative.<sup>66</sup> This project is part of the Government's \$20 million initiative against people trafficking announced in October 2003 and it is managed by the IOM.<sup>67</sup> The aim of this project is to 'enhance the capacity of referral agencies to support and reintegrate suspected victims of trafficking who return to their country of origin in South East Asia. Initially the project will collaborate with Thai agencies and NGOs in order to enhance their capacity to receive and care for returning Thais and others; to monitor reintegration of victims; and to facilitate investigation and/or prosecution of traffickers (who could be Australian or other nationalities)'. Outputs of the project will include a common operational framework for agencies both government and non-government working on these issues in Thailand, an information package on services available for victims once they return to Thailand and information brochures to be made available in Bangkok airport.

Despite AusAID funding for this project, there is no bi-lateral agreement on human trafficking between Australia and Thailand. Australian foreign aid to Thailand is decreasing because the Thai Prime Minister announced that Thailand is self-sufficient and is now a donor country. An operational protocol between Australia and Thailand is still being developed to enhance the capacity of referral agencies to provide repatriation and reintegration support. DIMIA has made contact with Thai NGOs regarding the repatriation of women trafficked from Australia.<sup>68 69</sup> Very few Australian NGOs have been invited to consult with the Australian Government regarding repatriation and pre-reintegration initiatives between Australia and Thailand. Despite the official communication developed between the Australian and Thai governments and Thai NGOs there remains no formal protocol in place for an operational framework between Australia and Thailand.<sup>70</sup> This situation has resulted in a lack of systematic service provision for all trafficked women who are being repatriated and reintegrated to their country of origin.

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<sup>66</sup> AusAID, (2004). 'People Trafficking and Child Exploitation: Australia's Aid Program Response'. Retrieved 7 November 2005, from <http://www.AusAID.gov.au/publications/pubout>

<sup>67</sup> Ibid

<sup>68</sup> Official Committee Hansard, (2005) Joint Committee on the Australian Crime Commission: trafficking in women for sexual servitude.

<sup>69</sup> Field Notes: Margaret Ng, October, 2005, Thailand

<sup>70</sup> *Personal Communication* N Mahan, Office of Women, 5 December 2005, Thailand.

Woven into the Government's repatriation and reintegration strategy is a prosecution framework. Repatriating trafficked women in exchange for 'facilitating investigation and/or prosecution of traffickers' has the potential to detract from AusAID's goal to support and reintegrate suspected victims of trafficking who return to their country of origin in South East Asia. The other main concern is that, not all trafficking victims are from Thailand. The Joint Committee on the Australian Crime Commission found that the main movement of women at the present time is between South Korea and Australia.<sup>71</sup>

## **6. PREVENTION**

### **6.1 "Reasonable and appropriate" measures**

The obligation to endeavour to prevent trafficking is contained in the Trafficking Protocol (articles 2.1, 9, 11 and 12), the European Convention (articles 29 and 32) and the UN Principles and Guidelines (Principles 2, 4, 5, and 6 and Guideline 7) and is a stated goal of the Government Action Plan. Under the Trafficking Protocol Australia has an obligation to prevent trafficking through the application of measures which are reasonable and adapted.

"reasonable and appropriate prevention measures would include an effective, victim-centred criminal justice response; criminalization of reckless or knowing use of the services of trafficked persons – as well as education programmes aimed at the end use of such services; appropriate training of public officials; legislation and regulation/ supervision of industries associated with trafficking such as brothels; and effective cooperation with authorities and victim support agencies in the country of origin. In relation to any State, failure to take known preventive measures when this is both possible and practical should be considered sufficient grounds for establishing a violation of preventions"<sup>72</sup>

### **6.2 International Initiatives**

The Australian Government has an impressive record of engagement with the international initiatives dedicated to eliminating trafficking. Australia's international participation includes:

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

At the Bali Regional Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime in February 2002, Ministers pledged their 'strong commitment to developing practical cooperative measures to prevent, intercept and disrupt people smuggling, trafficking in persons and other forms of illegal migration' (emphasis added). But in more specific terms, the Ministers agreed that 'an important strategy to deter and prevent these activities would be to adopt and strengthen legislation, as appropriate, that specifically criminalizes people smuggling and trafficking in persons'. This laid the foundation for what has now become the 'Bali Process'. At the 2004 Bali meeting it was

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<sup>71</sup> Official Committee Hansard, (2005) Joint Committee on the Australian Crime Commission: trafficking in women for sexual servitude.

