Law Council
OF AUSTRALIA

Inquiry into human trafficking

Joint Committee on Law Enforcement

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Acknowledgement

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Executive Summary

1. Human trafficking, including slavery, slavery-like practices and people trafficking offences, are contrary to international law, often target highly vulnerable victims, and involve significant breaches of human rights. The Law Council welcomes all efforts to prevent such practices and considers that Australia's response to these issues should reflect international best practice and be consistent with Australia's international legal obligations.

2. Since 2003, successive Commonwealth Governments have progressively implemented a number of legislative and policy initiatives to ensure that Australia adequately responds to human trafficking. The Law Council has welcomed these developments, but considers that the Government should take a human rights approach to all efforts to prevent and combat these offences, and to protect, assist and provide redress to victims.

3. The Law Council has restricted its submission to the following Terms of Reference:

    - the role and effectiveness of Commonwealth law enforcement agencies in responding to human trafficking;
    - practical measures and policies that would address human trafficking;
    - the involvement of organised crime, including transnational organised crime, in human trafficking; and
    - the effectiveness of relevant Commonwealth legislation and policies.

4. The Law Council makes a number of recommendations to the Committee, including those that it has previously recommended to Parliamentary inquiries, such as the establishment of a national compensation scheme for victims of these offences. The Law Council considers that it is imperative that the Government continue and improve its support for and work in these areas, in order to adequately address human trafficking, including slavery, slavery-like practices and people trafficking.

Introduction

5. Australia's international obligations in respect of human trafficking, including slavery, slavery-like practices and people trafficking, derive from various instruments to which it is party.[1] The most relevant instruments are the *United Nations Convention against Transnational Organised Crime* (**UNTOC**),[2] its *Protocol to Prevent, Supress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime* (**Trafficking Protocol**),[3] and the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (**Supplementary Slavery Convention**).[4]

6. As the Special Rapporteur on trafficking in persons, especially women and children (**Special Rapporteur**) has identified, the definition of 'trafficking in persons' at Article 3 of the Trafficking Protocol sets out the following constituent elements:

    - an *action*, namely recruitment, transportation, transfer, harbouring or receipt of persons;
    - the *means* by which the action is achieved, for example by threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving of payments or benefits to achieve the consent of a person having control over another person; and
    - the *purpose* of the extended action or means, namely exploitation.[5]

7. Successive Commonwealth Governments have progressively implemented a number of legislative and policy initiatives to ensure that Australia adequately responds to human trafficking, which the Law Council has welcomed:

    - in 1999, the Commonwealth Government introduced offences relating to slavery, sexual servitude and deceptive recruiting for sexual services into the *Criminal Code Act 1995* (Cth);
    - in 2003, the Commonwealth Government announced a whole-of-government package to address crimes committed against humanity, including people trafficking. As part of this package, the Australian Federal Police (**AFP**) received additional funds to strengthen its capacity to detect, investigate and

[1] Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (2014), 8, available at: https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf.
[2] *Convention against Transnational Organised Crime*, opened for signature 12-15 December 2000, 2225 UNTS 209 (entered into force 29 September 2003).
[3] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003).
[4] *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, opened for signature 7 September 1956, 226 UNTS 3 (entered into force 30 April 1957).
[5] *Report of the Special Rapporteur on trafficking in persons, especially women and children*, 28 July 2014, UN GAOR 69th sess, Item 69(b) of the provisional agenda, UN Doc A/69/33797, [9] ('Special Rapporteur Report').

provide specialist training in relation to slavery,[6] sexual servitude and deceptive recruiting,[7] trafficking in persons and debt bondage;[8]

- in 2004, the Commonwealth Government established a system of visa support for victims of human trafficking. The People Trafficking Visa Framework allows foreign nationals to remain in Australia for varying, limited amounts of time and access limited social services;

- in 2005, the Commonwealth Government introduced offences relating to human trafficking into the Criminal Code;[9]

- in 2009, following an extensive consultation, the People Trafficking Visa Framework was amended, to take effect 1 July 2009, such that a victim could access a 45-day visa, which included access to social services, after which they could access two further visas should the victim assist the AFP;

- in 2013, further amendments were made to the Criminal Code with the insertion of offences of forced labour, forced marriage, organ trafficking and harbouring a victim; and amendments were also made to the *Crimes Act 1914* (Cth), the *Migration Act 1958* (Cth), the *Proceeds of Crime Act 2002* (Cth) and the *Telecommunications (Interception and Access) Act 1979* (Cth); and

- in 2015, the definition of 'forced marriage' in the Criminal Code was expanded. The People Trafficking Visa Framework was also changed in order to reduce the real and/ or perceived stigma for victims on visas, and to provide a simplified visa pathway.

8. The Criminal Code offences form only part of the Government's response to people trafficking and forced labour issues. State and Territory criminal offences are also used in an effort to combat these types of crimes. Indeed, on some occasions, State or Territory offences such as assault, kidnapping and sexual assault may be used in conjunction with the Commonwealth offences. Offences also exist under the Migration Act, and the Government has introduced key workplace relations and migration reforms such as the *Fair Work Act 2009* (Cth) [10] and subclass 457 visa changes[11] to improve protections for vulnerable workers, including migrant workers.

9. While the Law Council is generally supportive of the Government's approach to combatting human trafficking, particularly through the work of the National Roundtable on Human Trafficking and Slavery (**Roundtable**), it recommends the Commonwealth

[6] See Division 270 of the *Criminal Code Act 1995* (Cth) which makes it an offence to possess a slave or exercise over a slave any powers attaching to the right of ownership, engage in slave trading or enter into any commercial transaction involving a slave.
[7] Division 270 of the Criminal Code also makes it an offence for a person to cause another person to enter into or remain in sexual servitude or conduct any business that involves the sexual servitude of others. There are also offences relating to the deceptive recruitment of a person to perform sexual services.
[8] Division 271 of the Criminal Code makes it an offence to traffic persons, whether internationally or domestically. There are also offences relating to debt bondage of persons, forced labour and the trade in human organs.
[9] The provisions that criminalise slavery, slavery-like conditions and people trafficking are found in Divisions 270 and 271 of the Criminal Code.
[10] The *Fair Work Act 2009* (Cth) contains 10 National Employment standards that apply to all Federal employees. These standards guarantee the rights of all employees to certain employment conditions including leave, public holidays, termination notice and maximum weekly hours of work. In addition, the general protections scheme in Parts 3-1 of the Act enhances the range of options available to exploited workers and job applicants.
[11] The *Migration Legislation Amendment (Worker Protection) Act 2008* (Cth) introduced a greater level of protection for migrant workers who hold subclass 457 visas.

