



CEDAW Shadow Report: Australian Government
Responses to Trafficking for Sexual Exploitation and
Access to Justice and Remedies

Project Respect submission May 2018

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Who we are:

Project Respect is a support and referral service for women in the sex industry and women trafficked to Australia for sexual exploitation. We undertake outreach to licensed brothels across the Greater Melbourne Region to provide information to women should they require it, provide case-coordination for women in the sex industry, and intensive case-management for women trafficked for sexual exploitation. We deliver capacity-building workshops to a broad range of social, community and welfare services, which includes sections on human trafficking indicators, support and referral pathways. We run a peer-led Women's Advisory Group consisting of women with experience of the sex industry who provide information, guidance and input on strategic direction for the organisation. We also create a safe space for women, including a monthly peer-led community lunch.

A note on language:

Project Respect uses the term 'survivor' to refer to people who have been trafficked, rather than 'victim' to be consistent with a human-rights, survivor centred model. However, when discussing policy and legislation, the term 'victim' has been used to reflect the legal language.

PART 1: TRAFFICKING IN AUSTRALIA

Scope of trafficking in Australia:

The Walk Free Foundation currently estimates there are approximately 4,300 people in slavery within Australia¹. However, it is widely acknowledged that the hidden nature of slavery means there is limited data on the prevalence of slavery in Australia.² Adding to this invisibility is the method of data collection, which only captures cases where consent has been provided for the survivor to be referred to the Australian Federal Police (AFP) further underrepresenting the number of people who have experience of slavery in Australia. Compounding this, is a lack of awareness amongst family violence services of human trafficking, which sees survivors misidentified as survivors of family violence.

Overwhelmingly, both nationally, as well as globally, it is recognised that women and children are more likely to be survivors of trafficking. The AFP have referred 254 people to the Australian Government funded Support for Trafficked People Program (STPP) since 2009. 224 of the people referred were women, and 117 of these women were exploited in the Australian sex industry.³ Project Respect provides support to women who have been trafficked for sexual exploitation in to the licensed and unlicensed sex industry in Australia, primarily within Victoria, who generally are unable to access the STPP. Between 2015-2018, Project Respect has provided individual support to approximately 20 women who have been trafficked and have had approximately 5 additional women referred to the organisation who chose not to engage with us, nor with the AFP and subsequently are not captured in official data. Additionally, we have provided 13 secondary consults to other organisation about human trafficking. In 2016/2017 Project Respect supported fifteen women who had been trafficked for sexual exploitation. Most women were aged 30 years or older. The country of origin for the women were:

- 4 x Malaysia

¹ The Walk Free Foundation *submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Establishing a Modern Slavery Act in Australia*, p. 10

² JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE (JSCFADT), *Hidden in Plain Sight: An Inquiry into Establishing Modern Slavery Act in Australia*, in, Canberra, 2017 p. 56

³ AGAGD, p. 12

- 3 x Republic of Korea
- 3 x Thailand
- 1 x Democratic People's Republic of Korea
- 1 x Italy
- 1 x Taiwan
- 1 x Vietnam

In addition to difficulties associated with data collection, there are growing concerns about appropriate screening of people who may be victims of human trafficking. The Government has committed additional resources to other forms of slavery, including establishing a Migrant Taskforce and a Labour Exploitation Working Group, however there are concerns victims are being screened as a migration and/or visa issue rather than a human rights violation. This was recently highlighted when the Australian Border Force (ABF) conducted raids in parts of Australia and found 225 people working in breach of their visa conditions in 50 raids on homes and businesses across Australia. This operation targeted visa fraud, illegal work and exploitation of foreign nationals. Many of the individuals who were found in this operation were deported⁴, and Project Respect, as well as other anti-trafficking organisations⁵ have serious concerns over whether they were appropriately screened before being deported. This process supports Project Respect's recent experiences where we have attempted to refer women to the AFP because they have been trafficked, and being informed it was considered a "migration issue at best". As part of the above operation, the ABF stopped over 300 individuals from entering into Australia⁶. From Project Respect's outreach to brothels, we know more than 80% of women in the sex industry in Victoria are from multicultural backgrounds⁷, and are on various short-term visas. While denying people entry to Australia may stop the act from happening within Australia and act as a deterrent for traffickers, it still leaves vulnerable people at risk of being trafficked, further exploited or re-trafficked in their origin or transit country.

