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Executive Summary

What do we know generally about this group?

It is difficult to form an accurate picture of the amount of people in Australia who have been trafficked and exploited. Trafficking, slavery and slavery-like practices are criminalised under Commonwealth law. The unlawful nature of these practices often means that they are often hidden, victims are often unwilling or unable to come forward, and current data collection methods regarding the prevalence of trafficking and exploitation in Australia mean that the numbers collected do not necessarily reflect the reality.

In the past, most victims of trafficking identified in Australia were women from South-East Asia brought to Australia for the purpose of sexual exploitation. However, in recent years, awareness is increasing around other forms of exploitation, like labour exploitation, especially of temporary visa holders, and other practices, such as forced marriage. It is important to distinguish between sexual exploitation and sex work, labour exploitation and poor working conditions, and trafficking and migration.

While these numbers do not tell the whole story, in 2015-2016, the Australian Federal Police received 169 referrals on human trafficking and slavery – including 69 related to forced marriage, 39 related to sexual exploitation, and 36 related to labour exploitation.

What are the key findings regarding this group’s legal needs?

The primary legal need of people who are trafficked and exploited is to escape from their situation, which by definition is one that is unlawful. As people who have been trafficked and exploited are often from migrant backgrounds, and have limited rights of residency, they may require assistance regarding immigration issues. In addition, they may need assistance with deciding whether or not to participate in a criminal investigation of those responsible, applying for victims of crime compensation, claiming unpaid wages, or seeking family law orders.

What are the barriers constraining this group from accessing justice?

Many people who have been trafficked and exploited come from culturally and linguistically diverse (CALD) backgrounds, which means they face barriers like a lack of understanding of their rights in the Australian legal system and limited English language skills. In addition, they may be unwilling to seek help or redress due to pre-existing beliefs about the utility of the legal system based on experiences in their home country, and in some cases, due to their limited rights of residency, they may be physically removed from the country, rendering them unable to access justice.

People in this group may also be unwilling and/or unable to seek help for other reasons specifically related to their trafficking and exploitation, including because of trauma and a fear of authorities, deprivation of their liberty and control exercised over them through threats and manipulation, fear of deportation, job loss or other consequences, a tenuous financial situation, and the stigma and stereotypes associated with being identified as a ‘victim’.
What are their legal capabilities?

People who have experienced exploitation and/or trafficking can have low levels of legal capability. The same factors that make a person vulnerable to exploitation contribute to a generally low level of legal capability. For example, people in this group often lack legal knowledge, due to a lack of understanding of legal rights or how to seek legal help. Their ability to resolve legal issues can be diminished by a lack of English skills and difficulties in communications.

Further, their psychological willingness to act can be adversely impacted by trauma, fear of authorities and reprisals, including job loss and/or deportation. These factors, which can contribute to making it unlikely that an individual can successfully get help, can also make a person vulnerable to exploitation in the first place. Due to the clandestine nature of trafficking and exploitation, those responsible may consider themselves more likely to ‘get away’ with their unlawful acts when those affected are less likely to be able to successfully seek help.

Are there critical gaps in services which are necessary to deliver access to justice to this group?

There are several gaps in critical services necessary to deliver access to justice to people who have been trafficked and exploited. These include a lack of legal assistance available for employment law matters, the urban focus of anti-trafficking and anti-exploitation services, and the design of the Australian Government’s Support for Trafficked People Program not necessarily being effective for the unique needs of victims of forced marriage.

Are there laws, policies and practices which exacerbate access to justice barriers for this group?

Visa conditions attached to sponsored working visas, student visas with working entitlements, working holiday visa and partner visas can exacerbate access to justice barriers for people who have been trafficked and exploited. The criminal justice-oriented, rather than victim-focused, approach taken to trafficking and exploitation by the federal government, has also inadvertently created barriers for some people who have been trafficked and exploited seeking justice. The absence of a national compensation scheme for victims of trafficking and exploitation, protection for victims of trafficking and exploitation being dependent on cooperation with law enforcement, as well as policies and practices that fail to, or incorrectly, identify trafficked and/or exploited people, are some examples.

What are the costs and consequences if this group cannot access justice?

For people who have been trafficked and exploited who cannot access help to escape their situation, they risk being trapped in that situation indeterminately, having their liberty and other rights seriously infringed. They may be at risk of injury or death, and may also face deportation if the relevant authorities fail to recognise them as a victim of trafficking or exploitation. In cases of forced marriage, a failure to access assistance may result in the person having to go through with the marriage or remain in the marriage. Women in forced
marriages may experience sexual assault, depression, post-traumatic stress disorder, physical and psychological harm and economic loss.

**What measures are effective – what works, and why?**

It is difficult to say with any degree of certainty ‘what works’ for people who have been trafficked and exploited in accessing justice, due to unclear evaluation criteria, a lack of evaluation of initiatives, and difficulties with reaching and interacting with people who have been trafficked or exploited to gain their perspective. However, there are a number of initiatives that seem promising based on other research regarding what is likely to assist people with low legal capability in accessing justice.

**Appropriate and accessible services**

People who have been trafficked and exploited often face complex legal and non-legal issues, and their level of legal capability often makes navigating the Australian legal system nearly impossible without a lawyer. Therefore, people have been trafficked and exploited benefit from access to free, specialised legal advice, such as that provided by Anti-Slavery Australia for survivors of trafficking and exploitation, or WEstjustice, for migrants and refugees who have experienced labour exploitation. As many people who have been trafficked and exploited are from CALD backgrounds, and may have experienced trauma, appropriate services adapted to individual circumstances are required. The Guidelines for NGOs Working with Trafficked People provide some guidance on the most appropriate way for organisations that interact with persons that may have been trafficked to provide their services. Some technological resources may also be beneficial, such as the My Blue Sky forced marriage resource website, aimed at Australian children at risk of forced marriage, and other relevant stakeholders that interact with Australian children at risk of forced marriage.

**Targeted services**

Given the clandestine nature of trafficking and exploitation, and that people who have been trafficked and exploited may not know how and where to get help, outreach is important in identifying victims and providing them with assistance. The Fair Work Ombudsman conducts outreach, including in rural and remote areas, targeting workplaces that employ migrant workers, who are disproportionately likely to face labour exploitation. A number of NGOs, including Scarlet Alliance and Project Respect, conduct outreach in brothels to identify trafficking and exploitation in the sex industry. Pursuant to the National Action Plan, the Attorney-General’s Department has also funded a number of outreach initiatives operated by various NGOs nationwide.

**Joined-up services**

People who have been trafficked and exploited benefit from joined-up services that address the underlying factors that make them vulnerable to exploitation in the first place, which helps them escape their situation and avoid re-victimisation. For example, the Support for Trafficked People Program (Support Program), operated by the Red Cross and funded by the Australian Government, assists survivors including by assisting them with finding accommodation and work, regularising their migration status and improving their English language skills. The Australian Government’s National Roundtable on Human Trafficking
and Slavery (National Roundtable) is a valuable ‘joined-up’ forum which enables multi-disciplinary networks across sectors to be developed and holistic approaches to be adopted.

This has helped to inform the National Action Plan, which is intended to be a “sophisticated, comprehensive and joined-up response”. State and Territory governments do not have formal responsibilities under the National Action Plan, though they have responsibilities that intersect with the national strategy to combat trafficking and slavery. Recognising that State and Territory level services are often the first port of call for survivors, it may be worth working with State and Territory governments with a view to incorporating their responsibilities under the National Action Plan.

**Timely services**

Given that trafficking and exploitation involve an abuse of power and some degree of control being exercised by the trafficked or exploited people, people seeking to escape a situation of trafficking or exploitation often only do so when the situation has deteriorated to an extent that they cannot remain in the situation any longer without risk of injury, danger to person safety, or other serious consequences. Further, people who have been trafficked and exploited may only able to take advantage of a brief window of time in which to get help, when they are not being monitored by those responsible for their exploitation or trafficking. This underlines the need to provide services in a timely fashion, lest the opportunity for assistance be lost. In addition, given the high propensity that people who have been trafficked and exploited will also be migrants, the provision of information at the point of entry to Australia has also proven to be successful in alerting people who found themselves to be victims of exploitation on ways to get help.

**Addressing laws, policies and practices**

There has been some discussion in Australia about how the government’s response to human trafficking is too law-enforcement based, rather than focusing on the human rights of the victim. This has included strict eligibility requirements for access to visa arrangements and the Support Program, which require the survivor to participate with law enforcement, and which were previously even stricter than they are now. Changes to the eligibility requirements came about because of consultation with NGOs through the National Roundtable. There are several best-practice examples worldwide, including Italy, Spain and Sweden, where survivors’ residency rights and entitlement to support is not exclusively linked to their cooperation with law enforcement. A tool developed for the European Commission by a consortium of NGOs provides a way to determine the human rights impact of national policies and practices on trafficking, which might be useful for evaluating government initiatives in Australia.
Introductory note*

This paper overlaps with some of the subject-matter in other Justice Project papers, including Recent Arrivals, Asylum Seekers and People Experiencing Family Violence. However, it should be noted that human trafficking, slavery and slavery like conditions including serious exploitation may be experienced by any person in Australia, regardless of status.

Consistent with a human rights framework, people who have experienced these breaches of human rights are properly referred to as ‘survivors’, and have been throughout this paper, except to the extent where they are identified as ‘victims’ in the law enforcement context.

What do we know generally about this group?

Human trafficking and slavery are considered to be ‘among the most grave of human rights violations’ which are fundamentally incompatible with the freedoms that should be assured to all people. For example, the first line of the Universal Declaration of Human Rights reads that:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace … no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. 2

This prohibition on slavery has become a peremptory norm of international law, 3 indicating how it is globally viewed as ‘the worst of the worst’ and without a place in the modern world. To that end, there may be a perception that slavery is an outdated relic (eg in the form of the transatlantic slave trade, for example) and no longer exists, which may explain the contemporary adoption of the terminology ‘modern slavery’, so as to make the plight of those who are still held in slavery and slavery-like conditions visible and enable a response.

Under Australian law, trafficking is the physical movement of people across or within borders through coercion, threat or deception for the purpose of exploiting them when they reach their destination, 4 and is criminalised by the Criminal Code Act 1995 (Cth) (Criminal Code). 5

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* This paper is intended to be read in conjunction with the Introductory Paper for the Justice Project which sets out the approach taken, the methodology and the overarching consultation questions as well as how to respond.


3 For a summary of the international instruments indicating the existence of the peremptory norm against slavery, see n 87 in Frances Simmons and Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centered reform’ (2010) 84 Australian Law Journal 712, 722.


Larsen and Renshaw have observed that of the cases of trafficking that have been identified in Australia to date, few fit the traditional stereotypes of the forced movement, abduction and confinement of trafficked persons by traffickers, the implications of which will be examined below.

Exploitation is defined in the Criminal Code as slavery or a condition similar to slavery, servitude, forced labour, debt bondage and forced marriage. The Australian Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade established an Inquiry into establishing a Modern Slavery Act in Australia on 15 February 2017 to consider whether Australia should enact legislation similar to the UK Modern Slavery Act (2015). The UK Act includes, inter alia, a reporting and due diligence reporting requirement for business. The Committee is due to report before the end of 2017, with an interim report to be published in August 2017.

It is difficult to form an accurate picture of the extent of trafficking and exploitation within Australia, due to under-reporting by victims, its criminal nature confining it to the shadows, lack of reliable methodology for identifying victims, and for other reasons discussed below.

In 2013, when the Joint Standing Committee on Foreign Affairs, Defence and Trade released their report Trading Lives: Modern Day Human Trafficking (Trading Lives report), following its inquiry into slavery, slavery-like conditions and human trafficking, the Committee noted that in the period 2004 to 2013, the Australian Federal Police (AFP) undertook more than 350 investigations and assessments into allegations of people trafficking and related offences. Of those 350 investigations, over seventy-five percent conducted by the AFP were in Melbourne and Sydney. However, since that report, the number of referrals has been increasing dramatically, and in 2015 – 2016 alone, the AFP received 169 referrals on human trafficking and slavery matters. Of these, 69 related to forced marriage, 39 related to sexual exploitation, 36 related to labour exploitation, and the remainder related to other types of exploitation. These numbers do not reflect the full extent of human trafficking and slavery in Australia and are discussed further below.

7 Criminal Code Act 1995 (Cth) Schedule 1 (Criminal Code) s 271.1A.
8 Attorney-General’s Department, ‘National Action Plan to Combat Human Trafficking and Slavery 2015-19’ above n 1, 4.
9 Frances Simmons and Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centered reform’, above n 3, 713.
10 Segrave, Pickering and Milivojevic, Submission No 13 to the NSW Legislative Council Select Committee on Human Trafficking, Inquiry into Human Trafficking (16 February 2017) 4.
12 Ibid 35.
Although this paper attempts to examine many of the issues common to trafficked and exploited persons, it is unhelpful to conceive of a homogenous group of people facing the same issues and barriers to access to justice. This is not the case. For example, while all trafficked persons are exploited, not all exploited people are trafficked,14 and exploitation can take various forms. As Piper, Segrave and Napier-Moore have observed, while the term and idea of ‘trafficking’ has been used interchangeably with ‘slavery’ and ‘forced labour’, the distinctions between the practices can matter.15 The authors argue that the distinctions matter as the label used can have significant consequences for how we ‘conceptualise, understand and respond to exploitation’ and formulate an appropriate response.16

Without being exclusive, this section will focus on the main types of exploitation found in Australia, namely forced marriage, sexual exploitation, and labour exploitation, and trafficking for these purposes. In this context, it is important to distinguish between sexual exploitation and sex work, between labour exploitation and substandard working conditions,17 and between trafficking and migration. International research has identified that anti-trafficking and anti-exploitation efforts that fail to uphold these distinctions can negatively impact the human rights of people who have been trafficked and exploited.18

**Trafficking**

Australia has been seen as a destination country for trafficking, rather than a source country.19 However, since the criminalisation of forced marriage in 2013, it is clear that Australia is now also a source country for some forms of trafficking, that being the trafficking of Australian citizens and residents from Australia to other countries for the purpose of forced marriage. The majority of trafficking victims from overseas identified by Australian authorities have been adult females who were trafficked from Thailand, South Korea, Malaysia and the Philippines to Australia.20 Women who fit this profile are considered stereotypical victims of trafficking in Australia (discussed below in the section on Stereotypes)

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16 Ibid.

17 On this point, see Attorney-General’s Department, ‘National Action Plan to Combat Human Trafficking and Slavery 2015-19’ above n 1, 11.


In recent years, trafficked persons are being identified in Australia in industries such as domestic work, hospitality, agriculture and construction, in numbers that outnumber those trafficked for sex work. Research by David examined potential labour trafficking in relation to the construction industry, nurses, chefs and cooks, meat industry, manufacturing industry, domestic workers, agricultural sector, and maritime and seafaring industry. However, David has also found that the known instance of labour trafficking in Australia – as distinct from labour exploitation – is very small.

Since the commencement of Division 270 and 271, there have been twenty convictions in relation to human trafficking and slavery. As of April 2017, the Commonwealth Director of Public Prosecutions (CDPP) had six human trafficking related prosecutions against seven defendants before the courts.

Labour exploitation

As reported by the Productivity Commission, migrant workers are more vulnerable to exploitation than Australian citizens. The employer sponsorship requirement of the 457 visa means that visa holders are dependent on their employers, which makes them vulnerable to exploitation. The 7-Eleven scandal, for example, involved widespread exploitation of student visa holders within 7-Eleven franchises in Australia. In addition, the

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21 For an example of how a policy of raiding brothels to ‘rescue’ trafficked women has had negative impacts on migrant sex workers in Australia, see Scarlet Alliance, Australia’s anti-trafficking response must be redirected, Raids and rescue approach does not work - comprehensive prevention plan is the answer (3 February 2012) <http://www.scarletalliance.org.au/media/News_Item.2012-02-02.4312>; and for how a criminal justice response to trafficking can unintentionally place sex workers at risk and disrupt their lives, see Scarlet Alliance, Submission to the Attorney-General’s Department (2011) 4 <http://www.scarletalliance.org.au/library/subagd_2011a>. Scarlet Alliance is the peak body representing the interests of sex workers in Australia, and receives government funding for its migration project, which aims to enhance the capacity of sex worker peer educators in Australia to provide support to migrant sex workers.

22 Australian Government, Submission no 23 to the New South Wales Legislative Council Select Committee, Human trafficking, 28 February 2017, 2.