Government take a human rights approach to all efforts to prevent and combat these offences, and to protect, assist and provide redress to victims.[12] It specifically recommends the following improvements to legislation and policy:

(a) the establishment of an independent anti-slavery commissioner;

(b) provide adequate funding and resources to implement the initiatives of the Roundtable, such as those set out in the 2015-2019 National Action Plan (**NAP**);

(c) continued and increase support for aid and other programs in the Asia Pacific, including the Tripartite Action to Protect Migrants in the Greater Mekong Sub-Region from Labour Exploitation to Project (**GMS TRIANGLE Project**), Australia-Asia Program to Combat Trafficking in Persons (**AAPTIP**) and the Bali Process on People Smuggling, Trafficking in Persons and Related Crime (**Bali Process**);

(d) the establishment of an ambassador for human trafficking (as distinct from the current combined Ambassador for People Smuggling Issues);

(e) continued support for community services and programs;

(f) increase in legal aid funding for organisations with expertise to ensure that legal assistance and education can be effectively provided to groups who are vulnerable to human trafficking, including slavery, slavery-like practices and people trafficking offences;

(g) undertake and fund, as a matter of priority, publically available primary research into the extent to which organised criminal groups are involved in human trafficking crimes in Australia;

(h) implementation of the 2015 Report of the Productivity Commission on the Workplace Relations Framework in respect of migrant workers;

(i) establishment of a national compensation scheme, de-linked from any assistance that victims may provide to law enforcement agencies;

(j) support provided under the Human Trafficking Visa Framework should be de-linked from the provision of assistance to law enforcement agencies;

(k) amending the Migration Act to reverse the changes made by the *Migration Amendment (Charging for a Migration Outcome) Act 2015* (Cth) (**Charging for a Migration Outcome Act**) that penalise victims of human trafficking, including slavery, slavery-like practices and people trafficking offences;

(l) an independent review of the power of the Minister of Immigration and Border Protection to cancel visas to examine the effect of these powers on victims of human trafficking, including slavery, slavery-like practices and people trafficking offences, and make recommendations accordingly; and

(m) ratification and domestic implementation of the *Domestic Workers Convention, 2011 (No. 189)* and the *Protocol of 2014 to the Forced Labour Convention,*

[12] Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1, 1 [4] and Guideline 1 ('OHCHR Principles and Guidelines').

1930 and *Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)*.

The role and effectiveness of Commonwealth law enforcement agencies in responding to human trafficking

10. The Law Council considers that it is possible that there are a number of barriers to the prosecution of perpetrators and the effectiveness of trafficking offences owing to the comparatively low number of prosecutions against the known prevalence of human trafficking, including slavery, slavery-like practices and people trafficking.

11. The Law Council considers that the lack of information around decision-making and the determination of offences, as well as a lack of resourcing to implement measures proposed in the NAP, make it difficult to identify how the role and effectiveness of Commonwealth law enforcement agencies can be improved.

12. The Law Council considers that the establishment of an independent anti-slavery commissioner, much like the United Kingdom's Independent Anti-Slavery Commissioner, would assist Commonwealth law enforcement agencies with overcoming these barriers.

13. The UK Commissioner is established by the *Modern Slavery Act 2015* (UK). The Commissioner must encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences; and the identification of victims of those offences.[13] At the Commissioner's request, a specified public authority[14] must co-operate with the Commissioner to enable the Commissioner to perform his or her statutory function,[15] which may include making recommendations to public authorities about the exercise of their functions.[16]

Recommendation:

- **The establishment of an independent anti-slavery commissioner.**

Practical measures and policies that would address human trafficking

14. As noted above, and as recommended in the United Nation's (**UN**) Recommended Principles and Guidelines on Human Rights and Human Trafficking (**Recommended Guidelines and Principles**), the Law Council considers it imperative that any measures and policies to address human trafficking take a human rights approach.[17] This is particularly important in respect of screening and interviewing victims,

[13] *Modern Slavery Act 2015* (UK) s 41(1).
[14] Ibid. See Schedule 3: law enforcement and border security, local government, health bodies and regulators.
[15] Ibid s 43(1).
[16] Ibid s 41(3)(b).
[17] OHCHR Principles and Guidelines 1[4].

considerations of family reunification, and consideration of providing support persons to victims during legal proceedings.

15. The Law Council acknowledges successive Commonwealth Governments' commitment to combatting human trafficking, including slavery, slavery-like practices and people trafficking. In particular, it welcomes the establishment and continued operation of the Roundtable and the Senior Officials' Meeting. The Law Council considers these fora are vital for the Government to continue to realise its commitment to address human trafficking. The fora provide a valuable line of communication between expert Non-Government Organisations (**NGOs**) and Commonwealth Government agencies. However, it is imperative that the initiatives of the Roundtable, such as those outlined in the NAP, are adequately funded and Departmental agencies are adequately resourced to implement the practical measures and policies required to address human trafficking.

16. The Law Council also advocates for certain additional measures that it considers will address human trafficking.

Continued and increased support for aid and other programs in Asia Pacific

17. The Law Council refers this Committee to the Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Trading Lives: Modern Day Human Trafficking*. In that report, the Joint Standing Committee stated that: '[t]hrough an active approach to international and regional mechanisms and targeted aid funding, Australia has gained a positive international reputation.'[18] The Joint Standing Committee expressed its support for an ongoing leadership role for Australia in combating people trafficking, both globally and regionally.[19]

18. The Law Council considers that this leadership role can only be sustained by continued and increased support for aid and other programs that combat human trafficking, particularly in the Asia Pacific region. A few examples are illustrative of the importance of continued and increased funding. The Law Council also notes that the Special Rapporteur, in her report on her mission to Australia, recommended a number of practical measures and policies to address human trafficking, including:

    (a) the continued support of stronger criminal justice responses to human trafficking in South-East Asia and Globally through a strong successor to the Asia Regional Trafficking in Persons Project (**ARTIP**);[20]

    (b) increasing development assistance aimed at supporting less developed countries in tacking the root causes of human trafficking;[21] and

    (c) ensuring that trafficking in persons is fully integrated into all aspects of the Bali Process, and guarding against confusion between people trafficking and migrant smuggling.[22]

[18] Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of the Commonwealth of Australia, *Trading Lives: Modern Day Human Trafficking* (2013), [4.60] ('JSCFADT Report').
[19] Ibid [4.61].
[20] Special Rapporteur Report, Recommendation 86(b).
[21] Ibid, Recommendation 86(c).
[22] Ibid, Recommendation 86(d).