Further to this, the 2017 Report, *Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support* undertook an analysis of 300 client files from InTouch, a multicultural family violence service provider in Victoria. Of the 300 files, 11 had indicators of human trafficking⁸, 20 involved evidence of labour and servitude⁹, with four of these 20 cases specifically related to sexual servitude¹⁰. Of these 31 cases, only 11 were referred to the AFP.¹¹ Services are unskilled to identify human trafficking, and as such, do not recognise this indicators. While this underrepresents the scope of slavery in Australia, it also means that survivors are not being referred or linked in to the appropriate services to support their legal, as well as psycho-social needs.

Since 2013 there have been 496 cases of human trafficking referred to the AFP, of which 123 of the cases referred were for sexual exploitation.¹² Since 2004, there has been only 20 successful

⁴ Pauka, C 2017, <https://www.governmentnews.com.au/2017/08/customs-targets-employers-illegal-workers/>

⁵ 2017, <https://www.sbs.com.au/news/hundreds-of-illegal-foreign-workers-swept-up-in-raids-border-force-says>

⁶ Pauka,C.

⁷ Project Respect p. 9

⁸ Segrave, Marie, *Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support*, Melbourne, School of Social Sciences, Monash University, 2017. p. 61

⁹ p. 63

¹⁰ Seagrave, M. p. 64

¹¹ Seagrave, M. p. 71

¹² JSCFADT p. 59

prosecutions¹³ from a total of 780 cases referred to the AFP, and only 4 of the successful prosecutions have been for sexual servitude.¹⁴

Part 2: Access to justice remedies for women trafficked

Obligations

Australia is a party to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Protocol), which reflects the '3P' paradigm of prosecution, protection, and prevention, used globally as a fundamental framework to combat human trafficking. Australia upholds support and protection measures as per Article 6 of the Protocol through initiatives such as the Support for Trafficked People Program (STPP) and the Human Trafficking Visa Framework (HTVF). However, there are considerable barriers to accessing this protection due to support being contingent on participating in the criminal justice system, which results in some victims not willing to assist, are unable to assist or, the survivor does assist, but there is insufficient evidence to prosecute, and the survivor loses access to the protection offered by the Australian government. This creates a framework where the Australian government prioritises the prosecution of traffickers over the safety of victims through a conditional criminal justice approach.

Barriers

Many survivors fear the possible repercussions of assisting and cooperating with the AFP in their investigations and potential court testimony¹⁵. Survivors may not engage due to fear of threats and reprisal from their traffickers; to their own personal safety, and that of their families and friends. Many survivors have been trafficked from countries where police corruption is rife. Driven by their experiences of corruption, they may fear Australian authorities, believing that they too are corrupt or untrustworthy¹⁶. Their traffickers may have deceived, threatened or coerced the trafficked individual with the threat of deportation, compounding a fear of authorities. Based on these preconceptions, it is therefore difficult for many survivors to trust the Australian authorities. The survivor may be ashamed or embarrassed about what happened to them¹⁷ or their involvement in the sex industry, and they may face stigma and discrimination or be ostracised from their local community if they choose to engage with the AFP. Even when a survivor chooses not to assist with an investigation, they are still a victim to their trafficker, as the trafficker continues to exercise an element of control and exploitation over them.