24 Ibid 3.


26 Ibid.


29 This included the workers being paid wages commensurate with the legal rate on paper but then forced to withdraw an amount in cash equal to those wages from an ATM and hand it back to their employer, as well as being forced to work beyond the hours permitted by their visa, workers then threatened with being reported to the Department of Immigration and Border Protection (DIPB) for exceeding with hours if they complained: see Fair Work Ombudsman, A report of the Fair Work Ombudsman’s Inquiry into 7-Eleven: Identifying and addressing the drivers of non-compliance in the 7-Eleven network (April 2016) <https://www.fairwork.gov.au/ArticleDocuments/763/7-eleven-inquiry-report.pdf.aspx>.
Fair Work Ombudsman (FWO) has also uncovered widespread exploitation in relation to 417 (working holiday) visa holders, who are required to undertake 88 days of work in regional Australia in order to qualify for an additional year in Australia.\(^3^0\) There have been a number of recent cases, particularly in the horticultural sector, which demonstrate that labour exploitation is widespread in Australian businesses and operations connected through supply chains.\(^3^1\)

**Forced marriage**

Reports of forced marriage make up the largest subgroup of AFP referrals on trafficking and slavery related issues for 2015-2016, comprising 69 referrals. This represents a significant increase compared with previous years, as the AFP received 11 referrals regarding allegations of forced marriage in 2013-14, and 33 in 2014-15.\(^3^2\) This ‘spike’ in reporting is likely explained by the fact that forced marriage was criminalised in Australia in 2013 and the resulting increased awareness surrounding the practice. Despite these referrals, no person has yet been convicted of the offence of forced marriage in Australia. However, a Melbourne man has pleaded guilty to forced marriage, and is currently awaiting sentencing.\(^3^3\)

Many of the forced marriage cases identified in Australia involve female Australian citizens under the age of 18 whose parents have forced them or are forcing them to marry a man the parents have selected.\(^3^4\) This does not necessarily mean that most forced marriages in Australia involve Australian girls, rather, that these types of cases make up the bulk of those referred to the AFP.\(^3^5\) The following is a case of an Australian girl tricked and threatened to enter a forced marriage:

> A 17-year-old girl was tricked into travelling to India under the belief that she could marry her Australian boyfriend but was instead forced to go through a marriage ceremony to another suitor chosen by her parents.

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35 Segrave, Pickering and Milivojevic, above n 10.
The girl’s parents, who confiscated her passport upon arrival in India, threatened to kidnap and rape the mother and sister of her Australian boyfriend if she did not comply with their directions. It was alleged that threats of a similar nature were also made to her boyfriend. The girl also stated that her father had hit her across the face on two separate occasions and hit her once on the back.36

My Blue Sky, Australia’s only dedicated forced marriage website and a joint initiative of Anti-Slavery Australia and the Australian government, notes that forced marriages are not like arranged marriages, common in many cultures, in which a potential bride (and/or groom) is free to refuse the proposed match. It states that forced marriages, in addition to being arranged by someone other than the two persons to be married, necessarily involve an additional element of coercion, which effectively leaves the potential bride (and/or groom) without the ability to refuse the marriage.37

However, Simmons and Burn have observed that the reality is often more complex, with forced marriage existing along a continuum of coercive practices where men and women are pressure into fulfilling expected gender roles, and are thereby deprived of the opportunity to fully and freely consent to marriage.38 The authors have also observed that forced marriage is different from the practice of sham marriage, where an Australian citizen fraudulently claims to be in a genuine relationship with a non-citizen in order to sponsor them to come to Australia as their ‘spouse’,39 though such arrangements have been used by traffickers to bring people to Australia for the purpose of exploitation (see the case of Re Kovacs,40 discussed below).

Recently reported cases illustrate the extent to which intimate partner exploitation in its most extreme forms can comprise of human trafficking, or in some cases, forced marriage. Intimate partner violence may be connected to trafficking and exploitation in situations where women come to Australia to marry, with the intention of studying and improving their circumstances, based on promises that have been made by their partners and others, and then met with very different arrangements when they arrive in Australia. For example, the case of ‘Maria’:

In the Philippines, Maria worked in a factory earning $10 a week. She had split up with her husband and had to support her young son and her mother. A family friend said she could help Maria get work in Australia. This friend had relatives in Australia and said that they would give her a job in their shop and enrol her in English classes in her spare time. In return, Maria was to marry an Australian man and she would have to give him some money for the visa and airfares.

When Maria arrived, her Australian fiancé took her passport. Maria had to work in the family shop seven days a week and wasn’t enrolled in English classes as promised.

39 Ibid 979-980.
Maria was only given $20 every fortnight or so but was never paid a wage. Maria spent all her time at the shop or at her fiancé’s house cooking, cleaning and gardening.

Maria wasn’t allowed to leave the house and felt like she had to do whatever they told her to do. If she didn’t, Maria’s fiancé threatened to hit her or made threats about hurting her family in the Philippines. Maria had no money, and they told her that if she contacted her family or tried to go back to the Philippines, they would find her and hurt her. She didn’t want her mother to worry. Maria didn’t speak much English and she didn’t know anyone else in Australia. She was trapped.41

What are the key findings regarding this group’s legal needs?

Unlike many other disadvantaged groups, trafficked and exploited persons are, by virtue of being trafficked and exploited, victims of crime. Therefore, their immediate legal need concerns how to escape from circumstances which are by definition against the law. People who have been trafficked and exploited may also have legal needs relating to decisions regarding whether or not to cooperate with law enforcement to bring criminal charges against those responsible, lodging a claim for victims of crime compensation, underpayment of wages and/or unfair dismissal, or bringing family law proceedings, in the case of forced marriages.42

As many trafficked people are brought from overseas to Australia, and exploited people are disproportionately likely to be migrants or refugees, many people who are trafficked or exploited face immigration issues. In a study by David on labour exploitation, AFP officers reported that affected individuals are often not willing to come forward due to fear of being deported, and if they assist police, they fear losing their visa, as well as retaliation.43 Therefore, people who have been trafficked and exploited may require assistance with migration law relevant to their immigration status.

WESTjustice, a community legal centre (CLC) based in the Western suburbs of Melbourne, has reported that, for its migrant clients who have been exploited, underpayment of wages and/or other entitlements is the single-most common problem with which they present.44 The Senate Legal and Constitutional Affairs References Committee, which examined the abuse and exploitation of migrant workers its inquiry into the framework and operation of subclass 457 visas, found that 457 visa holders were vulnerable to workplace injury and death, therefore raising issues relevant to workplace and occupation health and safety laws.45


43 Fiona David, above n 23, 16-17.


Forced marriages also present several legal, especially family law, issues. For example, children who are facing an impending forced marriage often require measures to prevent their removal by their parents from the country to marry, which may include being placed on an Airport Watch List, and/or an injunction in the Family Court of Australia. A case study illustrates this need:

Ms Kandal, a 17 year old girl, contacted police on 4 May 2010 stating that she was being taken to Lebanon to be married against her will by her mother and ‘perhaps other family members’. Her flight had been booked for 19 May 2010. Ms Kandal was living with her mother and step-father however she claimed that both her father and step-father supported the decision for her removal from Australia.

Ms Kandal gave enough information to the police that they were able to verify her identity and her place of residence. She stated however that she wanted minimal involvement from authorities and wanted to be placed on the Airport Watch List.

The Family Court made an order against her mother, father and step-father to restrain them from removing or attempting to remove the girl from Australia and to surrender her passport to the court. She was also placed on the Airport Watch List and an order made under section 68B of the Family Law Act 1975 for her mother, father and step-father to be restrained by way of injunction from assaulting, threatening, harassing or intimidating her. 

Given these cases typically involve minors, affected persons usually require the assistance of the authorities, courts, and other service providers (like legal aid or even school counsellors) to intervene on their behalf. Children and young people can be reluctant to report their situation because they do not want to get their family into trouble. As Simmons and Burn have identified, victims of forced marriage who choose to leave have complex legal and non-legal needs, including resolving questions of parental responsibility, practical arrangements for leaving the family home and finding appropriate shelter elsewhere, intensive social support and counselling, legal advice, and access to social security benefits. Women’s Domestic Violence Court Assistance Service of South Australia has noted that women who have experienced serious violence and abuse may also require additional services, such as translation services, medical and psychological services, and other tertiary level services.

How do people in this group respond to their legal problems?

Richards and Lyneham conducted a study on the help-seeking strategies of victim/survivors of human trafficking involving partner migration, and found that the majority of survivors

47 See Tessa Akerman, above n 33.
49 See Anti‐Slavery Australia, Submission to the Attorney-General’s Department Consultation on Forced and Servile Marriage, February 2011.
50 It should be noted that this study was limited in scope (involving interviews with only 8 women who had escaped from situations of human trafficking through partner migration), therefore caution should be exercised before seeking to generalise its findings: see Kelly Richards and Samantha Lyneham, ‘Help-
interviewed as part of the study sought help from a wide range of people and organisations, including neighbours, friends, family members, colleagues, community workers (both migrant and mainstream), English tutors, migration agents, medical and mental health workers, Centrelink staff, child protection workers and local police.51

The study found that in the majority of cases examined, women sought help from informal mechanisms. In the case of Re Kovacs,52 in which a Mr and Mrs Kovacs were convicted of slavery offences for their involvement in bringing a Filipina woman to Australia (through a sham marriage) for the purposes of domestic servitude and labour exploitation, the young woman escaped her situation and get help, gave evidence at trial that:

… she had tried to escape the situation, seeking the assistance of a woman she worked with at the shop. However, Mr and Mrs Kovacs located her shortly after she left their house, confiscated her passport and returned her to the family home. The young woman also gave evidence that, while in theory she had access to a pay phone at the shop, the only person she knew who owned a telephone was her aunt back in the Philippines—the very person who had suggested she work for Mrs Kovacs. According to her evidence, the young woman remained in that situation until she managed to escape again, with the assistance of another worker in the shop and Mr Kovacs’ estranged daughter.53

In Richards and Lyneham’s study, only a minority of participating women had sought formal help to escape their situation. One woman had called the police as a short-term fix, to deal with instances of escalating violence from her ‘husband’, but formed the view that the police were more likely to believe her husband’s version of events.54 The study also found that some women obtained help through a combination of formal and informal help, through persons who they knew in a professional capacity but considered to be friends or friends of the family. For example, a woman interviewed as part of the study described visiting a migration agent to inquire about her Tax File Number, and ultimately received assistance with escaping her situation:

One day I went to visit my mother’s friend’s house…On the way home, my mother’s friend…took me to see a migration agent, Agent B, so I could get my tax file number. Agent B is a very close friend to my mother and to [my mother’s friend]. He said the [tax file number] was sent to my husband’s address and I said I had not received it. He promised to help me and asked how my life had been. I told him I was not happy and what had happened to me…Agent B said he could refer me to someone to give me advice. He referred me to see a domestic violence worker…Miss R. The next day I called Miss R and arranged an appointment for the following day… I told her I cry every day, that I was worried, scared and I didn’t know what to do…During this interview my husband called on my mobile and asked why I wasn’t at home…He told me to come home immediately otherwise he would send me back to [my home country]. I put the


51 Ibid 7.
53 See Fiona David, above n 23, 19.
54 Kelly Richards and Samantha Lyneham, above n 50, 5.
phone on speaker and Miss R heard that conversation. Miss R began to look for a refuge for me to stay.\textsuperscript{55}

Richards and Lyneham have also examined documentary material about women who had escaped situations of human trafficking and exploitation. As part of that process, they discovered a number of incidents where a ‘chance encounter with a helpful third party’ enabled the woman to escape her situation, most commonly a medical practitioner who spoke the same language as the woman.\textsuperscript{56}

Through its Employment Law Service, WEstjustice has observed that many of its clients, most of whom come from a refugee background, had first attempted to solve their legal problem formally, such as lodging a complaint with the Fair Work Ombudsman. However, they had ultimately ended up at the Employment Law Service because despite approaching the correct government mechanisms, they were unable to achieve justice, due to communication difficulties and insufficient resources available to assist them with navigating those issues (as discussed below in the section on barriers).\textsuperscript{57}

What are the barriers constraining such groups from accessing justice?

Many trafficked and exploited persons are from CALD backgrounds, and therefore some of their capability issues overlap with the capability issues that face recent arrivals and asylum seekers, including:

- language barriers;
- cultural and social isolation;
- shame and risk of stigmatisation;
- lack of official documents; and
- limited understanding of Australian culture and laws.\textsuperscript{58}

Trafficked and/or exploited people also face additional barriers by virtue of their unique experiences, which are discussed below.

Limited understanding of legal rights

Larsen and Renshaw have found that survivors of trafficking discovered in Australia are usually trafficked from overseas,\textsuperscript{59} and the Senate Education and Employment References Committee recently concluded an inquiry into the widespread and systematic exploitation of temporary work visa holders, who are (temporary) migrants.\textsuperscript{60}

\textsuperscript{55} Ibid 6.
\textsuperscript{56} Ibid.
\textsuperscript{57} WEstJustice, above n 44, 129.
\textsuperscript{59} Jacqueline Joudo Larsen and Lauren Renshaw, above n 6.
\textsuperscript{60} See generally, Senate Education and Employment References Committee, above n 28.
This migrant background can present difficulties for survivors of trafficking and exploitation in terms of recognising their rights within the Australian legal system. They may have a limited understanding of Australian laws and society, therefore being unable to identify that they have a legal problem, and do not know where to go for assistance, thereby relying on members of the community to identify their issue and refer them appropriately.\textsuperscript{61} Research by Coumarelos et al shows that lack of knowledge about legal rights and resolution among migrant and non-English-speaking groups exacerbates the legal problems they experience.\textsuperscript{62}

Recent research by Hedwards, Andrevski and Bricknell on exploitation in the construction industry revealed that temporary migrant workers generally exhibited a limited understanding of Australian workplace legislation and rights, lower levels of access to union and government support, language and cultural barriers, and social isolation, all factors which impair their legal capability to seek help.\textsuperscript{63} Fels has identified that some employers have exploited the lack of knowledge of the Australian legal system by their employees:

\begin{quote}
[The franchisors] … exploit the lack of knowledge of the employees. For example, quite a few employees are told: ‘If you put in a claim then that will have to go to a full court of law, a hearing. You won’t have the evidence. All sorts of things will come out.’\textsuperscript{64}
\end{quote}

Limited understanding of Australian legal rights may also be exacerbated when trafficked and/or exploited people present to non-legal service providers who are unaware of their legal situation and/or unaware of where to refer them. A case study involving a WEstjustice client provides an example:

\begin{quote}
Pavel is a newly arrived refugee. He does not speak much English and cannot write. He often worked 12 or 14 hour shifts but was only paid for five hours’ work each shift. He was also paid below the minimum pay rate. Pavel came to WEstjustice because he had not been paid his last two weeks’ pay. A community worker had tried to assist Pavel to complain to the Fair Work Ombudsman, but because they didn’t know what to complain about, the complaint was closed…\textsuperscript{65}
\end{quote}

The lack of understanding of the Australian legal system and the barriers it presents are discussed further in the Recent Arrivals Justice Project paper.

\textbf{Limited English language skills}

Given that survivors of trafficking are more likely to have been trafficked from overseas, and exploited persons are disproportionately likely to be refugees or migrants, they may lack

\begin{itemize}
\item \textsuperscript{61} See WEstjustice, above n 44, 121.
\item \textsuperscript{65} WEstjustice, above n 44, 125.
\end{itemize}
English language skills. WEstjustice, in the context of their employment law services, noted that:

[m]any clients were unable to act on our advice without significant support due to literacy and language barriers. For many clients, tasks such as filling out forms, drafting letters, calling employers, requesting medical certificates or calculating underpayments were simply impossible.\(^\text{66}\)

Even when exploited people from CALD backgrounds seek out help from the right places, language barriers often mean that they cannot, and do not receive sufficient assistance to articulate their complaint. The following case study provides an example:

John worked for a bakery and believed he was underpaid by around $8000. He had evidence in his phone and diary to show the hours he had worked. He wasn’t paid penalties or overtime, and his hourly rate was below-award. John’s friend helped him lodge a complaint with the FWO. There was a mediation but the employer denied the underpayments. John came to WEstjustice asking for help. He showed us his documentation. A letter from FWO said that a Fair Work Inspector could assist John to pursue his case further and ask for this assistance if he’d like, but John doesn’t speak English and didn’t understand the invitation/offer of assistance...\(^\text{67}\)

Limited English language skills and the barriers it presents are discussed further in the section on Recent Arrivals.