GMS TRIANGLE Project

19. The GMS TRIANGLE Project is funded by the Commonwealth Government and aims to ensure safe labour migration and prevent labour exploitation for migrant workers in the Greater Mekong Sub-Region. Through a network of Migrant Resource Centres in both source and destination countries, migrants and potential migrants have access to services including counselling, training and legal assistance to support safe migration and rights at work.

20. The Commonwealth Government works with the International Labour Organization (**ILO**) to prevent and reduce the exploitation of migrant workers and their families through the GMS TRIANGLE Project. Partner countries include Burma, Cambodia, Lao PDR, Thailand and Vietnam, with Malaysia as a key destination country.

21. The Law Council notes that funding for the GMS TRIANGLE Project was due to expire in May 2015, but understands that the Commonwealth Government has committed to funding the second phase of the TRIANGLE project. The Law Council welcomes this commitment and considers that future funding should be settled well in advance of the expiry of funded programs.

Australia-Asia Program to Combat Trafficking in Persons

22. The Law Council commends the Government on its $50 million investment for the AAPTIP covering the period 2013-2018. The AAPTIP began in August, 2013, and was preceded by the Asia Regional Cooperation to Prevent People Trafficking (2003-6) and the ARTIP (2006-12). The AAPTIP aims to reduce the incentives and opportunities for human trafficking in the ASEAN region. The Law Council understands that AAPTIP has, or will, implement activities in Cambodia, Laos PDR, Myanmar, the Philippines, Indonesia, Thailand and Vietnam.

23. The Law Council notes that Australia is a primary funder in the region for the AAPTIP, and a number of other programs that aim at combatting human trafficking. The Law Council therefore advocates for continuation of Commonwealth Government funding and increased support in the region. For example, additional resourcing to collect and collate data on trafficking both in and outside of Australia would further assist in understanding the profile of trafficking and the drivers and indicators of forced labour and trafficking.

The Bali Process

24. The Law Council acknowledges the Commonwealth Government's work with regional partners through the Bali Process. The Bali Process began in 2002 and involves a meeting of Ministers of a number of member states in the region. The Regional Support Office, located in Bangkok, Thailand, was established in September 2013 and is responsible for developing a number of projects and activities put forward by the Co-Chairs of the Bali Process, Australia and Indonesia. These projects were initially focused on people smuggling issues, but have increasingly included a focus on human trafficking.

25. The Law Council welcomes the establishment of the Working Group on Trafficking in Persons of the Bali Process, and the recent publication by the Bali Process of the *Policy Guide on Protecting Victims of Trafficking*. The Working Group was established at the 5th Ministerial Conference on the Bali Process, held on 2 April 2013, and held its first meeting on 27 March 2015 in Bangkok. The Working Group aims to further cooperation between member states to combat human trafficking and provide support for victims, and to encourage the development and implementation of National Action

Plans. The Working Group also liaises with other regional bodies, including those in South America, to share expertise. Part of this work includes the development of policy guides that seek to provide accessible, best practice information about how states can implement their international obligations. The policy guidelines are particularly aimed at implementing obligations relating to the criminalisation of human trafficking.

26. The most recent Interdepartmental Report on Trafficking in Persons notes that:

> *A key focus of the plan for 2015–17 is to build the capacity of relevant officials to respond to human trafficking, including through delivering regional training sessions on the Bali Process policy guides. Other action items include considering ways to engage more effectively with NGOs and industry; developing a regional roadmap to support states to self-monitor progress in combating human trafficking in line with international standards; and developing best practice guidance on combating human trafficking for the purpose of labour exploitation.*[23]

27. The Law Council considers that the Bali Process provides a unique platform to work with regional partners to combat human trafficking, including slavery, slavery-like practices and people trafficking. However, it is important that the work and initiatives taken in respect of human trafficking are not limited to law enforcement, but also encompass a human rights and victim-centred response.

28. The Law Council considers that, in addition to the existing Ambassador for People Smuggling Issues, the establishment of an ambassador for human trafficking – as recommended by the Special Rapporteur[24] – would assist in achieving this objective.

Continued support of community services

29. As noted above, the Law Council recognises the important work of the Roundtable in combatting human trafficking. The Law Council particularly encourages the Commonwealth Government to continue its support of the Roundtable, in order that Departmental agencies and NGOs may continue to work together to address human trafficking.

30. Important initiatives of the Roundtable include the establishment of working groups. For example, the Communication and Awareness Working Group recently completed its work on forced marriage, which included the publication of a Community Pack and the development and distribution of awareness-raising post cards. Following its success, this Working Group has been reconstituted and is now examining the issue of forced labour. The Law Council now sits on this working group. The Law Council also commends the Government on its establishment of the Supply Chains Working Group.

31. Other collaborative work between Departmental agencies and NGOs includes work on forced marriage, such as a series of awareness-raising workshops conducted by the Attorney-General's Department, the AFP and Anti-Slavery Australia. The Commonwealth Government has also provided funding to specialist NGOs that work to prevent forced marriage.

[23] Australian Government, *Seventh Report of the Interdepartmental Committee on Human Trafficking and Slavery, 1 July 2014-30 June 2015* (2015), 15.
[24] Special Rapporteur Report, Recommendation 86(e).

32. The Law Council considers that it is imperative that the Government continue its work in support of community services by working together with NGOs through the Roundtable, its Working Groups, and independently of the Roundtable through separate funding grants and initiatives. The success of these initiatives demonstrates the importance of continued Government support.

Access to legal advice and assistance

33. The Law Council has previously advocated for victims of human trafficking, including slavery, slavery-like practices and people trafficking to have access to legal advice, in order to provide those victims with the opportunity to make an informed decision about the remedies available to them and their preferred course of action in pursuing a remedy. It is important that such advice is independent, so that victims are not coerced or feel pressured to assist law enforcement agencies with the prosecution of the perpetrator against their will.[25]

34. The Trafficking Protocol provides that Australia has an obligation to make legal advice available to people trafficking victims:

> *Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:*
>
> *…*
>
> *(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand."*[26]

35. The Recommended Principles and Guidelines also provide that legal and other assistance should be provided to victims for the duration of criminal, civil or other actions against suspected traffickers in a language that they understand.[27] Furthermore, although victims of people trafficking have an international legal right to adequate and appropriate remedies,

> *[t]his right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.*[28]

36. The Law Council continues to advocate for the Commonwealth Government to provide sufficient resources to community legal centres and organisations that undertake legal education services, so that they may effectively engage with the communities at greatest risk of falling victim to these types of crimes.

