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SUPPORT FOR VICTIMS OF TRAFFICKING; AUSTRALIA
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In 2004, Australia's Federal Government introduced the *Support for Victims of People Trafficking Program*. This scheme has been widely criticised, with the requirements for entry to the program seen as overly restrictive and ineffective if the scheme to have any real impact on the needs of trafficked persons. In addition, the content of the Program has been criticised for its lack of outside scrutiny and limited budgetary resources. This document reviews the format of the Program, and highlights academic literature critiquing Australia's victim support scheme.

1. Details of the Support for Victims of People Trafficking Program

The Australian Federal Government's Support for Victims of People Trafficking Program (the Program) is designed to assist persons who have been trafficked into Australia and who are aiding the investigation or prosecution of trafficking and sexual servitude. Eligibility for this program is tied to Australia's People Trafficking Visa Framework, with levels of available services varying depending on the type of visa held by the applicant.

1.1 The Program and its Aims ¹

The Program commenced in March 2004.² It is funded by the Commonwealth Department of Families, Housing, Community Services, and Indigenous Affairs (FaHCSIA) and administered by the Office for Women. The Department lists the expiry date of the program as December 2008 and no further information has been provided as to the current funding status of the Program. Prior to the inception of the Program, the Australian Federal Police (AFP) was responsible for the care of victims of trafficking.³

The Office for Women describes the Program as 'demand driven' and closely linked to the People Trafficking Visa Framework.⁴ It aims to assist with the Federal Government's priority of combating people trafficking through successful prosecution by providing 'appropriate support and assistance' to persons 'who are prepared to assist with the investigation or prosecution of perpetrators' and have been granted a relevant visa.⁵ The Program also aims to improve the skills of victims of trafficking, so as to assist their ability to reintegrate upon return to their home country.⁶

Since its inception, the Program has been carried out by the contractor BSIL Southern Edge, which is a registered training organisation.⁷ This company provides training to numerous government and private sector businesses. BSIL Southern Edge employs caseworkers with at least three years experience to provide 'professional, high quality and vocationally relevant training solutions'.⁸ From February 2009, the Australian Red Cross was contracted to carry out the work of the Program.⁹

¹ See separate memo at <<http://www.law.uq.edu.au/documents/humantraffic/victimsupport/australia-support-for-trafficking-victims.pdf>>

² From January 2004 to 31 March 2004, support services were delivered through Centrelink: ANAO 74.

³ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 36.

⁴ BSIL Southern Edge, *Victims of Trafficking Care Program (VotCare Program)* (2008) <http://www.southernedge.com.au/page/votcare_program.html> at 27 Jan 2009.

⁵ BSIL Southern Edge, *Victims of Trafficking Care Program (VotCare Program)* (2008) <http://www.southernedge.com.au/page/votcare_program.html> at 27 Jan 2009.

⁶ Office for Women, *Office for Women*, 2008. <http://www.ofw.facs.gov.au/international/combating_people_trafficking.htm> at 27 Jan 2009.

⁷ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 16.

⁸ BSIL Southern Edge, *Victims of Trafficking Care Program (VotCare Program)* (2008) <http://www.southernedge.com.au/page/votcare_program.html> at 27 Jan 2009.

⁹ Australian Red Cross, *New South Wales Employment* (2009) <<http://www.redcross.org.au/nsw/employment-caseworker-trafficking.htm>> at 7 May 2009.

1.2 Access to the Program

Trafficked persons gain entry to the Federal Government's support program after being granted one of Australia's visas for trafficked persons and witnesses (the Bridging Visa F, the Criminal Justice Stay Visa, and the Criminal Justice Entry Visa). The granting of these visas is conditional on the willingness of the participant to assist with any relevant criminal investigation into trafficking offences.