Unable or unwilling to act and persevere until the legal issue is resolved

Trauma and fear of authorities

Research by Pleasance et al indicates that seeking help, as well as navigating the legal system, is especially difficult for persons who have experienced trauma.\(^\text{68}\) In addition, people who have experienced trauma may fear those with authority, such as the government, police and lawyers, which prevents them from seeking help.\(^\text{69}\)

Survivors of trafficking and exploitation are likely to have experienced significant trauma. Andrevski, Lyneham and Larsen, in a study on barriers to participation in criminal justice proceedings for trafficked people, identified that trafficked persons are often subject to traumatic experiences including forms of psychological and/or physical abuse.\(^\text{70}\) The authors identified that people who have been trafficked have been conditioned by traffickers to be fearful of authorities; made to believe they will be arrested, imprisoned, deported or prosecuted because of their illegal status or the illegal activities they have engaged in as a result of being trafficked.\(^\text{71}\)

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66 Ibid 87.
67 Ibid 125.
69 Ibid 138.
70 Hannah Andrevski, Jacqueline Joudo Larsen & Samantha Lyneham, above n 58, 2.
71 Ibid.
In the case of refugees, who are disproportionately likely to be exploited in Australia, the Refugee Council of Australia has noted that:

_Prior to arriving in Australia, refugees have often experienced years of persecution and injustices at the hands of corrupt government officials, police and bureaucracies. It is understandable, then, that many refugees arrive with a wariness of police and government bureaucracies and it takes time to rebuild trust and understanding._\(^72\)

In addition, WEstjustice has observed that refugee clients ‘commonly misunderstand the confidential nature of legal advice, and … some clients express fear of retribution for both seeking legal assistance and in enforcing their rights’.\(^73\)

Experiences of trauma and the barriers it presents are discussed further in the Recent Arrivals and Asylum Seekers Justice Project papers, respectively.

**Deprivation of liberty and control through threats and manipulation**

Situations of trafficking and exploitation by definition involve a party with more power exerting that power against a more vulnerable party, namely the person who has been trafficked and exploited. The imbalance in power also affects legal capability, with research by Pleasence et al showing that an individual who perceives that the other party has more power will be less likely to take action and resolve the problem.\(^74\) Traffickers and other persons responsible for exploitation often exert their power by exercising physical and mental control over their victims. A case study by Anti-Slavery Australia provides an example:

> I lost my job in my home country when the factory I worked in closed down. A friend introduced me to a man who said I could have a job at his factory in Australia. Although it was a hard decision to leave my family, I decided to come to Australia for two or three years, to earn money. I wanted my family to have a better life. I needed to work and I couldn't get a job in my country. When I arrived in Australia, the Boss took my passport away. For more than a year, I worked every day in the factory, for 12 or 13 hours. I was not paid a wage or allowed to go outside. For the first couple of months, the Boss sent a small amount of money to my family, but then he stopped. The Boss said that if I tried to escape they would kill my family. Immigration officers visited me twice. The Boss gave me a story to tell them, about where I lived, and how much I was paid. He told me that if anyone asks me why I am sleeping at work, I should say that I drank too much and could not drive home.\(^75\)

Trafficked or exploited persons may be physically deprived of their liberty, such that they cannot physically seek legal help or advice. However, as Simmons et al have identified as part of their study of human trafficking prosecutions in Australia, most victims were controlled not by physical means but by more subtle methods such as debt bondage and

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73 WEstjustice, above n 44, 89.
74 Pascoe Pleasence et al., above n 68, 135.
75 Frances Simmons and Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centered reform’, above n 3.
manipulation of social contexts. Some of these methods were summarised by the trial judge in *DPP v Ho*, which concerned a group of individuals who brought Thai women to Australia for the purposes of sexual exploitation, where his Honour observed that:

> The confluence of control over work and residence situation constituted slavery. This was in part physical – the inability to leave – but essentially mental. You controlled the subjects by their vulnerability – you knew that they feared apprehension and deportation; by the removal of their passports – critical to their self-image as persons with an identity, in a foreign country with little language and skills and no personal support; and by the ever-present shadow of a minder under the veneer of a helper. In the context of the personal isolation of the subjects – no family, no friends, no language or personal history here to help them – all this achieved your intention: to disempower these subjects. The consequence was that this was modern slavery: not with physical chains but with mental chains.

The Law Society of South Australia has reported that women in forced or servile marriages are often threatened by their ‘husbands’, who threatened them with reporting them to immigration authorities with physical and sexual violence and where there are children, the removal of those children from their care. The unstable nature of their residency status means that they are often fearful of involving police and the law (see further ‘fear of deportation’ below). Richards and Lyneham provide an example of how a victim’s ‘husband’ can use threats that exploit her fears and lack of knowledge regarding Australian law:

> One victim/survivor’s husband threatened her by saying: I will return you to [your home country]... The law in Australia says that in the first two years of marriage if the husband says he doesn’t want to live with his wife anymore, then he can send her back.

Parents may also force their children to marry through threats or blackmail to enter into or remain in the relationship. For example, in one reported case of forced marriage, parents forced their underage daughter to marry by telling her that she could not remain in school unless she went through with the marriage. As previously discussed, in another case, parents told their daughter that if she did not marry the man of their choosing, they would arrange to have her boyfriend’s mother and sister kidnapped and raped.

**Fear of deportation, job loss or other consequences**

In its inquiry into the exploitation of temporary work visa holders, the Senate Committee on Education and Employment References received and heard evidence that temporary worker visa holders are fearful that if they complain about their conditions to their employer, their employer will cancel their sponsorship, inevitably leading to deportation. The case of Pawanjeet Heir provides an example. Ms Heir responded to an ad on Gumtree for a cook

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78 Ibid [32].
79 Kelly Richards and Samantha Lyneham, above n 50, 5.
82 Senate Education and Employment References Committee, above n 28, 145, 150, 247, 248.
and sponsorship on a subclass 457 visa, for a pay of $52 500 a year for a three-year contract at an Indian restaurant in Adelaide, and unwittingly became the victim of visa fraud, extortion and indentured servitude:

“[My boss] told me I can’t pay you because I sponsor you so you have to work for free” she said. “He then asked for money and said ‘I will cancel your sponsorship and you will be deported’ if you don’t pay”.

In August 2013 he demanded $30,000 for the visa. “We were very scared so we paid him what he wanted,” she said. “I was working for free”.

For the next two and a half years Heir worked long hours, six days a week for no pay. Months later he started using the so-called cash back scam, which involves the company paying her wages then her husband withdraws a similar amount and gives it back in cash.

She then had to find another $20,000 or face deportation. “He would say: ‘You go to immigration, nothing is going to happen to me as I am a citizen of this country, but they will definitely deport you back to India’.”

Taylor and Putt have also identified that fear of deportation has prevented migrant women in situations of exploitation from seeking help.

Both Clibborn and David have identified respectively that undocumented persons who experience labour exploitation are less likely to report their exploitation, due to the risk of deportation.

The Fair Work Ombudsman has identified that for workers holding 417 visas, fear of not having their employer ‘sign off’ that they have completed the 88 days of work required to gain a second year in Australia often prevents them seeking help.

In cases of forced marriage, children may also fear getting their family in trouble with the authorities, or defying their parents (upon whom they may be financially and emotionally dependent) and creating familial disharmony.

Pre-existing beliefs about the efficacy of the legal system

Access to justice and pre-existing beliefs about the justice system may impact willingness and ability to pursue a legal issue to resolution may relate to practical issues regarding accessing justice and pre-existing beliefs about the justice system. For example, after using

86 Fair Work Ombudsman, Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program, above n 30, 17.
WEstjustice’s targeted materials on employment law, an ESL teacher in a migrant community reported that, though her students were engaging with the material, in the case of one man who was working at a factory and was likely underpaid:

> [he] hasn’t done anything about going to CLC even though his mother has told him what to do - maybe because he’s always exhausted - working 12 hours a day on a lot of days. They also probably find it hard to believe they can get people to pay them more money.  

Studies indicate that previous experiences with the legal system which did not lead to effective outcomes are likely to discourage further participation and interaction with the legal system. Richards and Lyneham’s study on women in trafficking situations involving partner migration found that the interviewed women did not call the police due to beliefs that the police are corrupt based on their experiences in their home country. Women that did call the police were either unable to iterate what they wanted or the police seemed have been unable to understand what was being sought, leading to distrust. A service provider who works with migrant women explained her observations as follows:

> There is rarely a legal outcome at the end of these cases. [The police] don’t proceed because there is no support from the victim; because [the victims] don’t understand and because they don’t want police involved. They have a misunderstanding of what the role of the police is in Australia compared to what is in their home country.

This reluctance has been recognised by the Migrant Workers Taskforce, who have recommended that the Fair Work Ombudsman develop tools that make it easier for migrant workers to come forward about potential labour exploitation.

Removal from the country

The Senate Committee on Education and Employment References Committee in its inquiry into temporary work visa holders found that ‘limited rights of residency is the key factor that effectively undercuts a temporary visa worker’s access to pursue a legal remedy’. The Committee heard evidence from the Australasian Meat Industry Employees’ Union ‘that visa workers only have a limited time in Australia, and that by the time matters get to court [estimated to occur between six to 12 months later], the visa worker “is generally back in their home country”’. A study by David on labour trafficking identified that the complications of accessing services and linguistic barriers become even more acute if people are working in remote geographical areas and/or have returned overseas.

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88 WEstjustice, above n 44, 127.
89 Pascoe Pleasence et al., above n 68, 135.
90 Kelly Richards and Samantha Lyneham, above n 50, 4.
91 Ibid.
93 Senate Education and Employment References Committee, above n 28, 160-161.
94 Ibid 150.
95 Ibid.
96 Fiona David, above n 23, 23.
Financial situation

David has identified that the capacity of individuals experiencing labour exploitation to complain was limited by financial pressures, which included commitments which could not be discharged if the person returned to work in their country of origin, where wages in that country may be far lower in than Australia. In addition, David has observed that even if victims of labour exploitation understand their rights, their accrual of debts or having other financial obligations may increase their tolerance for exploitative conditions.

Research conducted by Howe has identified that 417 (working holiday) visa holders are often unable to escape exploitation because ‘they need to save money to send home and have spent lots of money to get here, so they will accept pretty much any job under any conditions’.

Simmons and Burn have identified that after women have been forced to marry they may find it difficult to seek help because of financial constraints. In addition, a women forced to marry may not be able to seek help to escape her situation because doing so would cause her to face homelessness or unemployment.

Stigma and stereotypes involved with being identified as a ‘victim’

Andrevski, Lyneham and Richards have identified that the stigma and stereotyping involved with being identified as a victim acts as a barrier to people who have been trafficked and exploited from coming forward. Moskowitz and the United Nations Office of Drugs and Crimes have identified that people who have been trafficked often fear being shamed or rejected by their family or community because of their trafficking experience. The authors found that this stigma is particularly profound for male victims of trafficking. A man interviewed by the International Centre for Migration Policy and Development provides an example:

How to say this, I don’t think I am a victim. It is even ridiculous for me to think that I am a victim. I think that any man will not like this word attributed to him. It sounds more like a

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97 Ibid 46.
100 See Frances Simmons and Jennifer Burn, ‘Without Consent: Forced Marriage in Australia’, above n 38.
101 Attorney-General’s Department, Forced and Servile Marriage, Discussion Paper (2010) [97].
102 Hannah Andrevski, Jacqueline Joudo Larsen & Samantha Lyneham, above n 58.
comic insult. People around him can mock him, especially if these men are young, without any life experience and who don’t realize the possibility of men’s exploitation.  

Andrevski, Lyneham and Richards identified that some women identified as victims of trafficking and/or exploitation that was not sexual in nature did not view themselves as victims either. The authors speculate that this may be due to a misconception that of trafficking for women involves ‘forced prostitution’ to the exclusion of other forms of exploitation, like labour exploitation.

Simmons and Burn have identified that women who have been forced to marry may be reluctant to seek help due to social stigma.

What are their legal capabilities?

Research by McDonald and Wei has identified that a person’s ‘capability’ is relevant to how they resolve legal problems. Research by Coumeleros et al and others has shown that a person’s ‘legal capability’ poses a fundamental barrier in their ability to access justice.

Coumarelos et al have noted that ‘legal capability’ consists of three main competencies: knowledge, skills and psychological readiness. First, individuals require basic legal knowledge: to recognise their rights and entitlements and that they have a grievance, to know there are potential solutions, and where to go to access further information and help. Secondly, they must have the necessary skills to pursue resolution of their legal issue: literacy, language, communication and information processing skills. Thirdly and finally, they must have the psychological readiness to act and persevere until the issue is resolved.

Currently, there is little qualitative data available on the legal capability of survivors of trafficking and exploitation specifically. However, several of the barriers identified above may significantly undermine their legal capability. For example, a limited understanding of their rights or how to seek appropriate help is directly relevant to the first element of legal capability: legal knowledge. Limited English skills and difficulties in communicating undermines individuals’ skills in resolving legal issues. Trauma, fear of authorities and reprisals, including the loss of jobs or deportation undermine survivors’ psychological readiness to act. This suggests that many people who are trafficked or exploited, will have low levels of legal capability. For example, in a study on labour trafficking, David identified

105 Hannah Andrevski, Jacqueline Joudo Larsen & Samantha Lyneham, above n 58, 3.
108 Coumarelos et al, above n 62, 29, citing several studies on legal capability.
109 Ibid 29.
110 Ibid.
111 Ibid.
112 Ibid 30.
that the capacity of individuals to complain is limited by their limited language ability, limited knowledge of rights or capacity to access rights, tenuous migration situations, all factors which also make them vulnerable to exploitation in the first place.\textsuperscript{113}

Are there critical gaps in services which are necessary to deliver access to justice to this group?

Lack of legal assistance available for employment law matters

As has been discussed in the section on legal need, people subjected to labour exploitation may require assistance with, for example, seeking unpaid wages and/or redress for unfair dismissal. As has also been noted in the section on barriers and legal capability, due to the low legal capability of the persons who often experience labour exploitation, they often require assistance to make Fair Work Claims and navigating the Fair Work system. The Productivity Commission has recognised that employment law is a major gap in civil law assistance, which can have serious consequences.\textsuperscript{114}

For example, WEstjustice’s Employment Law Service that assists victims of labour exploitation seek redress (discussed above) is only a pilot, and due to resourcing constraints, its future is not guaranteed.\textsuperscript{115} WEstjustice can currently not keep up with demand, their service is not available to migrants and refugees outside the western suburbs of Melbourne, although they have received contact from workers and organisations around the country seeking similar services.\textsuperscript{116} WEstjustice has observed the critical lack of legal advice available for employment matters across Victoria:

\textit{JobWatch, a community legal centre specialising in employment matters, is unable to meet 57 per cent of demand for help. Justice Connect, a community organisation that helps facilitate pro bono referrals, reports that employment law is one of the top four problems that people request assistance for, however only around one fifth of matters receive much needed help. In Victoria, Legal Aid does not provide assistance with employment matters (except where discrimination is involved) and frequently refer matters to other services…}\textsuperscript{117}

Urban focus of anti-trafficking and anti-exploitation services

The United Nations Office of Drugs and Crime International Framework for Action to Implement the Trafficking in Persons Protocol recommends that appropriate services offering support to trafficked people be provided throughout the country.\textsuperscript{118}

While there are several groups offering outreach services (eg Anti-Slavery Australia, Scarlet Alliance, Project Respect, all discussed below in the section on ‘what's working – outreach’),

\begin{itemize}
  \item[113] Fiona David, above n 23, 46.
  \item[115] WEstjustice, above n 44, 47.
  \item[116] Ibid 45.
  \item[117] Ibid 139.
\end{itemize}
and may work with survivors across the country, they appear to be based in metropolitan cities. Therefore, people living in more remote areas, who do not otherwise get referred to these services, may be left without support.

Schloenhardt and Hunte-Walshe have identified that most anti-trafficking services are located in Australia’s two main urban centres, Sydney and Melbourne.\(^{119}\) While the scope of services are expanding throughout Australia, this suggests that persons who are exploited in regional or remote areas,\(^ {120}\) for example 417 visa holders who are required by their visa conditions to undertake work in regional areas, may lack support.