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[25] Law Council of Australia, Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like conditions and People Trafficking, 2 October 2012, [95]ff, available at: http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2600-2699/2653%20-%20Inquiry%20into%20Slavery,%20Slavery-like%20conditions%20and%20People%20Trafficking.pdf.
[26] At art 6.3(b).
[27] OHCHR Principles and Guidelines 2[9]. See also Guideline 6 [5].
[28] Ibid. Guideline 9.

37. The Law Council therefore recommends that legal aid funding be increased to ensure that legal assistance and education can be effectively provided to groups who are vulnerable to human trafficking, including slavery, slavery-like practices and people trafficking.

Recommendations:

- **provide adequate funding and resources to implement the initiatives of the Roundtable, such as those set out in the NAP;**
- **continued and increase support for aid and other programs in the Asia Pacific, including the GMS TRIANGLE Project, AAPTIP and The Bali Process;**
- **the establishment for an ambassador for human trafficking (as distinct from the current combined Ambassador for People Smuggling Issues);**
- **continued support for community services and programs; and**
- **increase in legal aid funding for organisations with expertise to ensure that legal assistance and education can be effectively provided to groups who are vulnerable to human trafficking, including slavery, slavery-like practices and people trafficking offences.**

The involvement of organised crime, including transnational organised crime, in human trafficking

38. In Australia, current realities indicate the involvement of organised crime in human trafficking. However, there is very limited primary research that directly addresses the extent to which organised criminal groups are involved in human trafficking crimes in Australia, with most information based on Parliamentary and government reports. The information from these reports indicate that organised crime in human trafficking is at the lower end of the spectrum – small crime groups utilising family or business contacts overseas to facilitate recruitment, movement and visa fraud.

39. Accordingly, in order to ascertain a more accurate picture, or indeed to confirm the current assessment, the Law Council considers that it is important that publically available primary research into the extent to which organised criminal groups are involved in human trafficking crimes in Australia be undertaken or funded, as a matter of priority.

The definition of organised crime

40. The UNTOC – the parent treaty for the Trafficking Protocol **–** provides a legal definition for 'organised criminal group'[29] and the term 'structured group', referred to in that

[29] Art 2(a): '…a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.'

definition.[30] The provisions of the UNTOC apply *mutatis mutandis* to the Trafficking Protocol.[31] Accordingly, the Trafficking Protocol is supplementary to the UNTOC.[32] Australia is party to both instruments.[33]

41. The Legislative Guide to the UNTOC provides further interpretative guidance over the definitions in the UNTOC.[34] The broad concept of a 'structured group' in the UNTOC reflects a recognition that organised crime can be diverse and adaptive, and that it may not necessarily conform to hierarchical stereotypes.[35] It may, however, involve 'a diverse and analytically distinct range of actors, activities and harmful consequences'.[36] The definition therefore enables a wide variety of actors to be captured. This includes traditional notions of organised crime – groups with a hierarchical and bureaucratic structure operating across national and international borders,[37] to flexible and adaptive small scale offenders (enterprise model).[38]

42. This spectrum is referred to as the 'continuum model',[39] which suggests that rather than viewing the concept as a matter of kind (is it or is it not), it is far more useful to view it as a matter of degree.[40] The continuum model allows the most flexibility in delineating different modes of organised crime. This continuum approach is largely reflected in the broad UNTOC definition.[41]

The international perspective

43. International research indicates that contemporary human trafficking involves diverse criminal actors. Actors may be classified into three categories: entrepreneurial individuals, sophisticated transnational networks, and hybrid groups.[42] In South-East Asia, the majority of human trafficking falls within the ambit of entrepreneurial

[30] Art 2(c): 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.
[31] Art 1(2).
[32] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime*, 2237 UNTS 319, done Nov. 15, 2000, entered into force Dec. 25, 2003, at Art. 1(1).
[33] Australia ratified the CTOC on 27 May 2004. Australia ratified the TIPP on 14 September 2005.
[34] United Nations Office on Drugs and Crime Division for Treaty Affairs, *Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, (New York, 2004), [28]: 'The term "structured group" is to be used in a broad sense, so as to include groups with a hierarchical or other elaborate structure, as well as non-hierarchical groups where the roles of the members of the group are not formally specified...Thus, a "structured group" is not necessarily a formal type of organization, with a structure, continuous membership and a definition of the roles and functions of its members. However, it must be more than randomly formed for the immediate commission of an offence. This standard was adopted in order to avoid the inclusion of crimes committed by groups on an ad hoc basis. Nevertheless, it includes all instances of crimes that involve any element of organised preparation.'
[35] F David, Australian Institute of Criminology, 'Organised crime and trafficking in persons', *Trends & Issues In Crime And Criminal Justice* No. 436 (Australian Institute of Criminology, 2012) ('F David, 2012'); A Edwards and M Levi, 'Researching the organization of serious crimes' (2008) 8(4)*Criminology & Criminal Justice*, 363 ('A Edwards and M Levi, 2008').
[36] A Edwards and M Levi, 2008, 365.
[37] S Zhang and K Chin, 'Enter the dragon: Inside Chinese human smuggling organisations' (2002) 40(4) *Criminology*, 737, 739.
[38] M Levi, 'Perspectives on organised crime: An overview' (1998) 37(4) *The Howard Journal* , 335, 336.
[39] F Hagan 'The organised crime continuum: a further specification of a new conceptual model' (1983) 8(2) *Criminal Justice Review*, 52.
[40] Ibid. See also F David, 2012, 3.
[41] F David, 2012, 3.
[42] J Picarelli, National Defence Academy and Austrian Ministry of Defence and Sports, 'Human trafficking and organised crime in the US and Western Europe in Cornelius Friesendorf' (2009) *Strategies against human trafficking: the role of the security sector*, 124, 130-133 ('J Picarelli, 2009'). See also: F David 2012, 3.

individuals. In contrast, in South Eastern Europe, the majority of human trafficking is perpetrated by sophisticated networks.[43]

44. This diversity has also been recognised by the UN Office on Drugs and Crime, which has stated that internationally the crime of human trafficking varies in scale and sophistication; key actors can be highly organised criminal groups, loosely connected networks, individuals, or family and friends of the victims.[44]

45. A report for the Organisation for Security and Cooperation in Europe further observed that:

> *[w]hile the degree to which trafficking offenders are organised differs from one case to the next, trafficking operations can fall on a continuum ranging from 1) soloists or individual traffickers; to 2) loose networks of organised criminals; to 3) highly structured international trafficking networks.*[45]