<sup>72</sup> Gallagher, op cit.,

agreed that ‘the Bali process had created an environment in which regional countries were cooperating increasingly in preventing and intercepting people smuggling (and, to a lesser extent, trafficking) activities, prosecuting those responsible and strengthening border management’.<sup>73</sup> Bali Process strategies include the development of legislation to criminalise people smuggling and trafficking; public awareness campaigns about traffickers and development of repatriation policies.

### **6.2.2 ARCPPT Project**

In October 2003, Australia concluded an agreement with Cambodia enabling substantial Australian assistance to Cambodia to fight people trafficking. The agreement which forms part of the \$8.5 million Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) Project which is funded by AusAID and completes a round of agreements reached with Thailand, Cambodia, Lao PDR and Burma. The goal of the ARCPPT is to contribute to the prevention of people trafficking in South East Asia. The main focus of ARCPPT is on *strengthening the criminal justice process* to deal effectively with the crime of trafficking.<sup>74</sup> The ARCPPT initiative has four elements:

- Development of a criminal justice process for combating trafficking;
- Strengthening specialist trafficking response institutions;
- Collaboration and support services, and
- Project management<sup>75 76</sup>

### **6.3 Domestic Initiatives**

Going to the root cause of trafficking means addressing poverty and the gross inequality of wealth and opportunity between people living in source and destination countries. The writers of this report wish to commend the Australian Government on its work in addressing the Millennium Development Goals. Australia, in supporting these eight measurable goals, has committed to playing our part in halving world poverty by 2015. The authors of this report have witnessed the major impact on vulnerable women’s lives of alternative income generating initiatives. Women in North East Thailand are less susceptible to trafficking schemes since they have found a steady income in craft production. Trafficking of women for sexual servitude results in exploitation and serious harm. We encourage the Australian Government to continue the formulation of initiatives and strategies to eliminate violence against women.

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<sup>73</sup> Burn Jennifer, Blay Sam, Simmons Frances, “Combating Human Trafficking: Australia’s response to Modern Day Slavery” (2005) 70 ALJ 1

<sup>74</sup> Ibid

<sup>75</sup> Media release: The Minister for Justice and Customs, Senator Chris Ellison, E190/03, 18Dec2003

<sup>76</sup> Other AusAID strategies to address human trafficking include AusAID Australia-China Human Rights Technical Cooperation Program -1997 ongoing; AusAID Human Rights Small Grants Scheme – VietNam Centre for Reproductive and Family Health- May 2003-ongoing; AusAID Enhancing Capacity of Immigration Officials to Combat Irregular Migration and People trafficking in Bangladesh – IOM -2003/2004; AusAID Strengthening Law Enforcement Mechanisms and Institutions in South Asia to Combat People-Trafficking-UNIFEM-2003/2004; AusAID Capacity Building on Protection of Trafficking Victims – IOM- July 2000 to June 2003; AusAID Support for Regional Trafficking Conferences- As required; AusAID Empowering Stakeholders to Combat Trafficking (India) - STOP (Stop Trafficking and Oppression of Children and Women)- Apr 2004 to March 2005; AusAID Training of Women’s Rights Lawyers and Advocates, Philippines - Unlad-Kabayan Migrant Services Foundation, Inc. No date.

The Australian Government has made a commendable effort to address the elimination of human trafficking domestically. Positive developments include the development of the Government Action Plan, the creation of a special police taskforce, amended legislation and new visas for victims of trafficking.

We encourage the Australian Government to continue the creation of a communications strategy to educate the Australian community about human trafficking.

The pursuit of civil remedies and crime compensation for trafficking victims may be facilitated as a deterrent to supplement criminal prosecution and a way of providing restitution to trafficking victims.

## **7 CONCLUDING REMARKS**

We recognise that the Australian Government has made significant advances towards the elimination of trafficking. However we believe that future advances would be enhanced by addressing trafficking issues from a human rights perspective. More research into trafficking needs to be undertaken. We recommend that the Australian Government establish a national taskforce to investigate, review and coordinate response to human trafficking in Australia. Review of the visa framework is urgently needed. We recommend that a visa be introduced for those people who are unable to testify in court proceedings or for whom it would be unsafe to be repatriated. Given the limitations of the Victim Support package we recommend that resourcing of support for trafficked people be extended to other providers (NGOs and religious groups) who currently meet the needs of trafficked persons who do not meet the eligibility criteria for support from the Victim Support Package. The response of the Australian Government to the issue of trafficking would be enhanced by creating networks that draw on the knowledge, good will, experience base and international networks of the non-government sector. We believe that effective strategies to deal with trafficking will be achieved through collaborative partnerships between government and civil society.