**Design of Support Program not necessarily effective for victims of forced marriage**

The Support for Trafficked People Program was originally designed for victims of trafficking. However, as the understanding of trafficking, slavery and slavery-like practices has grown, so too has the scope of the Support Program (see section below on ‘what’s working – joined up services).

Simmons and Burn have identified that the design of the Support Program for victims of trafficking may be unable to meet the specific needs of people in or facing forced marriage.\(^ {121}\)

In the latest interdepartmental report on Australia’s response to human trafficking, the Attorney-General’s Department identified that the Support Program is facing a number of challenges in attempting to deal with the unique needs of girls escaping from or avoiding forced marriage. These included that the girls may be leaving home for the first time, have no experience living alone, and are therefore confronted by youth housing environments, away from their family, social and cultural networks.\(^ {122}\) The report identified the need for additional assistance and support, to address the complex needs of victims of forced marriage that fall outside the scope of the forced marriage offence.\(^ {123}\) This would require the development of networks of specialist community legal services and capability-building.

**Fragmented victim support services**

Schloenhardt and Hunt-Walshe have identified with the exception of Project Respect (which operates exclusively in Victoria), and Anti-Slavery Australia which provides legal representation to survivors of trafficking and exploitation, all other NGOs that offer support

\(^{119}\) Andreas Schloenhardt and Rose Hunt-Walshe, ‘The Role of Non-Governmental Organisations in Australia’s Anti-Trafficking in Persons Framework’ (2012) 36(1) *University of Western Australia Law Review* 57, 76.


\(^{121}\) See Frances Simmons and Jennifer Burn, ‘Without Consent: Forced Marriage in Australia’, above n 38, 1006.


\(^{123}\) Ibid 38-39.
services do so as ‘ancillary’ to their other services.¹²⁴ The authors note that most NGOs appear to offer particular services or services focused on a particular issue, and they argue that genuine integration of services is one of the most critical factors in support programs, as they will not operate effectively in isolation. This is supported by research by Pleasence et al which indicates that a joined-up service approach is more likely to be effective in meeting the legal and non-legal needs of disadvantaged people.¹²⁵ Schloenhardt and Hunt-Walshe also recommend the formalisation of government-NGO referral systems, noting that the government-Red Cross referral system for the purposes of the Support Program is the only such formalised relationship, and notwithstanding the informal referrals that occur.¹²⁶

Are there laws, policies and practices which exacerbate access to justice barriers for this group?

Visa conditions

As discussed above, a major barrier to accessing justice for trafficked and exploited persons is the fear of visa cancellation and deportation.

In some cases, this fear may not be fully justified, as there are certain visa arrangements which may provide at least temporary assistance - for example Bridging F Visa, which allows persons suspected by the AFP of being victims of human trafficking to remain in Australia for an initial period, subject to extension upon cooperation with law enforcement. However, as Richards and Lyneham,¹²⁷ and others,¹²⁸ have identified, in cases of exploitation where victims are not eligible for special visa arrangements, the risk that their fear of visa cancellation and deportation will be realised is very real.¹²⁹

Many persons who experience labour exploitation are on sponsored working visas, or a student visa with working entitlements. Women trafficked to or who come to Australia for a sham marriage which results in exploitation are often on temporary partner visas. The conditions of these visas make it difficult for exploited persons to come forward without risking loss of their visa and ability to remain in Australia legally.¹³⁰

Sponsored working visas

Wijers and Chew, in their analysis of international anti-trafficking measures, found that measures tying work permits to a specific employer place people in a situation of

¹²⁴ Andreas Schloenhardt and Rose Hunt-Walshe, above n 119, 77.
¹²⁵ Pascoe Pleasence et al., above n 68, 44.
¹²⁶ Andreas Schloenhardt and Rose Hunt-Walshe, above n 119, 77.
¹²⁷ See also Kelly Richards and Samantha Lyneham, above n 50, 5.
¹²⁸ Senate Education and Employment References Committee, above n 28, 247-250.
¹²⁹ See also Kelly Richards and Samantha Lyneham, above n 50, 5.
¹³⁰ The vulnerability to exploitation that temporary visa holders face, and the conditions of temporary work visas that contribute to this vulnerability, were examined in detail by the Senate Education and Employment References Committee in a 2016 report: see generally Senate Education and Employment References Committee, above n 28.
dependency, making them more vulnerable to abuse.\textsuperscript{131} As has been observed by the then-Department of Immigration and Citizenship in a review of the 457\textsuperscript{132} visa program:

\begin{quote}
Subclass 457 visa holders are different from other employees in Australian workplaces. They are the only group of employees whose ability to remain in Australia is largely dependent upon their employment, and to a large extent, their employer. It is for these reasons that visa holders of this type are vulnerable and are open to exploitation.\textsuperscript{133}
\end{quote}

In order to obtain a 457 visa, a migrant is required to be sponsored by their employer.\textsuperscript{134} If their employment is terminated by the employer, the sponsorship arrangement ends, and they can be deported.

The Senate Inquiry into temporary work visa holders noted where workers are dismissed for reporting exploitation, or otherwise unfairly dismissed, a 457 visa worker has 90 days to find another employer sponsor, during which time the person is not entitled to Centrelink benefits and must rely on friends, community, and unions to survive.\textsuperscript{135}

If a worker on a 457 visa reports their exploitation to the authorities and evidence of exploitation is found, the employer may be banned from sponsoring 457 visas, rendering the worker’s 457 visa no longer valid, and the worker can then be deported.\textsuperscript{136} This was the case for Pawanjeet Heir (discussed above) who was forced to work 6 days a week for no pay for two and a half years, to pay off her sponsorship ‘debt’, and was extorted of $50,000 in order to keep her visa. After the Australian Border Force and the Australian Taxation Office investigated, they banned her employer from sponsorship for three years, thereby also causing cancellation of Ms Heir’s visa.\textsuperscript{137}

The Productivity Commission has identified that exploitation of migrant workers has the potential to taint the appeal and integrity of temporary immigration programs,\textsuperscript{138} which may impact Australia’s ability to fill skill shortages in the future.

Student visas with working entitlements

The working entitlements of a student visa permit a visa holder to work no more than 40 hours a fortnight while their course is in session.\textsuperscript{139} Previously, when the requirement was

\begin{itemize}
\item \textsuperscript{131} Aim for human rights, La Strada Czech Republic, La Strada International and SCOT-PEP, above n 14, 7.
\item \textsuperscript{132} The government has recently announced that the 457 visa will be abolished and replaced with the Temporary Skills Shortage Visa from March 2018. However, based on the details that have been released by the DIPB, the Temporary Skills Shortage Visa appears to retain the sponsorship requirement, so some of the concerns regarding sponsorship may remain valid: see Department of Immigration and Border Protection, Abolition and replacement of the 457 visa – Government reforms to employer sponsored skilled migration visas (2017) <https://www.border.gov.au/Trav/Work/457-abolition-replacement>.
\item \textsuperscript{134} See Migration Act 1958 (Cth) (Migration Act) Division 3A (sponsorship) s 140A (Division applies to prescribed types of visa), and Migration Regulations 1994 reg 2.56(k) (prescribing the Subclass 457 (Temporary Work (Skilled)) visa as a visa to which Division 3A of the Migration Act applies).
\item \textsuperscript{135} Senate Education and Employment References Committee, above n 28, 152 [6.47].
\item \textsuperscript{136} Migration Act 1958 (Cth) s 140M and Migration Regulations 1994 reg 2.92.
\item \textsuperscript{137} Adele Ferguson, above n 83.
\item \textsuperscript{138} Productivity Commission, Migrant Intake into Australia, above n 27, 29, 369.
\item \textsuperscript{139} Migration Regulations 1994 (Cth) Sch 2 (Provisions with respect to the grant of Subclasses of visas), item 506.11(a) (imposes condition 8105 on Subclass 500 – Student visas in all cases); and Sch 8 (visa
no more than 20 hours a week, the Overseas Student Education Experience Taskforce (Victoria) has observed how this requirement, coupled with pressures on international students, can cause them to exceed these hours and be at risk of exploitation:

…it would appear that there is a significant number of overseas students who are currently working in excess of the allowed 20 hours per week during semester. There are many reasons for this, including the need to earn more money than is possible in 20 hours in order to meet the cost of living here. The consequence is often that the overseas students are at risk of workplace exploitation as they fear they will be reported to the immigration authorities and then deported if they seek to enforce their rights.\textsuperscript{140}

Restricted work rights can result in serious financial difficulties for international students. Research conducted by Nyland et al involving interviews with international students about their work experience in Australia appears to confirm these concerns.\textsuperscript{141}

Further, in its inquiry into the systematic exploitation of temporary visa holders by 7-Eleven franchisors, the Senate Committee on Education and Employment references found that employers required international students who were legally allowed to work in Australia to work hours exceeding those permitted by their visa conditions, precisely to exploit this technical breach of their visa conditions, in order to ‘underpay them and rob them of their wages and other workplace entitlements’.\textsuperscript{142}

The DIPB and the FWO have recently agreed that where temporary visa holders with a work entitlement attached to their visa may have been exploited and they have reported their circumstances to the FWO, the DIBP will generally not cancel a visa, detain or remove those individuals from Australia.\textsuperscript{143} This is subject to an agreement to abide by the visa conditions in future and assuming there are no other grounds for cancellation, like national security, health, character, or fraud.\textsuperscript{144}

However, this is an informal arrangement, an agreement by the DIPB not to take certain action as a matter of policy, not enshrined in legislation, and potentially subject to change at any time based on the discretion and priorities of the DIPB. DIPB have agreed only that visas of persons suspected to have been exploited ‘generally’ will not be cancelled. The use of the term ‘generally’ suggested that this is not a blanket protection, and will not necessarily apply in all cases, so there is no real guarantee that an exploited person’s visa will not be cancelled if they are in breach of its conditions.

\textbf{Working holiday visas}

In 2015, a high-profile journalistic investigation exposed situations of employers withholding the ‘sign-off’ needed for a second year of a working holiday visa in Australia unless 417 visa

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{142} Senate Education and Employment References Committee, above n 28, 259.
\item \textsuperscript{143} Allan Fels, above n 92.
\item \textsuperscript{144} Ibid.
\end{enumerate}
\end{footnotesize}
holders submit to exploitative conditions and work environment. An Estonian 417 visa holder described the conditions which she and other 417 visa holders working on a property in the Northern Territory experienced:

… I was made to work 88 days without one day off. Working at least 15-hour days for an hourly pay of $2.50 meant I was underpaid by $18,000…

I witnessed firsthand how a German girl, Laura, with whom I worked and shared accommodation, was refused a signature on her visa application. Much to her dismay, the farmers - without giving a reason - refused to sign off the days she had completed. This girl had spent nearly a week, working 15-hour days, with no pay; and now she was not a single day closer to completing her three-months of regional work…

I could not sleep … because the male farmer had threatened to pay a "surprise" visit to the unlockable accommodation where I was staying… [but] I decided to stay, fearing if I left I would not get my second-year visa signed off.

In 2015, after many of these issues came to light through the media, the FWO conducted an inquiry into the exploitation of 417 (working holiday) visa holders. The 417 working holiday visa program allows a person to remain in Australia for a year as part of a ‘cultural exchange’. Visa holders have the option of extending their visa by another year if they complete 88 days of work in regional Australia within their first year, and have it signed off on by an employer.

While recognising the utility that 417 visa holders had in providing labour, the FWO found this 88 day requirement was problematic, because it created a power imbalance between visa holders and employers, upon whom visa holders were dependent for ‘sign off’ on their 88 days of work in order to qualify for an additional year of visa. In addition, the locations in which visa holders worked were generally regional or remote where they could not seek help as easily. The FWO found that these conditions were creating an environment where:

- unscrupulous businesses impose unreasonable or unlawful requirements on visa holders;
- isolated and remote workplaces give rise to increased vulnerability and potentially exploitative workplace cultures; and


147 Fair Work Ombudsman, Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program, above n 30.

148 Migration Regulations 1994 sch 2, item 417.222(5).

149 Fair Work Ombudsman, Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program, above n 30, 3, 11, 24-26.

150 Ibid.
• employers are profiting by imposing unlawful deductions on visa holders’ wages or requiring the visa holders to spend all or part of their income in an unreasonable manner.  

Partner visas

In addition, Richards and Lyneham have identified that in cases of human trafficking involving partner migration, ‘...the women’s immigration status is, in most cases, dependent on maintaining their intimate relationship with their Australian partner’.  

For women who are not yet on permanent visas, they may be able to nonetheless remain in Australia even where they are no longer in a relationship with an Australian partner, provided they can prove that family violence occurred and the relationship was otherwise genuine prior to its breakdown (Family Violence Provisions). However, as identified by Richards and Lyneham, depending on the circumstances, not all survivors are eligible for Family Violence Provisions, or other arrangements that would allow them to remain Australia (like the Bridging F Visa, discussed further below under ‘Protection for victims of human trafficking dependent cooperation with law enforcement’).

Persons who do not hold a visa or have overstayed their visa

Research by Clibborn has identified that undocumented workers are often exploited by their employers. Clibborn has identified a gap at the intersection of Australia’s immigration and employment laws, which means that these undocumented workers are not entitled to protection under Australia’s employment laws. The result of this gap is that undocumented workers cannot seek recourse through the fair work system.

152 See Kelly Richards and Samantha Lyneham, above n 50, 5. While the Migration Act 1958 (Cth) is complex and provides for various subclasses of visas that may be available to partners of Australian citizens, examples of visas that may be dependent on a relationship existing between the partner visa holder and Australian partner include the Subclass 300 (Prospective Marriage) visa, the grant of which allows the partner visa holder to remain in Australia for up to nine months, but the condition that the partner visa holder and partner marry may be imposed: see Migration Regulations 1994 (Cth) Sch 2 (Provisions with respect to the grant of Subclasses of visas) items 300.511 and 300.612; Sch 8 (visa conditions) item 8519 (‘[t]he holder must enter into the marriage in relation to which the visa was granted within the visa period of the visa’); and Subclass 309 (Partner (Provisional) visa), which allows the partner visa holder to remain in Australia temporarily until such time as a decision is made on their Partner (Migrant) (Class BC) visa, which allows the person to remain in Australia for up to five years after it is granted: Migration Regulations 1994 (Cth) Sch 2 (classes of visa) item 100.511. The grant of a Partner (Migrant) (Class BC) visa requires at least two years to have passed since the grant of the Subclass 309 (Partner (Provisional)) visa, and the applicant to be the spouse or de facto partner of the sponsoring partner (Migration Regulations 1994 (Cth) Sch 2 (classes of visas) item 100.221 (2) and (2A)), unless the sponsoring partner has died (item 100.221 (3)), family violence can be proved (item 100.221 (4)), or certain other decisions have been made (item 100.221 (4A)).

153 See Kelly Richards and Samantha Lyneham, above n 50, 5. See also Migration Regulations Division 1.5 (Special provisions relating to family violence).
154 See Kelly Richards and Samantha Lyneham, above n 50, 5.
156 Ibid 465.
157 Ibid.
Clibborn examined the case of Smallwood v Ergo Asia Pty Ltd,\textsuperscript{158} in which the Fair Work Commission dismissed an unfair dismissal application brought by a person against an employer other than her 457 visa sponsor. In the decision, Commissioner Bissett applied the decision of the Queensland Court of Appeal in the workers’ compensation case of Australian Meat Holdings v Kazi,\textsuperscript{159} finding that an employment contract entered contrary to the Migration Act is ‘invalid and unenforceable’.

In addition, for victims of trafficking and exploitation who are found by immigration authorities to not be in possession of a valid visa, deportation without support can be problematic. As Wijers and Chew have found, repatriating survivors of trafficking and/or exploitation to their home countries, without protection against reprisals or harassment from traffickers or the authorities endangers people’s lives and security.\textsuperscript{160}

McLeod has written about ‘Ning’ (not her real name), a trafficking survivor whom the author assisted with obtaining compensation under the NSW Victims of Crime scheme. Ning’s case demonstrates the potential risks of forced repatriation without proper support, even where access to other ‘remedies’, like compensation, exist:

\begin{quote}
Ning… was trafficked to Australia at the age of 13 from Thailand. She was put to work in a Sydney brothel. Before she arrived, she was physically and emotionally abused by her traffickers in Malaysia. This involved repeated rapes and imprisonment, deprivation of basics and her passport. Upon arrival in Australia, Ning was told that she owed a “debt” to her traffickers of $35,000, which she would pay off by having sex with 650 clients…

Ten days after her arrival, Ning was discovered at the brothel following a customer-tip off during a joint AFP and Immigration raid. In those ten days, she had been required to have sex with more than 100 men…

Following the raid, Ning was promptly deported back to Thailand and found her way to a woman’s shelter. She eventually found her way home and gave evidence against two Thai individuals involved in trafficking her. They were subsequently convicted and imprisoned.