Entrepreneurial individuals

46. Entrepreneurial individuals occupy the smaller end of the spectrum.[46] Such actors include solo offenders[47] or unsophisticated, opportunistic small-scale offenders.[48] Common practice indicates two to three perpetrators acting simultaneously as recruiters, transporters and exploiters.[49] Such actors are more likely to engage in specific country-to-country human trafficking.[50]

47. International literature demonstrates that such actors recruit one or a small number of victims through their pre-existing social and family networks.[51]

Sophisticated networks

48. This type of actor is a major player.[52] Such actors are large scale, well organised criminal groups that control all aspects of the human trafficking process.[53] Typically, composition entails large numbers of perpetrators across a wide geographic range.[54] Networks have well defined organisational structures.[55] Further, such actors are

[43] R Surtees, 'Traffickers and trafficking in Southern and Eastern Europe: Considering the other side of human trafficking' (2008) 5(1) *European Journal of Criminology* , 36 ('R Surtees, 2008').
[44] United Nations Office on Drugs and Crime, *Organized crime involvement in trafficking in persons and smuggling of migrants* (2010).
[45] A Aronowitz, G Theuermann and E Tyurykanova, Office of the Special Representative and Co-Ordinator for Combating Trafficking in Human Beings, *Analysing the business model of trafficking in human beings to better prevent the crime (*2010), 18 ('A Aronowitz, G Theuermann and E Tyurykanova, 2010').
[46] J Picarelli, 2009, 130.
[47] A Aronowitz, G Theuermann and E Tyurykanova, 2010.
[48] N Busch-Armendariz, M Nsonwu, L Heffron, J Garza and M Hernandez, *Understanding Human Trafficking: Development of Typologies of Traffickers* (Austin: Institute on Domestic Violence and Sexual Assault, Centre for Social Work Research School of Social Work, University of Texas, 2009); Swedish National Council for Crime Prevention, *The Organisation of Human Trafficking: A study of criminal involvement in sexual exploitation in Sweden, Finland and Estonia* (2008).
[49] J Picarelli, 2009, 130.
[50] Ibid.
[51] F David, 2012, 7.
[52] J Picarelli, 2009, 133.
[53] Ibid 131. See also: S Coluccello and S Massey, 'Out of Africa: The human trade between Libya and Lampedusa' (2007) 10(4) *Trends in Organised Crime*, 77; J Leman and S Janssens, 'An analysis of some highly structured networks of human smuggling and trafficking from Albania and Bulgaria to Belgium' (2006) 22(3) *Migracijske i etnicke teme*, 231; G Saat, 'Human trafficking from the Philippines to Malaysia: the impact of urbanism' (2009) 16(1) *South Asian Survey*, 137.
[54] J Picarelli, 2009, 131.
[55] R Surtees, 2008.

innovative, continually seeking different routes and responding to shifts in market demands.[56] Ancillary services, such as money launders and document fraud experts are more likely to be engaged.[57]

Hybrid groups

49. Hybrid groups represent the collaboration between small groups of individuals and organised, formal crime groups.[58] Commonly referred to as the 'middle option' international literature indicates that historically this option is the most frequent and most diverse.[59]

The Australian perspective

50. As noted above, there is limited primary research that directly addresses the extent to which organised criminal groups are involved in human trafficking in Australia, with available information largely limited to parliamentary and government reports.

51. In 2005, the Parliamentary Joint Committee on the Australian Crime Commission published its supplementary report to the inquiry into the trafficking of women for sexual servitude. The Parliamentary Joint Committee concluded that there appeared to be no strong involvement of organised crime in human trafficking locally.[60]

52. In 2008, research undertaken concluded that:

> *Those involved have tended to include small business owners with business or family links to those involved in the other parts of the trafficking process such as recruitment or document fraud. In particular, the groups involved in human trafficking do not appear to have the same high levels of organisation and sophistication as drug traffickers.*[61]

53. Analogous conclusions have also been made in subsequent Commonwealth Government reports. In 2009, the inaugural report of the Interdepartmental Committee on Human Trafficking (**ICHT**), stated:

> *The groups detected in sex trafficking have been small rather than large organised crime groups. Those involved tended to use family or business contacts overseas to facilitate recruitment, movement and visa fraud.*[62]

54. Offenders active in this area have shown adaptability to law enforcement activity and migration governance. However, the groups involved in human trafficking identified to date do not appear to have the same high levels of organisation and sophisticated as drug traffickers. Many of the facilitators and escorts in the sex industry in Australia are Asian. Although a small number of cases have involved victims from Eastern Europe

[56] Ibid. See also: J Picarelli, 2009, 131.
[57] J Picarelli, 2009, 131.
[58] Ibid 133.
[59] Ibid.
[60] Parliamentary Joint Committee on the Australian Crime Commission, *Supplementary report to the inquiry into the trafficking of women for sexual servitude* (Canberra: Parliament of the Commonwealth of Australia, 2005).
[61] F David, 'Trafficking of women for sexual purposes', *Australian Institute of Criminology Research and Public Policy Series No. 95* (Australian Institute of Criminology, 2008), 34.
[62] Australian Government, *Inaugural report of the Anti-People Trafficking Interdepartmental Committee* 2004-2009 (2009), 26.

and West Africa, intelligence does not indicate any shift towards the involvement of organised crime groups in human trafficking from these regions to Australia.[63]

55. The ICHT's finding in relation to the prevalence of small crime groups and use of family or business contacts remained unchanged in the ICHT's 2010 report,[64] 2013 report,[65] and 2014 report.[66] The ICHT's 2015 report also indicates no change in this assessment.[67]

56. Given the lack of primary research data, or the lack of publically available material, in order to ascertain a more accurate picture, or indeed to confirm the current prevailing assessment, the Law Council considers that it is important that primary research be undertaken as a matter of priority.

