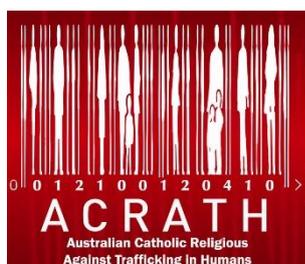


# Convention on the Elimination of all Forms of Discrimination Against Women

- **Article 6:** Suppression of the Exploitation of Women
- **Article 16(2):** The betrothal and marriage of a child shall have no legal effect, and all necessary action including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory

**State Party:** Australia

**Submission prepared by:**



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People are NOT for sale

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## **Article 6: Suppression of the Exploitation of Women**

### **Key Issue: Supporting victims of Human Trafficking and slavery**

#### **Background**

Trafficking in persons and all elements encompassed by exploitation including forced labour, slavery are all offences covered under Divisions 270 and 271 of the *Criminal Code Act 1995*. In 2015-2016 the AFP received 169 new referrals as compared with 119 in the previous year<sup>1</sup>. The Global Slavery Index (GSI), which provides bi-annual statistics on the prevalence of slavery around the world, estimates up to 4300 people are enslaved in Australia<sup>2</sup>. As more attention is drawn to this issue, reports of slavery and trafficking related offences have steadily increased. Despite this trend and the underlying issues of victims remaining silent – fear, shame, unawareness of rights—only 311 individuals have been referred onto the Government’s Support Program for victims of modern slavery<sup>3</sup>. This quantity demonstrates the severe need for further education and support services in order to reach more victims.

#### **2014 CEDAW Shadow Report Recommendations:**

In the 2014 CEDAW Shadow Report, Australian non-governmental organisations made the following recommendations regarding Article 6:

7.10 Implement the recommendations of UN Special Rapporteur on Trafficking in Persons 2011 Report, including:

- Establish a national comprehensive compensation scheme for victims of trafficking;
- Fully delink support for trafficked people from the criminal justice process;
- Improve the existing visa scheme that provides visas to trafficked people by extending the initial visa to any person identified or provisionally identified as trafficked to allow a stay of at least 90 days for reflection and recovery; and
- Develop specialist, child-centred service for any minors identified as being trafficked in recognition that the existing program is an adult centred service and thus cannot adequately meet the needs of minors. Extend the initial reflection and recovery period (also known as the Assessment Stream of the Support Program) from 45 days to 90 days for all persons identified as having been trafficked.
- Extend the Bridging Visa F, under the Human Trafficking Framework, from 45 days to 90 days (in line with the recommendation above).

7.11 Develop a whole-of-government strategy to ensure that Commonwealth procurement policies ensure slavery-free supply chains in the provision of goods and services, including convening the Supply Chains Working Group of the National Roundtable.

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<sup>1</sup> Trafficking in Persons: The Australian Government Response, 1 July 2015 – 30 June 2016 [online] Available at <https://www.homeaffairs.gov.au/crime/Documents/report-anti-people-trafficking-interdepartmental-committee-july-2015-june-2016.pdf>, p 20 accessed 8 May 2018

<sup>2</sup> Global Slavery Index, (2016). *Australia*. The Global Slavery Index. [online] Available at: <https://www.globallslaveryindex.org/country/australia/> [Accessed 5 May. 2018]

<sup>3</sup> Trafficking in Persons: The Australian Government Response, 1 July 2015 – 30 June 2016 [online] Available at <https://www.homeaffairs.gov.au/crime/Documents/report-anti-people-trafficking-interdepartmental-committee-july-2015-june-2016.pdf>, p 34 accessed 8 May 2018

- 7.12 Establish a wide-ranging review into the effectiveness of the victim support program, including visa support, entitlement to education services, financial support and the status of effective remedies.
- 7.13 Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).
- 7.14 Ratify International Labour Organization Protocol of 2014 to the Forced Labour Convention, 1930 and the ILO Convention on Domestic Workers. No 189, (2011).

## **Recommendations:**

### **1. Support Services not Dependent on Investigations**

At present, the Commonwealth *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* provides protection for vulnerable witnesses; and the Red Cross provides services for victims referred to them by the Australian Federal Police (AFP). These measures provide protection and support for victims who are able and willing to give evidence in an AFP investigation. However, the egregious abuse many victims have suffered too often than not renders them unable to provide evidence against their abusers due to either fear of appraisal, psychological damage or simply their lack of viable information.