It is well documented that the link between the STPP and the criminal justice system often acts as a considerable barrier to survivors who have experienced human trafficking to be able to access the relevant support to address their experience of being trafficked. Survivors of human trafficking can only access the counselling and support available on the STPP, as well have increased visa security through the HTVF if they assist the AFP with their investigation. This creates a situation where victims

¹³ AUSTRALIAN GOVERNMENT ATTORNEY-GENERAL'S DEPARTMENT CRIMINAL JUSTICE POLICY AND PROGRAMMES DIVISION (AGAGD), *Australian Government submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Establishing a Modern Slavery Act in Australia*, in Canberra, 2017. p. 7

¹⁴ JSCFADT, p. 182

¹⁵ The University of Queensland TC Beirne School of Law, *Protection and Assistance for Victims* <https://law.uq.edu.au/research/research-activities/human-trafficking/protection>, [first accessed 15 September 2017]

¹⁶ Attorney-General's Department, *Guidelines for NGOs Working with Trafficked People*, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/GuidelinesForNGOs-Working-with-trafficked-people.PDF>, first accessed 15th September 2017, p. 22

¹⁷ Attorney-General's Department, p. 22

are essentially forced to cooperate with criminal justice proceedings to access basic support. Investigations are often “complex and lengthy, and (individuals) are left in a continuing state of uncertainty and stress”¹⁸. This places already vulnerable women in a situation that is likely re-traumatising, dangerous to their health, wellbeing and security. Support for a survivor of trafficking should be provided regardless of their willingness to assist the authorities.

Further to this, victims can be exited from the STPP and lose access to the HTVF if an investigation is closed because, although willing and able to support the investigation, the victim contributions are deemed inadequate to prosecute. Without the necessary support frameworks in place, not only are survivor’s health and wellbeing impacted, but they are placed at risk of being re-trafficked. Two women Project Respect supported assisted the AFP with their investigations for over six months, and provided evidence on other people’s cases as they were involved on the same trafficking case. They were both exited from the program after being advised they were no longer persons of interest and that their investigations would not proceed. One of the women advises that she was made to feel like a criminal for helping the AFP. Another woman was exited from the STPP during the Assessment Stream and said that she felt betrayed and let down by the system. She assisted the AFP by doing drive-bys to locate the houses and brothels she was kept in, and provided details about her traffickers as requested. She did not receive counselling support whilst on the STPP, nor did she receive any financial assistance. This forced her to re-enter the sex industry to financially support herself.

Of the fifteen women trafficked Project Respect supported in the 2016/2017 year:

- 8 had previously been on the STPP,
- 4 had been exited from the program due to the inability to raise a prosecution
- 4 had successful outcomes
- 1 was currently on the STPP
- 4 were ineligible to access the STPP for a range of reasons
- 1 chose not to engage with the AFP¹⁹

Visa vulnerabilities

The impact of losing access to psycho-social support is extensive and significant. Additionally, the visa vulnerabilities created for women due to the conditional nature of accessing the HTVF, as well as the impact of the uncertainty regarding their immigration status can also lead to overwhelmingly poor health outcomes. Of the fifteen women Project Respect supported in 2016/2017:

- 1 had access to the HTVF
- 2 were Australian citizens
- 2 were permanent residents
- 3 were on student visas
- 6 were seeking asylum²⁰

Four of the six women were deemed trafficked by the AFP, however, as the AFP were unable to raise a prosecution the women were exited from the STPP and lost access to the HTVF. The women had no other options but to seek asylum and applied for protection visas. Despite their experience of being trafficked to Australia, all four women were denied protection visas. They all appealed this decision

¹⁸ Anti-Slavery Australia, *Visa for Trafficked People: The Response*, 2016. p. 3
<http://www.antislavery.org.au/images/pdf/Publications/2016%20-%20Visas%20for%20Trafficked%20People%20The%20Australian%20Response.pdf> [accessed 19 September 2017]

¹⁹ Project Respect *Annual Report 2017*, in Melbourne, 2017, p. 14

²⁰ Project Respect, p. 14

through the Administrative Appeals Tribunal, and all appeals were denied and they have now been repatriated back to their country of origin.

During this lengthy process, the women experienced significant mental health issues, including post-traumatic stress disorder, suicidal ideation, self-harming, severe depression and anxiety and one woman was admitted to a psychiatric hospital for several weeks for treatment. Further, the country of origin for three women was not deemed to be 'at risk' so there were seemingly no immediate safety concerns in having the women deported. However, prostitution is illegal in their country of origin, and they risk being prosecuted for their involvement in the sex industry in Australia, even though they were trafficked. The women are also at a high risk that they could be re-trafficked. Project Respect believes that if women had the HTVF available to them as well as ongoing access to support services including counselling, then the significant mental health decline experienced is unlikely to have occurred.