The AFP officer involved in the raid… was disturbed by Ning’s story and collaborated with documentary film-makers… to find her… They approached [McLeod] to act pro bono for Ning in a compensation claim in NSW… [and] Ning was ultimately awarded the maximum compensation available… She invested her compensation award in a small business in Thailand. Tragically, she was sexually assaulted in an act of revenge [by an associate of her traffickers] and contracted HIV before she passed away.\textsuperscript{161}
\end{quote}

While Australia has the Human Trafficking Visa Framework for persons who have been identified as victims of trafficking which may minimise such occurrences, that framework has several limitations (discussed further below) which do not rule out the possibility of trafficked and/or exploited persons being deported without adequate support.

\begin{flushleft}
\textsuperscript{158} (2014) FWC 964.
\textsuperscript{159} (2004) QCA 147.
\textsuperscript{160} Aim for human rights, La Strada Czech Republic, La Strada International and SCOT-PEP, above n 14, 7.
\textsuperscript{161} Fiona McLeod SC, above n 20, 74.
\end{flushleft}
Criminal justice approach to trafficking and/or exploitation

In 2002, the then United Nations High Commissioner for Human Rights issued a set of Recommended Principles and Guidelines on Human Rights and Human Trafficking, where she established the principle 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 trafficked persons”’ and that ‘anti-trafficking measures should not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers’.  

Australia’s anti-trafficking strategy has four key elements: prevention, detection and investigation, criminal prosecution, and victim support and rehabilitation.  

While there is a criminal justice aspect to trafficking and exploitation which requires criminalisation and enforcement pursuant to Australia’s international obligations, Australia’s response to trafficking has in the past been criticised for focusing too extensively on law enforcement instead of the rights of trafficked people.

Though many early criticisms of Australia’s criminal justice approach to trafficking have been addressed by subsequent law reform, amendment to eligibility requirements and conditions on visa programs and expansion of support programs, some concerns remain. Recently, Thiemann has identified that a law enforcement approach to trafficking that focuses on deterring irregular migration, for example through immigration raids and strict border controls, is likely only to push trafficking further underground. Further, Thiemann argues that such an approach ignores that trafficked persons often suffer the highest level of exploitation after their arrival in the destination country, not before or during their journey.

Gallagher has stated that a criminalisation-centric approach gears support for victims of human trafficking and exploitation towards participation in prosecutions and other legal

166 Frances Simmons and Jennifer Burn, ‘Without Consent: Forced Marriage in Australia’, above n 38, 988.
169 Ibid.
processes, which may not be in the best interests of victims.\textsuperscript{170} In addition, where policy responses, interventions and funding is allocated based on, for example, referrals to law enforcement, which may not reliably indicate prevalence of trafficking and/or exploitation, it may lead to initiatives which do not help, and may even harm, victims.\textsuperscript{171}

D'Adamo has identified that 'a trafficking situation never begins the day someone is trafficked' but years previously when long-standing issues like poverty, housing and food instability, limited education and/or domestic violence create the vulnerability that can cause many to fall victim to trafficking and exploitative situations.\textsuperscript{172} Therefore, D'Adamo considers that focusing on arresting and prosecuting traffickers, without addressing the economic and social injustice that makes people vulnerable to exploitation in the first place, will not prevent victimisation.\textsuperscript{173} D'Adamo recommended that work directed towards increasing support for the vulnerable – like unions that promote labour protections, community organisations that provide crisis services, and gender justice organisations that address the marginalisation of women and transgender persons – should be supported.\textsuperscript{174}

Likewise, Scarlet Alliance, the peak body representing the interests of sex workers in Australia, considers that more attention needs to be paid to those who are in vulnerable situations, rather than exclusively focusing on victims of crime. Scarlet Alliance have recommended focusing on the affected migrant communities, working with representatives in their country of origin, enabling a community-based response, and listening to their needs.\textsuperscript{175}

Simmons and Burn have observed the inherent limitations of the criminal justice system to contend with the complex causes of forced and servile marriage, and therefore that Australia’s response should be broadened to examine how legislative and non-legislative measures can operate to prevent forced marriage and protect those subjected to forced marriage.\textsuperscript{176} The authors suggest community consultation, education strategies and civil protection orders, as well as the need to deepen community awareness and understanding of forced marriage, and provide people facing forced marriage with the legal tools to avoid or exit forced marriages. \textsuperscript{177}

\begin{itemize}
\item \textsuperscript{170} Anne Gallagher, ‘Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice’ (2016) 6 \textit{Anti-Trafficking Review} 1, 3-4.
\item \textsuperscript{171} Ibid 4.
\item \textsuperscript{172} Kate D'Adamo, Prioritising Prosecutions is the Wrong Approach (2016) \textit{Anti-Trafficking Review} 111.
\item \textsuperscript{173} Ibid 113.
\item \textsuperscript{174} Ibid.
\item \textsuperscript{175} Scarlet Alliance, \textit{Submission to the Attorney-General’s Department}, above n 21, 5.
\item \textsuperscript{176} See Frances Simmons and Jennifer Burn, ‘Without Consent: Forced Marriage in Australia’, above n 38, 994. However, note that the authors were writing in 2013, and since then the Australian Government has, to some extent, expanded the non-legislative measures available regarding forced marriage. For example, with Anti-Slavery Australia, it launched \textit{My Blue Sky}, the first Australian online resource dedicated to forced marriage. In addition, over 2014-17, the Attorney-General’s Department has funded several NGOs to prevent and addressed forced marriage ($500,000), and funded the Australian Red Cross to conduct a scoping study on the extent of forced marriage in Australia ($250,000): See Attorney-General’s Department, ‘National Action Plan to Combat Human Trafficking and Slavery 2015-19’ above n 1, 16-17.
\item \textsuperscript{177} See Frances Simmons and Jennifer Burn, ‘Without Consent: Forced Marriage in Australia’, above n 38, 994.
\end{itemize}
Absence of national compensation scheme for victims of human trafficking, slavery and slavery-like offences


\[
\text{… each State Party shall ensure that its domestic legal system contains measures that offer victim of trafficking in persons the possibility of obtaining compensation for damage suffered.}
\]

In addition, as the International Covenant on Civil and Political Rights provides that a person has a right to an ‘effective remedy’ where their rights have been violated,\footnote{International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) article 2(3).} which as Simmons and Burn have identified, includes compensation.\footnote{Frances Simmons and Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centered reform’, above n 3, 728.}

However, Australia has no federal level compensation scheme for victims of trafficking and exploitation. As has been identified by Anti-Slavery Australia and others, compensation for victims of crime exists at the state level in Australia, but human trafficking, slavery and slavery-like offences are crimes at the federal level, and do not exist in the states’ legal framework.\footnote{Anti-Slavery Australia, Law Council of Australia and the University of Technology Sydney, Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime (2016) 1 <http://www.antislavery.org.au/images/FINAL%20REPORT%20-%20ASA%20-%20LCA%20-%20Case%20for%20a%20National%20Compensation%20Scheme.pdf>.
} This leaves victims of trafficking and exploitation related crimes without the ability to access compensation for the crimes that have been committed against them, unless they can approximate their situation with crimes that exist at the state level.\footnote{Ibid 4.} The amount of compensation available varies between states and is not necessarily available for the type of harm suffered by victims, including harm related to psychological trauma.\footnote{Ibid.}

Following her visit to Australia in 2011, the then-UN Special Rapporteur on Trafficking in Persons, especially Women and Children recommended that, in light of Australia’s international obligations, the Australian Government ‘[should] [e]stablish, at the federal level, a comprehensive compensation scheme for survivors of trafficking’.\footnote{Joy Ngozi Ezeilo, Report of the Special Rapporteur on trafficking in persons, especially women and children, UN Doc A/HRC/20/18 (18 May 2012) [64].} In addition, the 2011 Universal Periodic Review of Australia included a recommendation that the Australian Government consider the establishment of a compensation fund for victims of trafficking.

In 2012, the Senate Legal and Constitutional Affairs Legislation Committee recommended that the Australian Government further investigate the establishment of a federal compensation scheme for victims of slavery and people trafficking. In 2013, the Trading
Lives Report recommended that the Australian Government further investigate the establishment of a federal compensation scheme for proven victims of slavery and people trafficking. It considered that the compensation fund should be funded by persons convicted of these crimes and recommends that the Australian Government review the current rates of compensation.

In 2016, Anti-Slavery Australia and the Law Council of Australia published a report which set out a case for a national compensation scheme, which included proposed models for a scheme and addressed issues relevant to how it would function, such as burden of proof, caps on award, compensable harm, funding for the scheme, the constitutional basis for its creation, and how it would interact with the visa program.\(^{185}\) It was emphasised in that report that eligibility for the compensation scheme should be de-linked any requirement to cooperate with law enforcement.

As has been noted, as of 2017, no federal compensation scheme for victims of trafficking, slavery and slavery-related offences yet exists. However, in July 2017, the Joint Committee on Law Enforcement recommended the establishment of a national compensation scheme for victims of trafficking, slavery and slavery-like offences, funded by proceeds of crime.\(^{186}\) In addition, the inquiry into the Establishment of a Modern Slavery Act in Australia, announced 15 February 2017 (tentatively set to report by the end of 2017) has as one of its terms of reference ‘[whether Australia should adopt a Modern Slavery Act and] the implications for … and conformity with the [Palermo Protocol] regarding federal compensation for victims of modern slavery’.\(^{187}\)

Protection for victims of human trafficking dependent upon cooperation with law enforcement

Bridging F Visa allows persons who have been assessed by the AFP as suspected victims of human trafficking to remain in the country for an initial period of 45 days of recovery and reflection, with a discretionary extension of 45 additional day. However, the Special Rapporteur on trafficking in people, especially women and children, on a visit to Australia observed that this discretionary extension seems only to be granted for cases of extreme trauma.\(^{188}\) Access to the Bridging F Visa and the Support for Trafficking People Program (Support Program), beyond the initial reflection and recovery period of 45 or 90 days, is also dependent upon the victim providing assistance to authorities in a criminal investigation.\(^ {189}\)

In her report following her mission to Australia in 2011, the then-UN Special Rapporteur on People Trafficking, especially Women and Children, observed that any person who does not

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185 Anti-Slavery Australia and the Law Council of Australia, above n 181.
189 Migration Act 1958 (Cth) s 46(2) and Migration Regulations 1994 (Cth) reg 2.07AK(3); Attorney-General’s Department, ‘National Action Plan to Combat Human Trafficking and Slavery 2015-19’ above n 1, 87, 97.
engage with the AFP will automatically be excluded from the Visa Framework and Support Program. The Special Rapporteur was of the belief that the linking of ongoing support services to contribution to criminal processes should be removed, as it imposed an additional burden on victims of trafficking and does not represent an adequate acknowledgment of their status as victims.

The reasons that victims may be unwilling or unable to speak with law enforcement may be for a number of reasons; for example, victims of trafficking are often traumatised and may fear repercussions. The United Nations Association of Australia, summarising research on the incidence of post-traumatic stress disorder in trafficked persons in its submission to the current federal parliamentary inquiry into modern slavery in Australia, has observed that:

... trafficked victims with PTSD have presented difficulties when engaging with the criminal justice process. When asked to recount their experiences, victims are often left with little trust, memory gaps, and a fear of reprisal from their captors. The challenges in addressing these complex mental health needs lie in the direct conflict with the needs of the victim and with the justice system’s need to investigate, prosecute and convict, where more harm may be inadvertently caused. The criminal justice practices can harm prosecution cases by causing victims to fear or refuse participation, bringing the process to a halt. Victims can also appear to lack credibility due to their memory gaps, or not appear as the ‘ideal’ victim, which can influence the prosecution’s decision in not pursuing a case, leading to a failure to convict.

Schloenhardt and Hunt-Walshe have identified that it is ‘widely recognised’ that positive benchmarks for victim support programs include helping victims retake control of their lives, respecting their decisions and choices, and providing victim recovery services that focus on the immediate needs and rights of individuals rather than the needs of a criminal investigation. The National Action Plan also notes the need to provide support for trafficked people to improve their mental health and wellbeing.

The Senate Legal and Constitutional Affairs Legislation Committee (Senate Committee) in their 2012 report on their inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 [Provisions] recommended that the Australian Government review the People Trafficking Visa Framework and the eligibility requirements for the Support Program, and consider establishing an ongoing visa and


191 Ibid. For further criticism of the requirement that trafficking victims cooperate with law enforcement in order to access assistance, see Anna Dorevich and Michelle Foster, ‘Obstacles on the Road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia’s Migration and Refugee Law’ (2008) 9 Melbourne Journal of International Law 1; Frances Simmons and Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centred reform’, above n 3, 1006.


194 Andreas Schloenhardt and Rose Hunt-Walshe, above n 119, 71.

195 Attorney-General’s Department, ‘National Action Plan to Combat Human Trafficking and Slavery 2015-19’ above n 1, 2.
access to victim support mechanism which is not conditional on a victim of people trafficking providing assistance in the criminal justice process. In 2013, the Standing Committee on Foreign Affairs, Defence and Trade’s human rights sub-committee in their Trading Lives report recommended that Australian Government consider that recommendation from the Senate Committee’s Report on Slavery. In 2017, the Joint Standing Committee on Law Enforcement recommended that the Australian Government de-link access to the Support to Trafficked People Program from compliance with criminal investigations.

The issue may also arise again in the context of the inquiry into the Establishment of a Modern Slavery Act in Australia, announced 15 February 2017 (set to deliver an interim report by August 2017, with the final report due at the end of 2017).

Identification of trafficked and/or exploited people

The current Special Rapporteur on trafficking in persons, especially women and children, considers the identification of victims of trafficking as the greatest obstacle in ensuring the rights of victims and preventing further exploitation. As Simmons and Burn, and the United Nations Office of the High Commissioner for Human Rights has identified, a failure to identify a trafficked person correctly is likely to lead to a further denial of that person’s human rights. Some of the policies and practices that have resulted in a failure to identify victims correctly are discussed below.