Levels of psychological trauma experienced by some victims may be so high that they are never able to serve as witnesses or even give an account that can be used as the basis of intelligence. Only after substantial time and care, can victims feel empowered, safe and secure enough to come forth and provide evidence of their abuse. According to the United Nations Anti-Human Trafficking Manual for Practitioners, it is possible that some individuals who initially present strong emotional reactions, may with time, and professional support or counselling, become willing and capable witnesses<sup>4</sup>.

Consequently, it is recommended that support services such as those offered by the Red Cross, be made available to victims of human trafficking simply because they are victims and not dependent on their participation in criminal proceedings or witness reports.

### **2. Longer Term Support**

Current support programs offered to victims of human-trafficking, irrespective of their ability or willingness to assist in investigations, run for 45 days. While access to a further 45 days is granted to all minors, it is only granted to adults who are willing to assist in an AFP investigation. Research conducted by the US Department of Health and Human Services found that victims of trafficking are likely to need long-term treatment, due to the nature of the abuse and because recidivism rates are high<sup>5</sup>. Further to this, the Australian Institute of

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<sup>4</sup> United Nations Office on Drugs and Crime, (2009). *Anti-human trafficking Manual for Criminal Justice Practitioners: Module 3*. UN.GIFT. [online]. Available at [https://www.unodc.org/documents/human-trafficking/TIP\\_module3\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/TIP_module3_Ebook.pdf) [Accessed 5 May. 2018]

<sup>5</sup>H Clawson, A Salomon, L Goldblatt-Grace, (2008). *Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking*. U.S. Department of Health and Human Services.

Criminology found that a lack of long-term support measures directly impede the victim's ability to (re)integrate, increasing their exposure to additional vulnerabilities that could lead to further exploitation<sup>6</sup>.

It is therefore recommended that current support programs be extended to a minimum of 90 days and 200 for minors, with further planned follow up consultations for a period of no less than one year.

### **3. National Compensation Scheme**

Article 6 (6) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Palermo Protocol), requires states to 'ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered'<sup>7</sup>. Presently, there is no coordinated Federal Compensation Scheme available to victims of human trafficking, and current state and territory-based assistance schemes for victims of crime are unclear for victims and vary significantly in terms of eligibility, monetary value and method of application. Research shows that when you empower victims by making a payment, whether it is the ex gratia type payment available under victims of crime compensation schemes or whether it is tortious types of compensation, you empower victims to rebuild their lives.

It is recommended that the Australian Government establish a National Compensation Scheme for victims of modern slavery in Australia, modelled on existing victim compensation schemes administered by the Commonwealth. Eligibility for compensation should not be contingent on participation in criminal investigations or prosecutions and victims on temporary visas should not be prohibited from applying. Where possible, the scheme could be funded through the proceeds of crime, and/or by the Australian Government.

#### **Summary of Recommendations:**

1. That support services such as those offered by the Red Cross, be made available to victims of human trafficking simply because they are victims and not dependent on their participation in criminal proceedings or witness reports.
2. That current support programs be extended to a minimum of 90 days and 200 for minors, with further planned follow up consultations for a period of no less than one year.

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[online] Available at: <https://aspe.hhs.gov/report/treating-hidden-wounds-trauma-treatment-and-mental-health-recovery-victims-human-trafficking> [Accessed 5 May. 2018]

<sup>6</sup> S Lyneham, (2014). *Recovery return and reintegration of Indonesian victims of human trafficking*. Australian Institute of Criminology. [online] Available at <https://aic.gov.au/publications/tandi/tandi483> [Accessed 5 May. 2018]

<sup>7</sup> United Nations Human Rights Office of the High Commissioner (2000). *Protocol to Prevent, Suppress and Punish Trafficking in Persons*. United Nations [online] Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> [Accessed 5 May. 2018]

3. That the Australian Government establish a National Compensation Scheme for victims of modern slavery in Australia, modelled on existing victim compensation schemes administered by the Commonwealth. Eligibility for compensation should not be contingent on participation in criminal investigations or prosecutions Where possible, the scheme could be funded through the proceeds of crime, and/or by the Australian Government.