Initial assessment stream

Compounding the issue of the contingent nature of accessing support is the length of support period made available to survivors. The initial phase on the STPP is the Assessment and Intensive Support Stream which is provided irrespective of whether a victim is willing or able to assist with the investigation or prosecution²¹. This 45-day period is designed to provide time for reflection and recovery through the provision of support services such as food, accommodation, counselling and preliminary legal assistance²². In Project Respect's experience, the initial 45-day reflection period is inadequate for women who have been trafficked, who are likely to be experiencing trauma as well as other mental and physical health issues to reflect and make critical decisions²³. The inadequacies of this reflection period has been raised by numerous bodies, including in the 2012 report by United Nations Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi²⁴ as well as a number of non-government organisations submitting to the Joint Standing Committee On Foreign Affairs, Defence And Trade (JSCFADT) *Inquiry into Establishing a Modern Slavery Act*²⁵. In addition to the inadequacies of the period of time provided, Project Respect has observed women have been requested by the AFP to participate in investigations before the initial 45-day reflection period has ended. This has involved being interviewed by the AFP, providing evidence against their traffickers and conducting 'drive-by's to identify key locations in their trafficking cases during this period. Further, Project Respect has worked with women who have been exited from the STPP during the initial assessment stream, and their only option for support and recovery was to access Project Respect's support service.

This shows a distinct lack of understanding regarding trauma resulting from trafficking for sexual exploitation, and a subsequent disconnect between the need to safely and effectively engage with women experiencing trauma and the expectations for survivors to cooperate with authorities. Project Respect believes that if survivors were better supported and had longer reflection periods of time to address trauma they would be more able and willing to meaningfully participate in criminal proceedings. The current focus on prosecution is deemed more important than the experience and

²¹ AGAGD p. 12.

²² JSCFADT p. 148

²³ JSCFADT p. 156

²⁴ United Nations Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Australia, 18 May 2012, p.14, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1.En.PDF> (accessed 7 November 2017).

²⁵ JSCFADT - See HTRAC, Anti-Slavery, Norton Rose Fulbright, Project Respect and UNICEF UK submissions submissions p. 156-157

support for survivors and, subsequently, the experience of trauma is exacerbated for the survivor of human trafficking. As a result, the criminal justice system's effectiveness is hindered.

De-linking support from the criminal justice system

Anti-trafficking organisations in Australia have long advocated for fostering a survivor-centred holistic human rights based approach²⁶ to survivor support, including delinking of the support services and HTVF pathways from the criminal justice process. This approach is supported by the International Organisation for Migration, United Nations Office on Drugs and Crime²⁷, was a recommendation in the 2012 report by UN Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo on Australia's trafficking framework and has been a recommendation in Parliamentary Joint Committee On Law Enforcement (PJCOLE), *An inquiry into human trafficking, slavery and slavery-like practices*²⁸ and more recently in the JSCFADT Report, *Hidden in Plain Sight: An Inquiry in to Establishing a Modern Slavery Act in Australia*²⁹ in Australia. Yet, despite this consistently being a recommendation, the Government continues to make access to support services contingent on the criminal justice system.

Criminal proceedings as a consequence of being in the sex industry

As per the UN Special Rapporteur on trafficking in persons, Australia has a "legal obligation to correctly ensure that (trafficked individuals) are not criminalized for offences relating to the fact of their having been trafficked."³⁰ This view is supported by the PJCOLE, *An inquiry into human trafficking, slavery and slavery-like practices*³¹, and was noted by the witness Ms. Felicity Gerry, QC, international barrister and academic at the Public Hearing in to establishing a Modern Slavery Act, who "told the Committee that Australia's common law and legislative provisions to provide defences for people who commit crimes when they are subject to exploitation are 'currently wholly inadequate ... particularly in relation to women offenders'. Ms Gerry suggested that Australia is required to provide such defences under its international law obligations."³²