Lack of training to recognise the indicia of trafficking and/or exploitation

Community Relations Commission for a Multicultural New South Wales have identified the that there is a need for authorities, particularly front-line staff, to undergo further training on how to identify potential victims or survivors of human trafficking and slavery. Anti-Slavery Australia have also observed that without proper training on the indicia of human trafficking and exploitation, governmental agencies that may come into contact with exploited and/or trafficked people may fail to identify them as such. The Joint Standing Committee on Law

197 Joint Standing Committee on Foreign Affairs, Defence and Trade, Trading Lives: Modern Day Human Trafficking, above n 11, xviii.
198 Joint Standing Committee on Law Enforcement, above n 186, xii, 35.
200 Maria Grazia Giammarinaro, Special Rapporteur, Trafficking in persons, especially women and children, UN GAOR, 70th sess, Provisional Agenda Item 73(b), UN Doc A/70/260 (3 August 2015) [27].
202 Community Relations Commission for a Multicultural New South Wales, Parliament of New South Wales, Inquiry into the exploitation of people through trafficking all its forms in NSW (2013) 52.
Enforcement in its report on human trafficking, slavery and slavery-like practices acknowledged that there is a need for frontline officers in a variety of Commonwealth, State and Territory agencies to be able to identify the indicia of human trafficking, slavery and slavery-like practices and refer suspected victims to the relevant authority and support, and the Committee recommended this training be provided.\textsuperscript{204} In addition, it recommended that the Australian Government increases the number of Australian Federal Police officers with specialised human trafficking and anti-slavery training in all States and Territories.\textsuperscript{205}

**Influence of stereotypes in identification of trafficked and/or exploited people**

Ham, Segrave and Pickering have identified that gendered and racialised stereotypes in immigration decision-making have influenced whether or not a person is identified as being trafficked.\textsuperscript{206} The authors analysed original research which involved interviews with Australian and Thai officials and other anti-trafficking stakeholders in 2006 and 2007, and Australian immigration officials in 2012, respectively. The authors found that in the majority of cases, the decision as to whether or not a woman was trafficked came down to an assessment of her agency and sexuality.\textsuperscript{207} Women who appeared to have less agency regarding their plans were more likely to be considered trafficked or future victims of trafficking, while women with more agency were more likely not to be considered ‘real’ victims but rather having the intention to work illegally.\textsuperscript{208} As observed by an Australian law enforcement officer in Thailand who was interviewed for this research:

\begin{quote}
[I]t comes back to… are they a victim or [not]…. and that’s where the water’s really muddy… because they’re sort of in the middle of both worlds… Most of them only really become a victim when things go wrong for them. You know there are very few people who… go to Australia… not knowing that they’re going to be involved in the sex trade [and]… it’s only when that money is not forthcoming that they either decide to make a complaint or… report it to the authorities.\textsuperscript{209}
\end{quote}

The authors observed that officials were likely to pursue a line of questioning regarding trafficking where they believed the woman would be engaging in sex work, regardless of the legality of sex work in the jurisdiction, based on the individual views of the officer towards sex work. As explained by an Australian airport immigration officer interviewed for the research:

\begin{quote}
But we have to find evidence…. [so when] we are doing a baggage search [the question is]… what are their motives. If you’re coming here for a holiday, why do you bring some sexy lingerie and so many, like, the sex worker?… Why do you bring those items?\textsuperscript{210}
\end{quote}

The authors concluded that that the assessment of whether a woman was trafficked/exploited or a sex worker was ultimately a racialised and gendered one, and

\begin{itemize}
\item \textsuperscript{204} Joint Standing Committee on Law Enforcement, above n 186, xi, 28.
\item \textsuperscript{205} Ibid.
\item \textsuperscript{206} Julie Ham, Marie Segrave and Sharon Pickering ‘In the Eyes of the Beholder: Border enforcement, suspect travellers and trafficking victims’ (2013) 2 Anti-Trafficking Review 51.
\item \textsuperscript{207} Ibid 56-57.
\item \textsuperscript{208} Ibid 51, 63.
\item \textsuperscript{209} Ibid 51, 56-57.
\item \textsuperscript{210} Ibid 51, 58.
\end{itemize}
influenced by the stereotype of Asian women being trafficked into Australia for sexual exploitation. This may mean that people who trafficked are not being identified as such where they do not fit ‘simplistic, opportunistic stereotypes’ which has implications for how national policies and commitments to stop trafficking are challenged, reinforced or performed in practice.\footnote{Ibid 51, 53.}

Lack of coordinated response to identifying trafficked and/or exploited people

In addition, challenges are faced by the failure of law enforcement and other official bodies to recognise victims of trafficking and/or exploitation. Although the National Action Plan emphasises the need for a coordinated, whole-of-government approach to tackling the issue of human trafficking and exploitation, it appears that cases may still be falling through the cracks. A case study provided by a group that works with victims of forced labour in Victoria about a money-laundering raid provides an example:

\begin{quote}
On 3 May 2014, a multi-agency government taskforce, Operation Tricord-Polo, raided a market garden property in Carabooda, Western Australia, in response to an investigation into international money laundering and the use of undocumented foreign workers. Given that main focus of the investigation and subsequent raids was on money laundering, the foreign workers held after the raid were not assessed as victims of forced labour, nor modern slavery. Instead, the majority of the 200 workers rescued in the raid, and subsequent raids on neighbouring businesses, were… deported.

There [were] indicators that workers identified in the raid were victims of forced labour. Red flags include[d] excessive security at the property which may have led to restrictions on freedom of movement; situations of debt bondage; passports retained by the company and not in workers possession; harbouring of workers; and potential cases of excessive wage deductions for accommodation, transportation and meals. One report suggested that “handbook detailing the methods used to keep workers subdued through intimidation and degradation” was found during the raid.
\end{quote}

In addition, in the case of Ram v D&D Indian Fine Food & Trivedi\footnote{[2015] FCCA 389 (27 March 2015).} in which the Federal Circuit Court found that the plaintiff has been held in slavery-like conditions, the Department of Immigration and Australian Taxation Office and Fair Work Ombudsman had each been deceived by the employer, due to fabricated records and the confined scope of each of their inquiries on immigration and taxation matters respectively.

What are the costs and consequences if this group cannot access justice?

If exploited and/or trafficked persons are unable to access justice in order to escape their situation, they risk being trapped in that situation indeterminately, having their liberty and other rights seriously infringed.\footnote{See General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985) 40th sess, 96th plen mtg, UN Doc/ A/RES/40/34, preamble.}
Some situations of exploitation and/or trafficking may result in injury,\textsuperscript{214} or death, for example, inflicted intentionally by the person responsible for their exploitation and/or trafficking,\textsuperscript{215} accidentally through their own attempts to escape,\textsuperscript{216} the development or exacerbation of existing conditions due to unsafe working conditions and/or stress,\textsuperscript{217} and the onset of mental illness,\textsuperscript{218} including post-traumatic stress disorder.\textsuperscript{219} It may also lead to deportation, if trafficked and/or exploited people are discovered in the context of an immigration raid or workplace inspection, and the relevant authorities fail to recognise them as victims of exploitation and/or trafficking or can otherwise offer them assistance.\textsuperscript{220}

In the case of forced marriage, a failure to access justice can result in the person having to go through with the marriage. International research by Stout has found that those subjected to forced marriage may suffer psychological and physical injuries, sexual assault and domestic violence, false imprisonment and estrangement from their family.\textsuperscript{221} Simmons and Burn have identified that forced marriage may result in sexual assault, depression, post-traumatic stress disorder, physical and psychological harm, and economic loss.\textsuperscript{222}

A study published by My Blue Sky, showed the impact of a forced marriage on a young girl’s life in Australia, and how both the police and the family law system were successful in helping her escape her situation:

\textit{Ayla is a 17 year old high school student in Australia. Ayla’s teacher notices that Ayla seems depressed and has taken a lot of time off school. Her teacher also observes that Ayla’s family seem to be very strict and controlling. Ayla always has someone with her outside school hours and the teacher has heard from Ayla’s classmates that she isn’t allowed to go out with friends without a family member going with her.}


\textsuperscript{215} See for example, the case of Samuel Katua in Fiona David, above n 23, 30.

\textsuperscript{216} For example, the European Court of Human Rights case \textit{Rantsev v Russian and Cyprus} concerned the culpability of the respective states for the death of Oxana Ransteva, who had been trafficked to Cyprus to work as a prostitute, and in an attempt to escape from the house in which she was being kept by her employer, fell to her death: see \textit{Rantsev v Russia and Cyprus} (European Court of Human Rights, Grand Chamber, Application no. 25965/04, 7 January 2010).

\textsuperscript{217} See Senate Legal and Constitutional Affairs References Committee, above n 45.

\textsuperscript{218} For a summary of studies showing the prevalence of post-traumatic stress disorder and other mental illness in victims of trafficking, see United Nations Association of Australia, above n 193, Attachment 1, 9-11.

\textsuperscript{219} See for example, Abas et al, ‘Risk factors for mental disorders in women survivors of human trafficking: a historical cohort study’ (2013) 13(1) BMC Psychiatry 204.

\textsuperscript{220} For examples of instances in which likely victims of trafficking and/or exploitation were discovered in government raids and deported prior to being assessed as such, see the following case studies: ‘Ning’s case’ in Fiona McLeod SC, above n 20, 74 and ‘Carabooda’ in United Church of Australia, Submission No 33 to Joint Standing Committee on Law Enforcement, Parliament of Australia, \textit{Inquiry into human trafficking}, 19 September 2006, 5-6.


\textsuperscript{222} Frances Simmons and Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centred reform’, above n 3, 1007.
When the teacher asks Ayla if she is okay, Ayla says that her parents took her to visit relatives. Her parents told Ayla that she would only be able to go back to school if she agreed to marry a man her parents had chosen for her, whom she had never met. Ayla married this man so that she could return to school. Ayla’s parents told her that when she turns 18, she will have to sign migration papers for him so that he could get a permanent visa and live with her in Australia.

Ayla tells her teacher that she feels like a slave, and never wanted to marry him. Ayla says that she feels trapped and is scared about what might happen if she tries to leave her family. Ayla asks her teacher for help.

Ayla’s teacher contacts the Australian Federal Police (AFP) for help. Although Ayla does not want her parents or ‘husband’ to be prosecuted, the AFP are able to help her access support, including safe accommodation, financial support, legal advice and counselling. As a result of this assistance, Ayla is able to work towards establishing the future she wants for herself.223

What measures are effective – what works, and why?

It is difficult to say with any degree of precision ‘what’s working’ in address barriers to access to justice for people who have been trafficked and exploited. Despite international principles and commitments requiring evaluation of anti-trafficking responses,224 there is a dearth of reliable assessment and evaluation of anti-trafficking initiatives in Australia. Gallagher and Surtees have observed that, ‘multiple theories and elaborate methodologies abound, and these can present a daunting impediment to those seeking practical guidance in determining “what works”’.225

Any consideration of ‘what works’ also requires a consideration of who decides whether or not the measures are working. The National Action Plan emphasises that it is informed by ‘the overarching consideration of the rights and needs of trafficked people’.226 However, Gallagher and Surtees have identified that, due to the difficulties associated with involving victims of trafficking and exploitation in the evaluation process, evaluations often do not include their perspectives, but rather, the perspectives of those who work with victims, or who otherwise come into contact with victims (eg law enforcement).227 Therefore, there is not a lot of information available as to ‘what’s working’ from the perspective of victims.228

Due to the dearth of evaluation regarding the initiatives discussed below, this section focuses on measures that are likely to be effective in addressing barriers to access to justice

223 My Blue Sky, Ayla’s story, above n 80.
227 Anne Gallagher and Rebecca Surtees, above n 225.
228 The Migrant Workers Taskforce, a cross-departmental government taskforce, announced in February 2017 that it will undertake a research project will be undertaken jointly by the FWO, the Department of Immigration and Border Protection and the Department of Employment on ‘what works’ for migrant workers in terms of getting information out about workplace rights and entitlements and surmounting barriers they face in coming forward to make complaints: Allan Fels, above n 92.
for people who have been trafficked and exploited, based on research by Pleasance et al and others as to what generally works for disadvantaged groups.

**Appropriate and accessible services**

**Access to free, specialised legal assistance**

As has been identified, trafficked and exploited persons are often faced with a variety of complex legal and non-legal issues to navigate, including escaping or leaving their situation, addressing their often uncertain immigration status, deciding whether or not to assist law enforcement with any prosecutions of those responsible, claiming any monies available to them (through victims of crime compensation, unpaid wages and/or damages for unfair dismissal) or instituting family law proceedings.\(^{229}\)

Due to the capability issues and barriers faced by people who have been trafficked and exploited, navigating the Australian legal system to address these issues is almost impossible without a lawyer.\(^{230}\) As Simmons and Burn have identified, there is a ‘growing focus’ on the need for trafficked people to have access to legal advice about their prospects of seeking compensation, recovering unpaid wages, or taking civil action against their traffickers and/or employers.\(^{231}\) In Spain, for example, the law recognises the right of victims of human trafficking to free legal assistance, regardless of their entitlement to litigate.\(^{232}\)

There is also a need to ensure that lawyers responding to persons who have been identified as trafficked and exploited have the specialist skills they need, including both technical legal expertise, and the ‘soft’ skills required for the delivery of their services. The Guidelines for NGOs working with trafficked people (NGO Guidelines), produced by members of the National Roundtable on Human Trafficking and Slavery, set out what might be considered best practice standards for NGOs working with trafficked people in Australia.\(^{233}\) Guideline 6 is to ‘provide appropriate services for the individual’, including services that are sensitive to their age, religion, culture, gender, and any disability.\(^{234}\) Specialised legal assistance should be capable of being provided in a way that conforms to the Guidelines, which – in addition to providing appropriate services – requires the service provider to:

- understand and protect the rights of trafficked people;
- always act to protect people’s safety;

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231 Frances Simmons and Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centered reform’, above n 3, 728.


234 Ibid 10.
obtain informed consent;
provide appropriate referrals—tell people who can help;
protect privacy and confidentiality;
provide professional and ethical services;
know how to respond to subpoenas and other requests for information;
know how to support witnesses in court proceedings; and
recognise the particular needs of children.235

Simmons and Burn have identified that laws to address forced marriage will not succeed unless their implementation is accompanied by 'culturally appropriate legal and social services' that meet the needs of people who have or who are likely to experience forced marriage.236

Anti-Slavery Australia is the only specialist legal centre supporting people who have been trafficked and exploited in Australia by providing pro bono, independent legal advice and representation. Anti-Slavery Australia's work includes assistance with migration matters, family law, employment law, and making claims for victims compensation.237

WEstjustice have a number of initiatives providing free, specialised legal assistance for persons who may have experienced labour exploitation. While it has not been formally evaluated, WEstjustice's Employment Law Service has provided employment law advice to over 200 refugees and newly arrived migrants. As at September 2016, the ELS had recovered over $120,000 in unpaid entitlements, and $125,000 in compensation for unlawful termination. The project has also been commended by the Productivity Commission,238 which has recognised that community organisations have strong potential to provide innovative solutions to social problems.239

Technology

Research by Pleasance et al has shown that technology-based modes of assistance can work well for some higher capability clients, particularly at filtering out inquiries and clients that can be assisted through those mechanisms.240 However Pleasance et al have also

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235 See generally, ibid.
237 Attorney-General’s Department, ‘Anti-Human Trafficking Community Resource’ (2010) Australian Government 2 <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Anti-HumanTraffickingCommunityResource.pdf >. Anti-Slavery Australia has provided legal representation to over 300 people since 2009 and assisting survivors with claiming over one million dollars in statutory victims’ compensation applications since that time: See Anti-Slavery Australia, Submission No 92 to the House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, Parliamentary inquiry into a better family law system to support and protect those affected by family violence (June 2017) 9, which contains the most recent published figures on the amount of clients that Anti-Slavery Australia has been able to assist. However, for the purposes of this paper, updated figures were provided directly by Anti-Slavery Australia, as at 26 June 2017.
238 WEstjustice, above n 44, 4.
240 Pascoe Pleasence et al., above n 68, 146.
noted that technologically-based resources may, in general, have less utility for CALD community members. As practitioner in urban Sydney who predominately serves a CALD community has observed:

*We talk about ‘let’s improve our website and let’s get some instructional videos up on the website so people can be better able to represent themselves or advocate for themselves or whatever. That’s all well and good… and a lot of resources like that are available. But they’re not necessarily going to help our clients.*

There does not appear to be any publicly available information regarding the extent to which existing resources are accessed by people who have been trafficked and exploited, and how useful they find them. Given the legal capability issues and barriers identified above, the capacity of people who have been trafficked and exploited to access such information may be limited, and may be exacerbated by the lack of formal support mechanisms that might otherwise be able to help them access these resources.

The website My Blue Sky is Australia’s first and only resource dedicated to forced marriage in Australia, a joint initiative between Anti-Slavery Australia and the Australian Government. As has been noted, most AFP referrals on forced marriage involve Australian girls under the age of 18, so web-based resources on forced marriage may be effective as these girls, generally raised in Australia, are likely to have adequate English language skills, a basic understanding of their rights within the Australian context, and familiarity with how to use technology.

While there has been no formal assessment of the website, Jennifer Burn of Anti-Slavery Australia, a partner in the creation and operation of the My Blue Sky website, has said the website has been able to provide support to Australians who had been taken overseas to marry:

*We have had a number of cases reported to us of Australian citizens who are overseas and subject to a forced marriage… In one recent case, that process of building trust and a relationship… took place electronically… we were able to establish trust, tell the young person the options that were able to her and assist her to come back to Australia.*

241 Ibid.

242 Ibid.

243 The website provides resources about forced marriage, targeted at different groups of people: people between the ages of 7 – 13, 14 – 18, and counsellors and teachers, with resources tailored appropriately for each group. Information on how to get help is also provided on the website, targeted at people who are in a forced marriage or a worried they are going to be forced to marry, and people with a friend in that situation. The website also contains information on how users of the website can ‘cover their tracks’ should their internet usage be monitored by someone else (for example, their ‘husband’ or family members pressuring them into a forced marriage): see My Blue Sky, *My Blue Sky – Forced Marriage in Australia* (2015) <https://www.mybluesky.org.au>.