Recommendation:

- **undertake and fund, as a matter of priority, publically available primary research into the extent to which organised criminal groups are involved in human trafficking crimes in Australia.**

The effectiveness of relevant Commonwealth legislation and policies

The Workplace Relations Framework

57. The Law Council commends to the Committee the November 2015 Report of the Productivity Commission on the Workplace Relations Framework.[68] This report identified that the existing workplace relations framework is ineffective when it comes to protecting and supporting migrant workers:

> *Although covered under the Fair Work Act, permanent and temporary migrant workers face higher risks of exploitation. This can reflect lower proficiency in English skills, lack of awareness of their rights in the workplace and a reluctance to reveal exploitation in circumstances where the migrant is working in breach of the Migration Act 1958 (Cth), for example, by exceeding the prescribed limit on hours. Revealing such exploitation could result in deportation.*[69]

58. The Productivity Commission identified a number of practical approaches that would assist in reducing exploitation of migrant workers, in addition to disseminating

[63] Ibid 27.
[64] Australian Government, *Second Report of the Interdepartmental Committee on Human Trafficking and Slavery, 1 May 2009-30 June 2010* (2010), 29.
[65] Australian Government, *Fifth Report of the Interdepartmental Committee on Human Trafficking and Slavery, 1 July 2012-30 June 2013* (2013), 19.
[66] Australian Government, *Sixth Report of the Interdepartmental Committee on Human Trafficking and Slavery, 1 July 2013-30 June 2014* (2014), 20. The 2011 Report highlighted future research into organised crime and human trafficking. The 2012 Report presented the findings of the research.
[67] Australian Government, *Seventh Report of the Interdepartmental Committee on Human Trafficking and Slavery, 1 July 2014-30 June 2015* (2015), 27.
[68] Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report* No 76 (30 November 2015).
[69] Ibid 48.

information to migrant workers and increasing enforcement resources. The Commission recommended:

(a) improving the information available on Department of Immigration and Border Protection (**DIBP**) and the Fair Work Ombudsman (**FWO**) websites about migrant workers' workplace rights and conditions;[70]

(b) additional resources to the FWO to identify, investigate, and carry out enforcement activities against employers that are underpaying workers, particularly migrant workers;[71]

(c) increasing penalties for keeping false or misleading documents in breach of Reg. 3.44 of the Fair Work Regulations 2009 (Cth);[72]

(d) amending the Fair Work Act to clarify that, in instances where migrants have breached the Migration Act, their employment contract is valid and the Fair Work Act applies;[73] and

(e) precluding the FWO from sharing identifying information with the DIBP about a migrant who has only breached their employment-related visa conditions. However, the DIBP should share any information with the FWO about a migrant and their employer, when they suspect an employer has underpaid a migrant.[74]

59. The Law Council commends these recommendations to the Committee, and considers that their implementation would increase the effectiveness of the workplace relations framework in respect of migrant workers.

National Compensation Scheme

60. The lack of consistency across jurisdictions and the failure of these schemes to adequately cover some forms of human trafficking has led the Law Council to repeatedly call for the establishment of a Commonwealth victims' compensation scheme in Australia to cover human trafficking offences.

61. In Australia, there are eight different State and Territory schemes that provide financial compensation for victims of crime. These schemes vary considerably, for example, over time limits in which to make claims, caps on compensation amounts, determination processes, burdens of proof, and key definitions. These differences between State and Territory schemes give rise to the potential for different outcomes for victims.

62. This proposal has been under consideration at the Roundtable for a number of years, and has also received support from various Parliamentary Committees[75] and the Special Rapporteur.[76]

63. The Law Council continues to advocate for the establishment of a national compensation scheme, which is de-linked from any assistance that victims may

[70] Ibid, Recommendation 29.1.
[71] Recommendation 29.2
[72] Recommendation 29.3
[73] Recommendation 29.4
[74] Recommendation 29.5
[75] See for example: JSCFADT Report, Recommendation 6.
[76] Special Rapporteur Report, Recommendation 82(g).

provide to law enforcement agencies concerning the perpetrator of the crime against that victim.

64. Support provided under the Human Trafficking Visa Framework should also be de-linked from the provision of assistance to law enforcement agencies, in accordance with the Recommended Principles and Guidelines.[77]

General concerns with the Migration Amendment (Charging for a Migration Outcome) Act 2015

65. The Charging for a Migration Outcome Act amended the Migration Act to establish a criminal and civil penalty regime that makes it unlawful for a person to give or receive a benefit in return for a migration outcome in relation to certain skilled work visa programs. The Act also enables visa cancellation to be considered where the visa holder has engaged in such conduct.

66. The Act was introduced in response to recommendation 10.7 of the Independent Review into Integrity in the Subclass 457 Programme,[78] however, that Review did not specify to whom the sanctions should apply and does not make any recommendations with regards to visa cancellations.[79] The objective of the Act is to impose sanctions on sponsors and other third parties who engage in 'payment for visa' activities.[80]

67. The Law Council was not in a position to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee in its inquiry into the (then) Migration Amendment (Charging for a Migration Outcome) Bill 2015, but refers this Committee to the submission made by one of its Constituent Bodies, the Law Institute of Victoria (**LIV**).[81]

68. One of the LIV's significant concerns with the Bill was that the high penalties that could be imposed on migrant workers – strict liability heavy fines and discretionary power to cancel any visa the applicant holds – may in fact deter migrant workers in exploitative situations from coming forward. The LIV considered that a strict liability provision without a mental element is unnecessary to protect the integrity of the migration system or to address the 'payment for visa' activities that the Bill seeks to address.

69. In respect of the civil penalty provision that created a civil strict liability offence at section 245AS of the Migration Act, the LIV stated, in imposing a penalty, it is important to consider whether a visa holder intended to pay for a visa and knew that such payment was unlawful. The LIV further noted that there was nothing in the section to take into account certain vulnerabilities, such as exploitative work conditions.

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[77] OHCHR Principles and Guidelines, 1 [8].
[78] Explanatory Memorandum to the Migration Amendment (Charging for a Migration Outcome) Bill 2015, 1, available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5533_ems_ceda10d9-2987-49d0-ad9b-0e85e42cb9d5%22.
[79] John Azarias, Jenny Lambert, Professor Peter McDonald and Katie Malyon, 'Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Programme' (September 2014).
[80] Ibid.
[81] See: Law Institute of Victoria, Submission to Senate Legal and Constitutional Affairs Legislation Committee, Inquiry into Migration Amendment (Charging for a Migration Outcome) Bill 2015, 9 October 2015, available at: http://www.liv.asn.au/getattachment/20d5e21a-13ef-49e7-8927-3565f965efd9/Migration-Amendment-Charging-for-a-Migration-Outco.aspx.

70. The Law Council therefore recommends this Act is amended so as not to penalise victims of human trafficking, slavery or slavery-like offences. It notes that the Recommended Principles and Guidelines provide that States should consider ensuring that legislation prevents trafficked persons being prosecuted, detained or punished on the illegality of their entry.[82]

71. The Law Council's other concerns with this Act – in respect of an expansion of visa cancellation powers under the Migration Act – are addressed below.

Visa cancellation powers

72. The power of the Minister of Immigration and Border Protection to cancel visas under the Migration Act was expanded with the passage of the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth) (**Character Act**) and the Charging for a Migration Outcome Act.