**Article 16(2): The betrothal and marriage of a child shall have no legal effect, and all necessary action including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory**

**Key Issue:** Improving education about, and response to, forced marriage in Australia.

**Background:**

The 1961 Marriage Act, which prohibits child marriages, has been well implemented in Australia. However, early marriage in Australia is part of a larger phenomenon of exploitation, namely *forced marriage*. It is conservatively estimated that there are hundreds of women at risk every year, including those to be married in Australia and those taken overseas from Australia to get married. Whilst forced marriages have always taken place, the practice has only recently become criminalised. In 2013, the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act* made forced marriage practices illegal, with perpetrators to face up to nine years in jail. This Act has led to a significant increase in engagement with the Australian Federal Police. Between 8 March 2013 and 30 June 2016 AFP have received 116 referrals with 69 of those being received in 2015-2016. Of the 169 human trafficking referrals in 2015-2016, 69 related to forced marriage<sup>8</sup>. However, the implementation of the legislation is key to the elimination of this practice.

**2014 CEDAW Shadow Report Recommendations:**

In the 2014 CEDAW Shadow Report, Australian non-governmental organisations made the following recommendations in regard to Article 16 (2):

- 28.8. Prioritise research into the prevalence of early and forced marriage in Australia to inform best practice strategies to prevent and address the issue in high risk communities.
- 28.9. Work collaboratively with State and Territory counterparts to coordinate Federal, State and Territory government responses to early and forced marriage.
- 28.10. Continue to provide funding for community based organisations to raise community awareness, develop materials and undertake community engagement on the issue of early and forced marriage.
- 28.11. Provide training to front-line government employees (including immigration and child protection workers), law enforcement officers and community organisations working in the family violence, health and education sectors to identify and respond to early and forced marriage.

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<sup>8</sup> Trafficking in Persons: The Australian Government Response, 1 July 2015 – 30 June 2016 [online] Available at <https://www.homeaffairs.gov.au/crime/Documents/report-anti-people-trafficking-interdepartmental-committee-july-2015-june-2016.pdf>, p 20 [accessed 8 May 2018]

**Positive Developments:**

- For 2017-18, the Australian government pledged almost \$500,000 to prevent and address forced marriage to the Australian Catholic Religious Against Trafficking in Humans (ACRATH), Anti-Slavery Australia (ASA) and the Australian Muslim Women's Centre for Human Rights (AMWCHR) and to the Salvation Army under National Community Crime Prevention Program. The Australian Red Cross was previously given funding for a forced marriage scoping exercise, client kit and a service provider training program.
- The National Action Plan to Combat Human Trafficking and Slavery 2015-19 included forced marriage as a focus area, with goals to educate on forced marriage, refine service responses and develop additional civil measures within the family law system.
- In February 2018, the Forced Marriage Support Stream Trial commenced. The stream includes up to 200 days of intensive support; and although clients must be referred by the AFP, they are not required to participate in any investigation or prosecution. ACRATH is pleased to see this trial being undertaken, and is keen to see the trial expanded to include all people trafficked into Australia.

**Remaining Challenges:**

While forced marriage legislation now exists, many sectors of Australian society are still unaware of the issue and there are still significant barriers to its effective implementation.

- It is clear that victims who choose to reject or resist forced marriage will almost certainly face rupture or alienation from their family, isolation from their community and insecurity about their basic human rights to shelter and support. Culturally appropriate housing is required as victims are often from conservative and sheltered home environments and do not yet live independently. Currently, they are often required to live with homeless youth affected by drug and alcohol issues in residential care.
- While awareness of forced marriage has increased, and a modest amount of school and community education implemented, there is still a large appreciation gap on the issue amongst service providers. Consultation and education strategies are only beginning in high risk areas as well as with law enforcement agencies, courts, marriage celebrants and support services.
- There is pressing need for a uniform and co-ordinated approach between all services operating in the forced marriage arena with clear referral pathways. There are no standard guidelines or assessment tools specific to the issue that can be used by all service providers.

**Recommendations:**

ACRATH recommends that the Australian Government:

1. Supply funding for culturally appropriate and safe housing for victims of actual or potential forced marriage, through collaboration with state and territory counterparts.

2. Implement and broaden education strategies around forced marriage in Australia among legal services, marriage celebrants, service provision and community sectors, especially in high risk areas.
3. Provide contributions for realistic long term funding to be given to organisations to sustain practices and developments and holistically support victims to achieve complete recovery which is not wholly attainable through short-term efforts. Encompassed within this is the formation of a uniformed and co-ordinated approach between all services operating in the forced marriage arena with clear referral pathways.