This inadequacy to ensure vulnerable women are not criminalised is demonstrated by Project Respect's work supporting women who faced criminal proceedings directly relating to having been trafficked. There is no defence of coercion, and there is still no law against intentionally, knowingly or recklessly purchasing sex from a trafficked person in Australia. One woman supported was trafficked into a "massage parlour" and forced to provide sexual services. The brothel was proscribed and the woman was charged with providing sexual services without a licence. Project Respect contacted the AFP, who identified that she would fit the definition of being trafficked and subsequently eligible for the relevant support services, however, due to her fear of authorities, she chose not to engage with the AFP. This woman experienced significant mental health decline, including self-harm, after being charged. The second woman came to Australia on false documents, which were organised by her trafficker. She was arrested and charged with travelling on false documents and sent to a detention centre in Victoria. During her court proceedings, the woman pled guilty to the charges. Whilst she did not face imprisonment, she now carries a criminal record which is likely to have a negative impact on her Protection Visa. The AFP advised this woman is not eligible for referral into the STPP as her

²⁶ JSCFADT p. 150

²⁷ JSCFADT p. 141 -142

²⁸ PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT (PJCOLE), *An inquiry into human trafficking, slavery and slavery-like practices*, 2017. p. 35

²⁹ JSCFADT p. 159

³⁰ United Nations Human Rights Council, p. 7

³¹ PJCOLE p.

³² JSCFADT, p. 161

trafficking occurred outside of Australian borders and it would be too difficult to investigate. She was homeless and living on the streets prior to being referred to Project Respect. Without being able to access services through the STPP, it took numerous months for her to secure financial support through the government. In lieu of the STPP, Project Respect secured housing for her, and linked her in with physical and mental health services to address her PTSD.

National Compensation Scheme

Under international Law, the Australian Government is obliged to provide provisions for compensation for survivors of human trafficking. The Palermo Protocol indicates states are required to “ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”³³ Currently in Australia, compensation is regulated differently in each state, and it also differs for the type of offence(s) perpetrated³⁴ which results in the provision of, as well as compensation amounts differing. Joy Ngozi Ezeilo, the United Nations Special Rapporteur on trafficking in persons, especially woman and children, recommended in 2012 that Australia should “establish a federal compensation scheme for victims of trafficking, noting this would ‘be in accordance with the obligations of Australia with respect to remedies under the Trafficking Protocol and international human rights law.’”³⁵ Anti-Slavery Australia and the Law Council of Australia have long advocated for a National Compensation Scheme for survivors of trafficking. Their 2016 report *Establishing a National Compensation Scheme for Victims of Commonwealth Crime* sets out Australia’s obligations, the current inadequacies, as well as proposed models³⁶. Despite this, as well as the establishment of a National Compensation Scheme being recommended in a number of inquiries³⁷, the Australian Government has consistently failed to establish a national compensation scheme for survivors of trafficking.

Over the past five years there have been numerous inquiries and reports, as referenced throughout this document, which have recommended fostering a human-rights based approach to supporting survivors of trafficking, including de-linking of the Support for Trafficked People Program and de-linking the Human Trafficking Visa Framework from the criminal justice system, increasing the initial reflection and recovery period from 45 days, and introducing a National Compensation Scheme. To date, the Australian Government has not responded to any of these recommendations.

³³ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, Article (6).

³⁴ Project Respect submission to JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE (JSCFADT), *Hidden in Plain Sight: An Inquiry in to Establishing Modern Slavery Act in Australia*, 2017. p. 19 https://d3n8a8pro7vhmx.cloudfront.net/projectrespect/pages/15/attachments/original/1504666130/25052017_MSAFINAL_amended.pdf?1504666130

³⁵ United Nations Human Rights Council p. 16 & p. 21

³⁶ Law Council of Australia, Anti-Slavery Australia and the University of Technology Sydney, *Report on ESTABLISHING A NATIONAL COMPENSATION SCHEME for Victims of Commonwealth Crime*, 2016.

³⁷ See PJCOLE and JSCFADT