73. The Migration Act currently provides that the Minister, and/ or the Minister's delegate, may cancel a visa on various grounds:

    (a) section 109: Cancellation of visa if information incorrect; [83]

    (b) section 116: various grounds, including that its holder has not complied with a condition of the visa, or the presence of its holder in Australia is or may be, or would or might be, a risk to the health, safety or good order of the Australian community or a segment of the Australian community;[84]

    (c) section 134B: Emergency cancellation on security grounds;

    (d) section 134: Cancellation of business visas;

    (e) section 137J: Non-complying students may have their visas automatically cancelled;

    (f) section 137Q: Cancellation of regional sponsored employment visas;

    (g) section 500A: Refusal or cancellation of temporary safe haven visas;

    (h) section 501: Refusal or cancellation of visa on character grounds;

    (i) section 501A: Refusal or cancellation of visa – setting aside and substitution of non-adverse decision under subsection 501(1) or (2); and

    (j) section 501B: Refusal or cancellation of visa--setting aside and substitution of adverse decision under subsection 501(1) or (2).

74. The most significant cancellation powers for the purposes of this Inquiry fall under sections 109, 116 and 501. Recent and proposed amendments to these sections serve to further increase the Minister's already broad discretionary powers to cancel visas. The Law Council understands that the result of these changes has served to undermine Australia's anti-slavery policy, by often penalising the visa holder and preventing or inhibiting the visa holder's ability to review an adverse decision and/ or seek legal advice prior to deportation.

[82] OHCHR Principles and Guidelines, Guideline 4 [5].
[83] The Minister's personal power to cancel a visa on this ground appears at s 133A.
[84] The Minister's personal power to cancel a visa on this ground appears at s 133C.

75. The Law Council's concerns with these recent and proposed amendments are examined in some detail below. The Law Council notes that generally, the Recommended Principles and Guidelines provide that States should consider that anti-trafficking legislation protect against the summary deportation or return of people where there are sufficient grounds to believe that such a return would represent a risk to the victim, and the victim's family.[85]

The Character Act

76. The LIV previously expressed its concern with the amendments to the Migration Act by the Character Act.[86] In particular, its concerns related to amendments that substantially broadened the grounds on which a non-citizen's visa could be refused or cancelled, such as:

    (a) section 501(6)(b) which lowered the threshold of evidence required to demonstrate that a person is a member of a criminal or terrorist organisation;

    (b) section 501(6)(d) which lowered the threshold from 'significant risk' to 'risk' of a person engaging in criminal conduct or harassment and who represents a danger to the Australian community or 'risks' being involved in activities disruptive to the Australian community; and

    (c) section 501(6)(g) and (h) which provide that a person will not pass the character test where they have been assessed by the Australian Security and Intelligence Organisation as directly or indirectly a risk to security, or where an Interpol Notice has been issued from which it is reasonable to infer that a person would present a risk to the Australian community.

77. The Law Council is concerned that these amendments, particularly section 501(6)(d), could inadvertently apply to victims of human trafficking, without the need for the offence to be proven to a criminal standard and absent basic procedural safeguards.

The Migration and Maritime Powers Amendment Bill (No. 1) 2015 [Provisions]

78. The Migration and Maritime Powers Amendment Bill (No. 1) 2015 [Provisions], currently before the House of Representatives, aims to further strengthen the Government's ability to cancel the visas[87] of non-citizens serving a sentence of imprisonment[88] and remove them from Australia on the basis of character concerns, by empowering the Minister to cancel a visa following a non-adverse decision by a delegate or the Administrative Appeals Tribunal.[89] These changes, and certain additional changes, have also been proposed with the introduction of the Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016 on 10 February 2016.

79. As the Law Council set out in its submission to the Senate Legal and Constitutional Affairs Legislation Committee on this Bill, the LIV has noted that, since the Character Act was introduced in late 2014, a significant number of people have been placed in

[85] OHCHR Principles and Guidelines, Guideline 4[6].
[86] See: Law Institute of Victoria, Submission to Senate Legal and Constitutional Affairs Legislation Committee, Inquiry into the Migration Amendment (Charter and General Visa Cancellation) Bill 2014, 3 November 2014, available at: http://www.liv.asn.au/getattachment/0d3282a8-36af-4c5d-96aa-ee2d7b56e5e0/Migration-Amendment-Character-and-General-Visa-Can.aspx.
[87] Through extending the application of sub-ss 192(1) and (4), and sub-s 193(1)(a)(v) of the Migration Act.
[88] Pursuant to sub-s 501(3A).
[89] Pursuant to s 501BA.

detention, even before charges have been determined by the courts. The proposed amendment is similar to the amendments in the Character Act, as it allows delegates to detain non-citizens prior to assessing their ability to meet the character requirements in section 501 of the Migration Act.

80. The Law Council raised its concern that the practical effect of this amendment will result in a greater rate of unnecessary detention of non-citizens for extended periods of time. Further, the use of a low threshold of proof requiring an officer merely to 'reasonably suspect', combined with the very broad discretionary grounds to cancel a visa, may lead to the detention of some non-citizens in circumstances where it is not justified. The Law Council considers that such detention also places an unnecessary financial burden on the Government.

81. The Law Council also raised concerns that the proposed amendments may result in the deportation of a person serving a sentence of imprisonment whose visa has been cancelled before they have had the opportunity to seek judicial review of the cancellation.

82. As with the changes to the Migration Act under the Character Act, the Law Council is concerned that these amendments could inadvertently apply to victims of human trafficking. The Law Council considers that it is important to ensure that Australia does not unnecessarily refuse or deny visas to non-citizens who pose no threat to Australia, as visa refusal or cancellation may involve significant long-term consequences for the individual, including detention and deportation. It is imperative that visa cancellation on character grounds involve effective procedural safeguards, and that an applicant or their legal representative are appraised of the reasons pertaining to their visa cancellation.

<u>The Charging for a Migration Outcome Act</u>

83. With the passage of the Charging for a Migration Outcome Act, the Minster is empowered to cancel a visa holder's current visa if the Minister is satisfied that a benefit was asked for or received by, or on behalf of, the visa holder from another person in return for the occurrence of a sponsorship-related event; or a benefit was offered or provided by, or on behalf of, the visa holder to another person in return for the occurrence of a sponsorship-related event.[90]

84. The discretionary power applies regardless of whether the visa holder held a current or previous visa at the time of the benefit; whether the event relates to the current or previous visa; or whether or not the event occurred.[91]

85. As the LIV noted in its submission on the Charging for a Migration Outcome Bill, the trend towards increasing the Minister's discretionary powers to cancel visas under the Migration Act may result in difficulties for applicants, advisors and delegates in interpreting and applying the relevant powers. Furthermore, the LIV considered that the threshold issue – the subjective satisfaction of the Minister that the event occurred – is unduly low and disproportionate.