Trafficked persons who do not hold any of these visas do not have access to the Program and, as unlawful non-citizens, are held in immigration detention prior to being removed from Australia.¹⁰

Victims of trafficking who may be eligible for the Program are detected in Australia either through the investigations of government bodies (such as the Department of Immigration and Citizenship (DIAC), state police services or the Australian Federal Police (AFP)) or by their own initiative.¹¹ Trafficked persons have previously sought assistance through notifying local police stations, calling 000, contacting their embassy or asking their clients for help.¹²

The Support for Victims of People Trafficking Program is open to all victims of trafficking, irrespective of gender or the nature of their trafficking situation.¹³ Victims of child trafficking will be supported for up to 48 hours under the support scheme and then will be transferred to the relevant state or territory child protection agency.¹⁴

1.3 Types of Participants

The participants in the Support for Victims of People Trafficking Program have thus far primarily been women working in the sex industry.¹⁵ As of July 1, 2008, there were 34 participants in the Program.¹⁶ More recent data is currently not available. Since the program commenced in 2004, a total of 107 persons have been given assistance (including one male victim of trafficking who was working in the hospitality industry).¹⁷ 65% of the participants were Thai nationals and 19% were Korean (Republic of Korea or South Korea).¹⁸

¹⁰ Section 189 *Migration Act 1958* (Cth).

¹¹ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, ix, 24.

¹² Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, ix, 24.

¹³ Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) [1] <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009, 1.

¹⁴ Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [72].

¹⁵ Tanya Plibersek, presentation at the *Australian Trafficking Forum*, Sydney (NSW), 24 July 2008), [2] <http://www.antislavery.org.au/pdf/TanyPlib_Address.pdf> at 27 Jan 2009.

¹⁶ Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) [1] <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009, 1; Tanya Plibersek, presentation at the *Australian Trafficking Forum*, Sydney (NSW), 24 July 2008), [2] <http://www.antislavery.org.au/pdf/TanyPlib_Address.pdf> at 27 Jan 2009, 2.

¹⁷ Elizabeth Broderick, 'Trafficking: The Need for a Human Rights Based Approach', presentation at the *Anti-Trafficking Forum*, Sydney (NSW), 24 July 2008), [11] <http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20080724_trafficking.html> at 27 Jan 2009.

¹⁸ Elizabeth Broderick, 'Trafficking: The Need for a Human Rights Based Approach', presentation at the *Anti-Trafficking Forum*, Sydney (NSW), 24 July 2008), [11] <http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20080724_trafficking.html> at 27 Jan 2009.

1.4 Services Provided

The services provided under the Program are divided into three phases.¹⁹ The entry to each phase is determined by the visa held by the individual. As a range of services are available within each phase, the types of programs that the individual becomes involved in are shaped by their needs, as determined by their case manager.²⁰ Additionally, the guidelines for the provision of these services are made known to the case managers through a program of training.²¹

Phase One Services

Phase One services are only available for a maximum of 30 days to holders of a Bridging Visa F.²² To obtain this visa, the applicant must be a person 'of interest' in the investigation or prosecution of an offence involving trafficking in persons, sexual servitude or deceptive recruiting.²³ Holders of this visa cannot engage in paid employment, but may travel to their home country for a short period and then return to Australia to access the program if 'compelling and compassionate' circumstances are present.²⁴ The services provided in this phase include:

- Safe accommodation (\$140–\$160 per night);²⁵
- Support funds (\$80 a week food allowance, \$80 a week living allowance, plus a one-off amount of \$310 to purchase essentials such as clothing and toiletries);
- Case manager contact (all case managers have access to a car);²⁶
- Emergency funds (\$500);
- Medical evaluations;
- Counselling (optional);
- Translation services (up to the value of \$300);²⁷
- Sexual health screening;
- Local transport and appointment scheduling; and
- Socialisation services.

Phase Two Services

The availability of the Phase Two services is limited to recipients of a Criminal Justice Stay Visa.²⁸ This visa is issued to recipients of the Bridging Visa F (see above) who have been determined to be of interest to a prosecution, following the issuing of a Criminal Justice Stay Certificate (CJSC) by the State/Territory or Federal Attorney-General.²⁹ The Office for Women

¹⁹ According to a recent audit of the scheme, as of November 2008 the three phases have been renamed the 'Assessment Stream', 'Justice Support Stream' and 'Temporary Trial Support Scheme' respectively: Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [74].