My Blue Sky website has had over 24 000 page views, and has received several requests for assistance.\footnote{245} In April – May 2016, more than 2,800 My Blue Sky flyers and booklets were distributed to schools, service providers and community organisations.\footnote{246}

The Australian Government, in partnership with the National Roundtable on Human Trafficking and Slavery’s Communication and Awareness Working Group, have developed community information packs on forced marriage, for use by people in, or at risk of, a forced marriage, the general community, the media and organisations and service providers. The materials are available in several other languages (Arabic, Dari, Farsi, Tamil, Urdu, Somali).\footnote{247} While they are available as self-help materials, which has as limitations those discussed above for people with low legal capability, the resources are intended to be integrated into organisations and service providers’ existing materials for delivery to communities at risk of forced marriage. Resources currently under development include lesson plans and scenario based training, as well as radio grabs.

The Commonwealth Attorney-General’s Department provides fact sheets on labour trafficking which have been translated into a number of other languages on their website.\footnote{248} The FWO also provides online information for migrants and visa holders about work rights and entitlements, which is currently available in 30 languages.\footnote{249}

In a study on the role of the migration broker in facilitating workplace exploitation, Renshaw identified the need to ensure that the information available is accessible and useful to migrants both before and after they arrive in Australia. Renshaw also identified that the dissemination of such information should act as a supplement to other support services for migrants at risk of or experiencing exploitation, rather than as a single strategy.\footnote{250} The Joint Committee on Law Enforcement, in their report on human trafficking, slavery, and slavery-like practices, recommended that the Australian Government provide both pre-departure and post-arrival briefings to seasonal workers and sex workers to inform them about their rights in Australia. In addition, that information regarding forced marriage is consistently and routinely provided to newly arrived migrants in Australia through their engagement with government officials and agencies, as well as appropriate community groups and programs.\footnote{251}

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\begin{itemize}
\item \footnote{245} Anti-Slavery Australia, Submission No 9 to the NSW Select Committee on Human Trafficking, above n 203, 1.
\item \footnote{251} Joint Standing Committee on Law Enforcement, above n 186, xii-xiii, xiv, 46, 84.
\end{itemize}
Targeted services

Outreach

Outreach (ie proactive strategies to connect with difficult-to-reach clients) are likely to be very important for people who have been trafficked and exploited, given that – as previously discussed – trafficking and exploitation can be largely hidden or concealed problems, many of the target group will not identify that they have a legal problem, or cannot come forward (eg due to language issues) or will not willingly come forward (eg due to fear or trauma).

The Fair Work Ombudsman has an Overseas Workers Team, which it established in 2012, in recognition of the vulnerability to exploitation of temporary visa holders and the barriers they face.\textsuperscript{252} As at 2016, the Overseas Workers Team had 17 full-time inspectors based in Adelaide, Sydney, Melbourne and Brisbane, but could also draw upon 250 inspectors located at 24 locations across the country.\textsuperscript{253} The FWO Overseas Workers Team works directly with community groups and has tailored resources and communications campaigns, including social media campaigns, targeting specific groups of visa holders to alert them to their workplace rights.

The Overseas Workers Team also conducted a three-year ‘Harvest Trail’ inquiry, starting in 2013, in response to ongoing requests for assistance from employees in the horticulture sector, many of whom are on 417 (working holiday) visas. The Harvest Trail inquiry visited growers in all States and Territories. After the education and awareness-raising part of the inquiry, the FWO followed up with compliance checks, as a result of which it recovered \$232\,785 for 470 employees from 37 employers.\textsuperscript{254}

In their assessment of strengths of NGOs involved in Australia’s anti-trafficking response, Schloenhardt and Hunt-Walshe have identified that outreach work conducted by NGOs in brothels is an important part of efforts to identify trafficking in the sex industry.\textsuperscript{255}

Project Respect engages in brothel outreach, in order to provide information about rights and services available to women, as well as identify signs of trafficking and potential survivors of trafficking.\textsuperscript{256} These visits are undertaken with diverse teams, including with volunteers with bi and multi-lingual skills, and experience in the sex industry, which Project Respect claims has allowed them to connect with women through language and shared experience,\textsuperscript{257} helping to surmount some of the issues that may otherwise be involved with providing information to persons from a CALD background, and persons who may be socially isolated or stigmatised. Scarlet Alliance also operate a brothel outreach program, which is the only outreach program that reaches brothels throughout Australia.\textsuperscript{258}

\begin{itemize}
\item \textsuperscript{252} Senate Education and Employment References Committee, above n 28, 279.
\item \textsuperscript{253} Ibid.
\item \textsuperscript{254} Ibid 281-2.
\item \textsuperscript{255} Andreas Schloenhardt and Rose Hunt-Walshe, above n 119, 81.
\item \textsuperscript{256} Project Respect, \textit{Annual Report 2016}, above n 192, 9.
\item \textsuperscript{257} Ibid.
\item \textsuperscript{258} Andreas Schloenhardt and Rose Hunt-Walshe, above n 119, 79.
\end{itemize}
Alliance’s outreach, advice and referral programs are available in Thai, Chinese and Korean.\textsuperscript{259}

The Salvation Army conduct brothel outreach in Melbourne, and Anti-Slavery Australia also conducts brothel outreach, presumably in Sydney where the organisation is based.\textsuperscript{260}

The St Kilda Legal Service in Melbourne provides specific legal information material for sex workers, including fact sheets and booklets. Its publication, \textit{Legal Issues for Professionals}, which it distributes to sex workers in a number of languages, contains a section on trafficking and exploitation, which explains how to seek help.\textsuperscript{261}

Internationally, de Veda has examined the outreach efforts of the Worker Justice Centre of New York (WJCNY), has worked with victims to escape indentured servitude and has conducted outreach in relation to undocumented persons in situations of labour exploitation. De Veda observes how NGOs such as WJCNY have been able to make headway into human trafficking and exploitation in a way that authorities cannot, for example, because they are able to approach high-risk workplaces unburdened by political considerations and without bearing a badge, ‘the mere sight of which is to many undocumented immigrants synonymous with immigration enforcement’.\textsuperscript{262} The 2015 Assessment of US Government Activities to Combat Trafficking in Persons by the Attorney-General’s office points to the success of NGOs such as WJCNY in identifying and working with labour trafficking victims, recommending an increase in ‘targeted training and outreach efforts with partners who can help identify potential labor trafficking victims’.\textsuperscript{263}

Outreach projects reported in the last National Action Plan, and funded by the Attorney-General’s Department, include:

- Asian Women at Work carry out outreach on work rights, awareness-raising activities, and provide education and social support to migrant women in low-paid and precarious employment across Sydney;
- Australian Council of Trade Unions (ACTU) carried out a campaign entitled ‘Labour trafficking is a crime – Spot It, Report It’;
- Australian Hotels Association are undertaking a labour exploitation awareness-raising project involving the distribution of an information brochure to 5,000 hotels on how to legally employ overseas workers and manage the visa process;
- Australian Red Cross are working on increasing union and community capacity to identify and combat labour trafficking and exploitation among the Indian community in New South Wales and Victoria;

\textsuperscript{259} Attorney-General’s Department, ‘Anti-Human Trafficking Community Resource’, above n 237.
• Construction, Forestry, Mining and Energy Union (CFMEU) are producing multilingual pamphlets in the industries it sees as high priorities for anti-labour exploitation efforts (construction, mining, forestry and parts of manufacturing), the facilitation of workshops for union organisers and the sharing of results with the union movement and civil society organisations, and engagement with media.264

As many of these projects are not yet underway, there is little information available as to the effectiveness of these programs. Concerns have been raised during evidence given to the parliamentary inquiry into establishing a Modern Slavery Act that some of these projects may be in jeopardy due to a change in funding arrangements by the Attorney-General's Department of the NGOs responsible for their implementations.265 The Joint Committee on Law Enforcement, following its inquiry into human trafficking, slavery and slavery-like practices, recommended funding the National Action Plan so that it can be fully implemented.266

Simmons and Burn consider that education and consultation in communities is critical to identifying suspected cases of forced marriage, overcome gendered stereotypes that contribute to its incidence, and provide safe exit strategies for those whom it affects.267 Anti-Slavery Australia have created a multilingual resource kit containing information about forced marriage and forced labour.268 The Joint Committee on Law Enforcement, following its inquiry into human trafficking, slavery and slavery-like practices, recommended that the Australian Government continue to fund organisations and programs that engage in outreach, education and awareness-raising activities on forced marriage issues and that that Australian governments consider the inclusion of education on forced marriage in school curricula.269

Gateways to help

Schloenhardt and Hunt-Walshe have identified that non-governmental organisations (NGOs) are able to access and support people who have been trafficked and exploited in a way that government cannot.270 The authors have observed that NGOs may be best placed to deliver services compared with government, for reasons including:

• the apprehensiveness, fear, or lack of trust that victims of trafficking often have in government agencies;

265 Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, Canberra, 22 June 2017, 6-8, 11-12 (Adrian Breen, Attorney-General’s Department).
266 Joint Standing Committee on Law Enforcement, above n 186, xi, 16.
269 Joint Standing Committee on Law Enforcement, above n 186, xiii, 81.
270 Andreas Schloenhardt and Rose Hunt-Walshe, above n 119, 70.
NGOs have relevant experience and expertise through working with trafficked persons;

• NGOs can provide a nuanced approach to assisting victims of trafficking individually and independently;

• community-based NGOs can provide a degree of cultural sensitivity and language competence that can build trust and rapport with victims of trafficking; and

• the ideological orientation of NGOs often means they are able to provide a human rights-based and ‘victim-centric’ approach while the government tends to focus on criminalisation and victimisation.

• De Veda has identified that have observed that NGOs are often better placed to work with persons who have been trafficked or exploited because government cannot be seen to directly support certain types of people for political or legal reasons (eg: migrant workers without working entitlements on their visas).

Community and community leaders

As has been noted above in the section on how people who have been trafficked and exploited seek help, people in this group are more likely to rely upon informal networks, such as friends or other members of their community whom they trust, than formal assistance mechanisms.

In a study on labour trafficking by David, various participants in the study had emphasised the importance of migrant workers having access to independent members of their own ethnic or linguistic communities who can assist people to exit their exploitative situations and to work out next steps, including linking in with broader service providers. Examples of successful initiatives given by participants in the study were small community-based organisations such as Migranté, who rely on volunteers drawn from within the Filipino community, and unions like the CFMEU and LHMU, who had made a point of ensuring they have union delegates with language and cultural backgrounds which reflect the language and cultural mix of the unions’ membership.

WEstjustice’s Train the Trainer program is a program targeted at training community leaders on laws and processes regarding employment, so that they can provide information to their communities. A case study shows the success of the program in recovering a substantial amount of unpaid wages on behalf of workers who had approached their community leader with concerns:

WEstjustice received a phone call from a community leader who had recently completed the Train the Trainer Program. The leader had been approached by numerous community members who all worked for one employer. They felt concerned that they had been underpaid. The workers spoke no English and were very afraid about complaining—they did not want to lose their jobs.

271 Gonzalo Martinez de Veda, above n 262, 14.
272 Fiona David, above n 23, xi.
The trusted community leader arranged a meeting with WEstjustice at a familiar meeting place. WEstjustice lawyers attended, and advised the community members that it appeared there had been an underpayment. The lawyers gave information and advice about the minimum wage, and also the role of FWO. After building trust with the workers, and explaining the options moving forward, the workers agreed to meet with a FWO inspector and explain their situation.

Another meeting was arranged. At this meeting, around 10 workers were assisted by WEstjustice staff and volunteers to complete complaint forms, as the workers did not speak English. FWO then liaised with the relevant employer and ultimately over $20,000 in unpaid wages was recovered for numerous vulnerable community members.

The workers said they would never have made a complaint without help from their community leader.273

Research by Pleasence et al shows that if persons from CALD backgrounds have a positive experience with a CLC, they are more likely to refer other members of their community to get help.274 For example, Hameed Nida, a refugee from Afghanistan who settled in Victoria has explained:

… my friend from Afghanistan of asylum seeker refugee background here in Melbourne was significantly underpaid by his employer. But he approached Footscray Community Legal Centre… (now WEstjustice) to seek assistance and legal advice. He received appropriate legal assistance and consequently, he received his salary of around A$2000. He was very happy with the outcome and cordially thanked the CLC for its great service. Now he always advises his friends going through similar situations to approach the CLC.275

People who have been trafficked and exploited may also come into contact with service providers in their community who may also be able to provide a gateway to help. Richards and Lyneham identified two reported cases in which the exploited women were able to seek help through doctors who spoke their language.276 This underlines the importance of ensuring that persons who may come into contact with people who have been trafficked and exploited receive appropriate training on how to identify victims and refer them to appropriate services. Simmons and Burn have identified that if government agencies, NGOs, and legal and health care services that come into contact with people in forced marriage but do not have proper training or guidance, they may miss opportunities to identify forced marriage.277 Anti-Slavery Australia have developed an e-training tool on slavery, slavery-like practices and trafficking for frontline workers who may come into contact with people who have been trafficked and/or exploited, including community and social workers, lawyers, health care professionals, government workers and teachers.278 The tool includes a comprehensive module on forced marriage, and information about identification, referral

273 WEstjustice, above n 44, 127.
274 Pascoe Pleasence et al., above n 68, 135.
275 WEstjustice, above n 44, 3.
276 Kelly Richards and Samantha Lyneham, above n 50, 6-7.
pathways, and next steps. To date, over 48,453 lessons have been completed, with 90% of users saying they would recommend the course.

Joined up services

Survivors of trafficking and exploitation, by virtue of being trafficked and exploited, are by definition victims of crime. Studies by Pleasance et al have shown that that the overlap between crime victimisation, legal problems and social exclusion indicates that strategies aimed at preventing, resolving or mitigating any of these three issues are likely to have a broad impact on the other two issues as well. As WEstjustice have observed, migrants and refugees are susceptible to exploitation due to the difficulty they have in obtaining jobs with reputable employers due a lack of recognition of their qualifications and Australian experience, social exclusion, and fear about their immigration status. Therefore, services with assist with ameliorating those conditions are also likely to assist with preventing people becoming victims of exploitation or re-victimised. Hence, Pleasance et al have argued that an integrated service approach in response to these issues would be more beneficial than focusing on any of these issues in isolation.

The National Roundtable on Human Trafficking and Slavery is a useful joined-up forum enabling multi-disciplinary networks to be developed and holistic approaches to be adopted. This has helped to inform the National Action Plan, which is intended to be a “sophisticated, comprehensive and joined-up response” to address all forms of human trafficking and slavery. State and Territory governments do not have formal responsibilities under the National Action Plan, though they do have responsibilities that intersect with the national strategy on human trafficking and slavery. Given State and Territory level services are often the first port of call for survivors, it may be worthwhile for the Australian Government to work with State and Territory governments with a view to incorporating their responsibilities into the National Action Plan. In addition, the Supply Chains Working Group, and the Labour Exploitation Working Group, bring together experts from across government, civil society and business to provide advice and recommendations to the Attorney-General’s

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279 Ibid.
280 Anti-Slavery Australia, Submission No 9 to the NSW Select Committee on Human Trafficking, above n 203, 1.
281 See Pascoe Pleasence et al., above n 68, 12.
282 WEstjustice, above n 44, 53.
283 See Pascoe Pleasence et al., above n 68, 86-87.
285 Ibid 2.
286 The Joint Standing Committee on Law Enforcement, following its inquiry into human trafficking, slavery and slavery-like practices, relevantly recommended that frontline Commonwealth agencies strengthen existing relationships with State and Territory agencies. In addition, it recommended that the Commonwealth Government work with its State and Territory counterparts to ensure State and Territory police receive adequate training on human trafficking, slavery and slavery-like offences, as well as referral pathways for victims to receive support: Joint Standing Committee on Law Enforcement, above n 186, xi, 13-14, 28.
Department on addressing exploitation in supply chains and labour exploitation, respectively.  

Part of the National Action Plan includes the Australian Government’s Support Program, managed by the Red Cross, which aims to assist victims of human trafficking with rebuilding their lives and prevent their further victimisation. This case study provides an example of how the Support Program has been beneficial in helping ‘P’ (a pseudonym) transition out of a situation of labour exploitation:

P was referred to the Support Program when the AFP identified him as a suspected victim of labour exploitation. While on the Support Program, P worked to overcome health problems, build on his existing work skills, reunite with his family, and establish a new life in Australia. During his time on the Support Program, P was able to help the AFP in their investigation against his alleged offender. The AFP supported P being invited to apply for a Witness Protection (Trafficking) (Permanent) visa (WPTV) 33 by DIBP. From the outset, P was determined to work and support himself. Australian Red Cross helped P in applying for, and gaining access to, formal recognition of his vocational skills, and to access further vocational training. Once he was eligible to work, P gained part-time work, and eventually secured a full-time job in his chosen field. Like other families, living apart from his wife and children was highly stressful. As a result of being granted a WPTV, P’s wife and children were able to join him in Australia permanently. An Australian Red Cross caseworker worked closely with P and his family to help them connect to community groups and services. P’s caseworker also worked with P and his family to secure long-term housing and enrol in English classes, as well as to apply for Centrelink and Medicare.