86. In respect of the Charging for a Migration Outcome Bill, the LIV recommended that the Bill should be amended to prescribe a range of mandatorily relevant considerations, including the question of complicity and intention on the part of the visa holder.

[90] Section 116(1AC).
[91] Section 116(1AD).

87. The LIV also criticised the overly broad definition of a 'benefit'[92] that would capture visa holders in the following circumstances:

    - the visa holder's wages are deducted in return for sponsorship; or
    - the visa holder is requested to forgo wages or is underpaid in return for sponsorship;

    including in conditions where the visa holder is disempowered and unable to refuse, for example, if working in indentured-labour like conditions.

88. It has also been suggested that under these new powers, the Minister could cancel the visa of a human trafficking victim and remove this person, even in situations where the victim is assisting the AFP as a witness in pursuing legal action against an employer.[93]

Ratification of international treaties

89. The Law Council supports the ratification and domestic implementation of two key ILO instruments. The Law Council considers that this would strengthen the effectiveness of Commonwealth legislation and policies that address human trafficking, including slavery, slavery-like practices and people trafficking offences.

Domestic Workers Convention, 2011 (No. 189)

90. The *Domestic Workers Convention, 2011 (No. 189)*[94] which came into effect on 5 September 2013, extends basic labour rights to domestic workers worldwide.[95]

91. The Convention defines domestic work as 'work performed in or for a household or households' and domestic worker as any person regularly 'engaged in domestic work within an employment relationship.'[96] It requires Member States to take measures 'to ensure the effective promotion and protection of the human rights of all domestic workers …' and enumerates the goals of ensuring freedom of association (including for collective bargaining), elimination of forced or compulsory labour, abolition of child labour, and ending employment discrimination.[97]

92. Although the Commonwealth Government considers that it already has strong laws in place to prevent slavery, prosecute perpetrators, and help is available to assist victims if required, despite such laws, domestic workers in Australia remain vulnerable to severe exploitation and abuse equal to modern slavery.[98]

[92] Section 245AQ.
[93] Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia; The Freedom Partnership – to End Modern Slavery, The Salvation Army; the National Union of Workers; and Harris Wake Pty Ltd, Submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Migration Amendment (Charging for a Migration Outcome) Bill 2015, 2.
[94] See: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189.
[95] The following countries have ratified the Convention: Argentina; Belgium; Bolivia; Chile; Colombia; Costa Rica; Dominican Republic; Ecuador; Finland; Germany; Guyana; Ireland; Italy; Mauritius; Nicaragua; Panama; Paraguay; Philippines; South Africa; Switzerland; and Uruguay.
[96] Art 1.
[97] Art 3.
[98] See for example: The Salvation Army and the Walk Free Foundation, *Policy Brief: Improving Protections for Migrant Domestic Workers in Australia*, June 2015, available at: http://endslavery.salvos.org.au/wp-content/uploads/2015/02/Improving-Protections-for-Domestic-Workers-in-Australia.pdf.

93. The Law Council notes that the Special Rapporteur recommended the ratification of this instrument in her report on her mission to Australia.[99]

Protocol of 2014 to the Forced Labour Convention, 1930

94. Two major ILO Conventions prohibit forced or compulsory labour in all its forms – Conventions 29 and 105. Australia is party to Convention 29, which was adopted in 1930. The Convention contains an open-ended definition of prohibited forced labour without listing specific prohibitions and applies to every possible form of forced labour and to all workers, regardless of whether they are in the public or private sector. Convention 105 was adopted in 1957 and advances Convention 29 by requiring the immediate abolition of forced labour in five specific cases related to forced labour by the State for economic purposes or as a means of political coercion.

95. Following a detailed analysis by a group of experts appointed by the Governing Body of the ILO in 2012-13 to analyse whether there were gaps in existing coverage of ILO standards on forced labour, the experts found that significant implementation gaps remain in the effective eradication of forced labour and there was added value in the adoption of supplementary measures to address these gaps.

96. Subsequently, on June 11, 2014, the General Conference of the ILO adopted the *Protocol of 2014 to the Forced Labour Convention, 1930.*[100] The Protocol calls for governments to pursue a range of measures in order to prevent and eliminate forced labour, including by ensuring that the coverage and enforcement of legislation relevant to the prevention of forced labour applies to all workers and sectors of the economy and by strengthening labour inspection services. It is supported by a non-binding *Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)*,[101] which provides technical guidance for the implementation of the Protocol.

97. The Protocol will enter into force one year after it has been ratified by at least two member States of the ILO.

98. Although Australia supported its adoption,[102] it is not yet party to the Protocol.

[99] *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Mission to Australia, 18 May 2012, 20th sess, Agenda Item 3, UN Doc A/HRC/20/18/Add.1, Recommendation 86(a).
[100] See: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029/.
[101] See: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R203:NO.
[102] The Hon Julie Bishop MP, Minister for Foreign Affairs, Senator the Hon Eric Abetz, Leader of the Government in the Senate, Minister for Employment, Minister Assisting the Prime Minister for the Public Service, The Hon Michael Keenan MP, Minister for Justice, *Australia supports action against forced labour* (Joint Media Release, 12 June 2014), available at: http://foreignminister.gov.au/releases/Pages/2014/jb_mr_140612b.aspx?ministerid=4.

Recommendations:

- **implementation of the 2015 Report of the Productivity Commission on the Workplace Relations Framework in respect of migrant workers;**
- **establishment of a national compensation scheme, de-linked from any assistance that victims may provide to law enforcement agencies;**
- **support provided under the Human Trafficking Visa Framework should be de-linked from the provision of assistance to law enforcement agencies;**
- **amending the Migration Act to reverse the changes made by the Charging for a Migration Outcome Act that penalise victims of human trafficking, including slavery, slavery-like practices and people trafficking offences;**
- **an independent review of the power of the Minister of Immigration and Border Protection to cancel visas to examine the effect of these powers on victims of human trafficking, including slavery, slavery-like practices and people trafficking offences, and make recommendations accordingly; and**
- **ratification and domestic implementation of the *Domestic Workers Convention, 2011 (No. 189)* and the *Protocol of 2014 to the Forced Labour Convention, 1930* and *Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)*.**

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2016 Executive as at 1 January 2016 are:

- Mr S. Stuart Clark AM, President
- Ms Fiona McLeod SC, President-Elect
- Mr Morry Bailes, Treasurer
- Mr Arthur Moses SC, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Michael Fitzgerald, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.