²⁰ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 38; Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) [1] <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009, 2.

²¹ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 38.

²² Subclass 060; Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 14, 15.

²³ *Migration Regulations 1994* (Cth). Schedule 1, 1306 3(d); div 270, 271 *Criminal Code* (Cth).

²⁴ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 14, 15; Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) [1] <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009.

²⁵ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 14, 15.

²⁶ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 39.

²⁷ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 39.

²⁸ Pt 2, Division 4 *Migration Act 1958* (Cth); Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 1 16.

²⁹ Section 157(a) *Migration Act 1958* (Cth).

has stated that this phase of services is designed to provide 'less intensive support until the investigation and prosecution of a people trafficking offence is finalised'.³⁰ The visa holder can undertake paid employment during this phase.³¹ Services provided in this phase include:

- Special Benefits Allowance (up to \$424.30 per fortnight), rent assistance (up to \$104 per fortnight), and a Centrelink Health Care Card (if eligible);³²
- Access to the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme.
- Court support;
- Employment;
- Long term accommodation assistance and furniture;
- Assistance with the opening of bank accounts;
- Social networks;
- English classes;
- Vocational Training;
- Case manager contact; and
- Legal assistance (with a maximum of three appointments per program participant).³³

Phase Three Services

This phase was implemented on July 1, 2007 in order to provide services to trafficked persons who hold a Criminal Justice Entry Visa,³⁴ and who are returning to Australia in order to assist a prosecution by giving evidence.³⁵ As of April 2009, none of the participants in the support scheme had received support under Phase Three.³⁶ Similar levels of services as are available in Phase One are provided in this phase, such as:

- Secure accommodation; a
- Living allowance; and a
- Food allowance.³⁷

1.5 After the Program

Trafficked persons who have participated in the Support for Victims of People Trafficking Program and who may be at risk of harm if they return home (as a result of their involvement with the prosecution of traffickers in Australia) are eligible for a Temporary or Permanent Witness Protection (Trafficking) Visa to remain in Australia.³⁸ Recipients of these visas are not eligible for any further assistance from the Program. Persons who do not wish to assist an investigation are provided with 30 days worth of financial assistance on the condition that they contact an NGO upon their return to their country of origin.³⁹

³⁰ Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) [1] <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009.

³¹ Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) [1] <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009.

³² Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 16.

³³ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 39.

³⁴ *Migration Act 1958* (Cth) s156.

³⁵ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 15, 17.

Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [74].

³⁷ Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) 2 <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009.

³⁸ Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) 2 <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009.

³⁹ Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) [42] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

Victims who return to their country of origin after receiving care from this support scheme are also able to access limited reintegration assistance provided by the Australian Government.⁴⁰ One such program is run in Thailand by the Australian Agency for International Development (AusAID) in collaboration with the Thai government and the International Organisation for Migration, but the provision of support is contingent on the victim's willingness to assist local authorities.⁴¹ By July 2006, 34 victims of trafficking were returned to Thailand from Australia, according to Thai authorities, although there are no figures available as to the number of these persons who have accessed victim support.⁴²

2. Critique

2.1 Lack of access to the scheme

The greatest area of criticism has been the Program's restriction to persons who have provided a 'significant contribution' to the investigations of law enforcement authorities. A recent audit of the Program noted that these entry requirements are unclear, particularly as there is no explanation given in the contract documents as to which visas entitle entry to the scheme.⁴³ This creates a risk that 'ill-considered or inconsistent decisions' are made in regard to an individual's entry to the support program.⁴⁴ Burn and Simmons also argue that this restriction is unsound as it

'leaves open the possibility that trafficking victims will not be protected: women so psychologically terrified that the thought of giving evidence cannot even be contemplated will be deported; the same fate awaits those willing witnesses whose information is deemed insignificant or useless'.⁴⁵

Janet Phillips echoes these concerns in noting that persuading victims to cooperate with police is often extremely difficult, and for victims who remain too afraid to assist the authorities they will be excluded from any form of support under the Support for Victims of Human Trafficking Program.⁴⁶

⁴⁰ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 44; Office for Women, *Support for Victims of Trafficking Fact Sheet* (2008) 2 <http://www.ofw.facs.gov.au/downloads/pdfs/trafficking_factsheet.pdf> at 27 Jan 2009.