As P’s story above shows, issues related to reducing his social exclusion and other potential legal issues, which contributed to his exploitation, were addressed. For example, P no longer had to worry about his immigration status as he was granted a permanent visa, he reduced his social exclusion as he was able to bring his family to Australia, connect with community groups and enrol in English classes, and improve his chance of finding a job with a reputable employer by gaining recognition of his skills, undertaking further training, and then obtaining part-time and then full-time work. Not only did the Program assist P with reducing identified exploitation risk factors, but it has assisted him with building capability so that if he faces legal problems in future, he is likely to be better able to resolve them.

Despite the apparent success of the Support Program, beyond the initial reflection and recovery period of 45 or 90 days, support is only available if an identified victim of exploitation or trafficking is prepared to assist law enforcement with the investigation and prosecution of their traffickers and/or other persons involved with their exploitation. This means many survivors of exploitation and trafficking are left without support, as they may be unwilling to assist law enforcement for many reasons, including, for example, fear of repercussions and/or trauma.


289 Anna Dorevich and Michelle Foster, above n 191, 1.
However, as part of the anti-trafficking framework, the Attorney-General’s Department funds projects intended to address some of these gaps. Project Respect is a support and referral service for women trafficked for sexual exploitation and women in the sex industry, and provides individual support and case work services to people (mostly women) who are otherwise ineligible to access the Support Program. Last year, Project Respect assisted 16 women who were trafficked into the sex industry in Australia, with support ranging from ‘long-term, intensive case management to assisting women in accessing relevant services, provision of information about their rights, peer support and community activities as well as emergency accommodation’. Only one of those women was otherwise eligible for the Support Program. The following case study provides an example of how Project Respect helped a woman who escaped from a trafficking situation rebuild her life:

Sylvie had been trafficked to Australia and managed to escape this situation, however found herself in a new country completely left by herself not knowing where in Melbourne she was. When we first met her she presented to be fearful and traumatised.

Sylvie didn’t speak any English, she had experienced multiple sexual assaults and other traumatising events happened to her. She didn’t have work or study rights nor access to health care. Sylvie also needed urgent assistance related to immigration matters and health. With assistance from the housing service, emergency accommodation was secured for Sylvie and we were able to secure a pro-bono lawyer for her to assist with immigration related matters.

Sylvie now has access to healthcare thanks to the collaboration of the Royal Nursing District Services. We were also able to link Sylvie in with specialist counselling services. Whilst Sylvie’s immigration status still means that she doesn’t have access to Medicare or other important forms of support such as Centrelink, she now finds herself in a safe situation and has further access to community support, including long-term housing. She is also receiving pro-bono English tutoring until her study rights are granted to enrol into an English course.

Schloenhardt and Hunt-Walshe have identified that Project Respect’s close relationship with sex workers provides a deeper understanding of the complexities of sex work to provide ‘friendly, non-judgmental’ counselling.

Timely services

In a study conducted by David on labour trafficking, the author identified several instances in which individuals ‘only sought help once the situation had deteriorated to such an extent that they literally could not remain in that situation either because of serious injury or fear about their personal safety’. David identified the need to undertake further research into the issue of how to make access to Australian services ‘a meaningful reality’ for temporary

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290 Attorney-General’s Department, ‘National Action Plan to Combat Human Trafficking and Slavery 2015-19’ above n 1, 16.
292 Ibid.
294 Ibid 12.
295 Andreas Schloenhardt and Rose Hunt-Walshe, above n 119, 71.
296 Fiona David, above n 23, 46.
migrant workers so that relevant support and assistance can be provided at a much earlier stage.297

As has been discussed, given many people who have been exploited and/or trafficked are likely to be migrants, the provision of information to visa holders at the point of arrival in Australia is an early opportunity to provide individuals with information about their rights in Australia. In the context of any strategy to raise awareness about forced marriage, Simmons and Burn have identified that the need to ensure that the Australian government collaborates with migration service providers and industry bodies to ensure culturally appropriate information about legal rights and the family violence exception are provided to visa applicants on arrival in Australia.298

In a study on help-seeking strategies of victim/survivors of human trafficking involving partner migration by Richards and Lyneham, the authors interviewed a victim/survivor who, after failed attempts to seek help with the police, sought help from a local migrant community organisation that she was aware of due to the information that the then-Department of Immigration and Citizenship had provided in the course of her immigrating to Australia.299

In the same study by Richards and Lyneham, the authors identified several instances (based on a literature review) in which the women were able to get help due to ‘a chance occurrence or serendipitous meeting with a helpful third party [who] played a critical role in victim/survivors exiting their exploitative marriages’.300 This suggests that a trafficked and/or exploited person may only have a brief opportunity to seek assistance, and it is necessary to respond quickly in order to seize the opportunity to provide assistance before it slips away.

Addressing laws, policies and practices which exacerbate access to justice barriers

As discussed, in Australia, there has been criticism that the government’s response to trafficking is too law enforcement focused, rather than being focused on the rights of the trafficked person, including regarding eligibility requirements for access to the visa program and Support Program (discussed further in the section on policies, practices and laws which exacerbate barriers). Prior to reforms, these eligibility requirements were narrower than they are currently.

Simmons and Burn have identified that reforms to the visa framework were the outcome of close consultation between the government and NGOs. The first National Roundtable on People Trafficking (now the National Roundtable on Human Trafficking and Slavery), convened in 2008, ‘provided a forum for NGOs to identify areas for priority action’, which were then visa framework amendments and the provision of culturally appropriate services

297 Ibid xiii.
299 Kelly Richards and Samantha Lyneham, above n 50, 5.
300 Ibid 6.
to trafficked people.  

Like Australia, some other States require participation in a criminal investigation to access ongoing support and permanent residency, rather than focusing on the needs of the survivor as part of a broader human rights-based approach. In 2017, the Parliamentary Joint Committee on Law Enforcement recommended that access to the Support Program be de-linked from cooperation with law enforcement and that the Australian Government take a ‘human rights-based approach’ to the implementation of the National Action Plan.

There are several best-practice examples globally of a more integrated human rights-based approach. At the international level, Article 14(1) of the Council of Europe Convention on Action against Trafficking in Human Beings allows states parties to grant residence permits to survivors of human trafficking in exchange for their cooperation with a criminal investigation, and/or with regards to the personal situation of the survivor. The personal circumstances of the survivor can include safety, state of health and family situation. The Group of Experts on Action against Trafficking in Human Beings (GRETA) has highlighted the best-practice examples of Italy, Spain and Sweden, whereby victims may be awarded residency on the basis of either cooperation with a criminal investigation, or on account of compelling or compassionate personal circumstances.

In 2010, a tool was developed to address concerns that government responses to human trafficking were detrimentally impacting the human rights of victims, funded by the European Commission and Dutch Ministry of Foreign Affairs. It is aimed at civil society groups, to allow them to assess the impacts of anti-trafficking laws and government policies in their respective countries, in order to focus their advocacy efforts and voice their concerns more effectively. The tool was trialled by a number of NGOs across the world as part of its development process.

As discussed in the section on gaps in knowledge below, there is currently little evidence to indicate whether or not Government-run and NGO-run programs and initiatives are achieving their stated goals and improving outcomes for people who have been trafficked and exploited. One option may be for the Australian Government to directly fund an NGO/group of NGOs to undertake an assessment of the government’s response to human trafficking and exploitation using the tool for assessing the human rights impact of anti-trafficking policies developed for the European Commission by a consortium of European

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301 Frances Simmons and Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centered reform’, above n 3, 716.
304 Joint Standing Committee on Law Enforcement, above n 186, xi, 16.
308 Ibid.
NGOs discussed above. In 2010, the developers of the tool estimated that a full assessment, assuming those staffed on the assessment have the relevant expertise and experience, would take 4-6 months, and cost €8 000 – €12 000 (AUD$12 000 – $18 000).

What are the knowledge gaps?

Challenges determining the prevalence of human trafficking and exploitation in Australia due to difficulties associated with data collection

While these figures on AFP referrals and prosecutions regarding trafficking and exploitation are relied upon by government inquiries, and taken into account in the National Action Plan, and the annual Australian Government Response to Trafficking in Persons report, researchers have argued that these numbers should be treated with caution when estimating prevalence of trafficking and exploitation in Australia. As Segrave, Pickering and Milivojevic had identified, it is ‘internationally recognised that estimates of human trafficking are some of the least reliable figures in both crime and migration debates’. The authors have stressed that, as there is no consistent, transparent process to identify victims, referrals to the AFP or local police are not ‘prevalence’ indicators.

Nevertheless, reliable information about the group is needed so that appropriate initiatives and interventions can be designed. The Joint Committee on Law Enforcement, following its inquiry into human trafficking, slavery and slavery-like practices, recommended that the Australian Government commission balanced and constructive research into the prevalence of sex trafficking into and within Australia. Bricknell and Renshaw have identified that a key challenge for improving knowledge about human trafficking and exploitation in order to design and deliver effective policies and interventions is obtaining relevant and accurate data that describes the nature and scale of human trafficking and slavery. They have identified that the nature of human trafficking and slavery presents difficulties with data collection, including due to:

- the reluctance of victims to report their exploitation due to fearfulness of reprisals against themselves or their families;

309 Ibid; see also a similar recommendation that the Australian Government use the tool to assess its anti-trafficking response, proposed by Scarlet Alliance, Submission to the Attorney-General’s Department, above n 21, 4.
310 Aim for human rights, La Strada Czech Republic, La Strada International and SCOT-PEP, above n 14, 27.
311 See for example, Joint Standing Committee on Foreign Affairs, Defence and Trade, Trading Lives: Modern Day Human Trafficking, above n 11, 6.
314 Segrave, Pickering and Milivojevic, above n 10, 4.
315 Joint Standing Committee on Law Enforcement, above n 186, xiii, 60.
317 See also Hannah Andrevski, Jacqueline Joudo Larsen & Samantha Lyneham, above n 58.
limited awareness of how or where to report the abuse;
- distrust of law enforcement and criminal justice authorities, and/or
- uncertainty as to whether a response will ensure, and if that response will be favourable to them.318

Bricknell and Renshaw have also identified challenges regarding the nature of the available data, including:

- a lack of comparable and consistent data;
- incomplete data;
- an absence of ongoing or uninterrupted data collection;
- fragmented data collection systems;
- a lack of common definitions within and between existing data sources;
- inconsistent identification of victims across different data sources (eg NGOs that work with victims vs law enforcement data);
- a narrow spectrum of human trafficking and associated exploitation scenarios captured in the data;
- double counting within and between existing data collection systems; and
- deficiencies in information sharing. 319

The 2009 Anti-People Trafficking Inter-Departmental Committee’s report identified that data regarding human trafficking is often collected for specific programs and/or institutions and focuses on the needs of the institution. For example, some NGOs may record suspected victims on first contact, regardless of whether or not they meet the criteria for receiving assistance under the Support Program, while other NGOs only record those that meet the criteria. Schloenhardt and Hunt-Walshe have also raised questions as to the methodology organisations use to generate statistics about trafficking, ‘noting that NGOs may have a vested interest in overstating the level of trafficking in persons in order to engender support (and funding) for their cause and their organisation’. For example, the authors questioned the statistic promulgated by Project Respect that at any one time, there are around 1000 women under debt contracts in Australia, a figure dismissed by government agencies as ‘not substantiated’ since 2003.320

A key action item of the National Action Plan is the implementation of measures to improve and standardise the collection of statistical information on human trafficking and slavery, with the key outcome being the development of an enhanced monitoring program on human trafficking, slavery and slavery-like practices.321 The Australian Institute of Criminology is undertaking an examination of the feasibility and logistics of monitoring human trafficking and slavery as it affects Australia and the options available to perform this monitoring.
activity. If the relevant stakeholders opt for the enhanced monitoring program, will involve
the development and pilot testing of the data collection tool(s) and associated processes.322

Lack of independent evaluation of policies, programs and initiatives

Gallagher and Surtees have observed that there is an intractable problem with accurately
documenting trafficking and slavery prevalence and assessing the quality of government
responses.323 Gallagher and Surtees considers that one of the main impediments to
effective evaluations of criminal justice responses to trafficking lies in the failure of states,
the international community and the counter-trafficking sector to specify and communicate a
common vision of what constitutes an effective response.324

In the context of forced marriage, Simmons and Burn have identified the need for further
research as to whether criminalisation serves as an effective deterrent or in fact dissuades
potential or actual victims of forced marriage from seeking help.325

Due to the typically resource-constrained nature of NGOs, the lack of evaluation of NGO-
operated initiatives may be due to a reluctance to ‘divert crucial resources away from the
[initiative] itself’.326 Research conducted by Schloenhardt and Hunt-Walshe evaluated the
role of NGOs as envisaged by international law and in best practice guidelines, and
analysed if and how these obligations are carried out in practice by NGOs in Australia
working in the anti-trafficking space.327 However, the assessments made by the authors
were of a general nature, focused on identifying strengths and weakness, and did not
evaluate the success of any particular program or initiative according to any evidence-based
methodology.328

Writing about the Be Careful What You Pay For anti-trafficking awareness campaigns in
Australia, Schloenhardt, Astill-Torchia and Jolly observed that assessment of the campaign
is complicated by the fact that campaign outcomes were not immediately tied to, for
example, the apprehension of victims, any rates of investigations, prosecutions, convictions,
or any other quantifiable aspect of trafficking in persons.329

Possible priorities for discussion

Based on consultations with Anti-Slavery Australia, the following priorities for discussion are
proposed:

322 Ibid.
323 Anne Gallagher and Rebecca Surtees, above n 225, 10, 11.
324 Ibid 28-29.
326 Andreas Schloenhardt, Paris Astill-Torchia and Jarrod M. Jolly, ‘Be careful what you pay for: awareness
327 The analysis focused on eight NGOs: the Red Cross, Salvation Army, Anti-Slavery Australia, Childwise, the
Josephite Anti-Trafficking Project, Australian Catholic Religious Against Trafficking in Humans, Scarlet
Alliance and Project Respect: see Andreas Schloenhardt and Rose Hunt-Walshe, above n 119, 57.
328 See ibid.
329 Andreas Schloenhardt, Paris Astill-Torchia and Jarrod M Jolly, above n 326.
1. Introduce a national statutory compensation scheme for survivors of human trafficking and slavery in Australia, to address inconsistencies between State and Territory compensation schemes and ensure that survivors have access to a financial remedy. This compensation scheme should recognise the serious psychological harm suffered by survivors of human trafficking and the worst forms of exploitation and provide assistance to applicants who may be re-victimised or traumatised during this process. Payments under a national compensation scheme should not be dependent upon survivors’ cooperation with criminal investigations. Visa protection should be extended to allow survivors to remain in Australia while applications are processed.

2. Incorporate a human rights-based approach to the Support Program and the Human Trafficking Visa Framework by removing, or expanding the requirement that a survivor assists in a criminal investigation to access support following the initial reflection and recovery period. The criteria for the provision of ongoing support should take into consideration the individual needs and circumstances of each survivor.

3. Improve the rates of identification of human trafficking and slavery through the delivery of effective training on the indicia of these forms of exploitation and referral pathways to frontline officers of government agencies. This training should also be available to community lawyers, non-government organisations and relevant third party stakeholders.

4. Engage with community stakeholders to improve education and awareness raising campaigns to prevent forced marriage.

5. Engage with vulnerable communities and employers in high-risk industries to raise awareness about labour exploitation, especially outside urban centres, and improve oversight of employers in high-risk industries.

6. Engage in further empirical research on the prevalence of human trafficking and slavery, and undertake independent evaluations of the efficacy of government and non-government programs which address these forms of exploitation. The Commonwealth government should also continue funding the Australian Institute of Criminology in the development of a monitoring program on human trafficking in order to better understand the incidence of human trafficking, slavery and slavery-like practices in Australia.

7. Improve coordination between Australian Government, States and Territories and civil society to strengthen response to trafficking and exploitation.

8. Ensure continuous funding for the National Action Plan, including stable funding for programs operated by NGOs that form part of Australia’s response to human trafficking.