⁴¹ Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) [42] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

⁴² Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) [42] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

⁴³ Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [20, 75-76].

⁴⁴ Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [75, 76].

⁴⁵ Jennifer Burn and Frances Simmons, 'Rewarding Witnesses and Punishing Victims: An Evaluation of the Trafficking Visa Framework', *Immigration Review*, 24 (2005), 10. See also Anne Gallagher, Human Rights and Human Trafficking: A Preliminary Review of Australia's Response, *Castan Centre for Human Rights*, [6] <<http://www.law.monash.edu.au/castancentre/events/2004/gallagherpaper-refereed.pdf>> at 14 May 2009

⁴⁶ Janet Phillips, *People trafficking: an update on Australia's response*, Canberra (ACT): Australian Parliamentary Library, 2008, [10]. <<http://www.aph.gov.au/library/pubs/rp/2008-09/09rp05.pdf>> at 19 May 2009. See also Marianna Leishman, 'Human trafficking and sexual slavery: Australia's response' *Australian Feminist Law Journal* (27) 2007: 193-205, 201; Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-*

Burn and Simmons also contend that this restriction is too discretionary, with victims worthy of support capable of exclusion from the support program merely as a result of the 'vagaries of criminal trials and prosecutions'.⁴⁷ Gallagher supports this assessment, criticising the support regime for its lack of transparency and opportunities for review of its decisions.⁴⁸ The provision of support has also been criticised on the grounds that the visa requirements involve excessive waiting periods with an average time of up to two and a half years before prosecutions are concluded successfully.⁴⁹

These restrictive entry requirements are arguably in contravention of the principles of international law in relation to trafficking. A number of commentators note the need for any victim support scheme to meet the requirements of the of the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, particularly Article 6, which imposes the fundamental requirement 'to provide for the physical, psychological and social recovery of victims of trafficking in persons'.⁵⁰ There are clearly deficiencies in the Australian government's victim support program in regards to this criterion, given the limited access to the scheme in general, and the budgetary limitations on support services such as legal and psychological advice, as outlined above. Furthermore, Anna Dorevitch notes that the Committee on the Elimination of Discrimination Against Women (acting in compliance with the *Convention on the Elimination of Discrimination Against Women* or CEDAW), was critical of Australia's approach to the provision of victim support. The Committee urged Australia to 'consider the extension of temporary protection visas and reintegration and support services to all victims of trafficking, including those who are unable or unwilling to cooperate in the investigation and prosecution of traffickers'.⁵¹ This criticism reveals that the restrictive approach taken by the Australian government is arguably in contravention of international norms, as it fails to offer support to trafficking victims on a status-based criteria, that is, on the basis of their victimhood, rather than on consideration of their 'usefulness' to law enforcement agencies.⁵²

Trafficking Measures on Human Rights around the World (GAATW, 2007) [55-56] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

⁴⁷ Jennifer Burn and Frances Simmons, 'Rewarding Witnesses and Punishing Victims: An Evaluation of the Trafficking Visa Framework', *Immigration Review*, 24 (2005), 10

⁴⁸ Anne Gallagher, 'Human Rights and Human Trafficking: A Preliminary Review of Australia's Response', *Castan Centre For Human Rights*, [6] <<http://www.law.monash.edu.au/castancentre/events/2004/gallagherpaper-refereed.pdf>> at 14 May 2009.

⁴⁹ Janet Phillips, *People trafficking: an update on Australia's response*, Canberra (ACT): Australian Parliamentary Library, 2008, [10]. <<http://www.aph.gov.au/library/pubs/rp/2008-09/09rp05.pdf>> at 19 May 2009.

⁵⁰ ECPAT Recommendations Briefing on a proposal for: European Union Council Directive (COM (2002) 71 final) On the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings Who Co-operate With the Competent Authorities. [2]; Anne Gallagher, 'Human Rights and Human Trafficking: A Preliminary Review of Australia's Response', *Castan Centre For Human Rights*, [5] <<http://www.law.monash.edu.au/castancentre/events/2004/gallagherpaper-refereed.pdf>> at 14 May 2009.

⁵¹ Anna Dorevitch & Michelle Foster, 'Obstacles on the Road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law' (2008) 9 *Melbourne Journal of International Law* 1, 15, citing the Concluding Comments of the Committee on the Elimination of Discrimination against Women: Australia, UN Doc CEDAW/CIAULICO/5 (3 February 2006) [21].

⁵² See, for example, Bernadette McSherry and Susan Kneebone, 'Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights', (2008) 12: 1 *International Journal of Human Rights*, 81.

2.2 Lack of objective scrutiny of the Program

Another major concern with the Federal Government's Support for Victims of People Trafficking Program is its perceived lack of outside scrutiny. As the Program has been outsourced to private contractors, little information is available about the details of the assistance offered or the nature of the qualifications of those providing it. Although the Federal Government's Office for Women officially administers the scheme, it provides almost no public information about the contracting organisation that actually carries out the work of the Program. Additionally, no annual reports are produced detailing the specific impacts of its work, or the locations where it is carried out. A recent audit of the government's response to trafficking in persons criticised these aspects of the victim support scheme,⁵³ noting that 'the specification of services in the contract and associated documents has been poor, and contract administration, in particular contract monitoring arrangements, had substantial shortcomings that limited [the Office for Women's] ability to be assured that eligible victims were receiving appropriate support.'⁵⁴ However, this report also noted that the Office for Women has introduced new 'performance reporting indicators' in relation to the victim support scheme, to be used from 2009-10, which will address some of these concerns. Yet the details of these improvements (a new complaints handling system, Program Guidelines, Service Standards, Communication and Operation Protocol and Standard Operation Procedures) have not been made public, despite their commendation in the Auditor's report.⁵⁵

As a means of addressing some of these problems without compromising the confidentiality of the services involved, Fiona David recommends that data be collected anonymously from clients of the program (for example, through an exit survey) to gauge their evaluation of the Program's services, and potentially highlight areas needing reform.⁵⁶ In addition, persons interacting with clients should also be given the opportunity to give feedback or raise concerns in order to improve the current system.⁵⁷

2.3 Too much power concentrated in caseworkers alone

The Program has also been criticised in respect of the fact the implementation of the scheme is seemingly left at the discretion of the contracting organisation and its caseworkers. David notes that the powerful role played by caseworkers employed by these corporations has provided concerns for some researchers. Her research indicates that there has been too much variation in the standard of care offered, which often directly affected the quality of evidence the clients were subsequently able to provide to the authorities.⁵⁸ Caseworkers clearly need to have adequate skills, experience and qualifications in order for them to provide adequate

⁵³ Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [86].

⁵⁴ Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [16].

⁵⁵ Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [75, 76].

⁵⁶ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, xiv. See also Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) [49-50] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

⁵⁷ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, xi, xii.

⁵⁸ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 37. See also Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) [49-50] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

psychological support to clients. David thus recommends that their role should be clarified, in order to establish exactly what services they are required to provide to victims of trafficking, and what qualifications they require.⁵⁹

2.4 Lack of adequate legal assistance to trafficked persons

The extent of legal advice provided under the Program is another major area of criticism. With each client limited to only three hours of legal assistance,⁶⁰ the ability of any advisor to resolve the complex legal issues faced by a trafficked person is doubtful. This is largely related to the immigration problems many victims of trafficking face, with some persons having fraudulently completed visa or protection applications under the guidance of their traffickers. David recommends that there be a greater allowance of time for legal advice within the Program, given that many victims will have complicated fact scenarios to present.⁶¹ Along with Georgina Costello and Elaine Pearson, she proposes that legal service providers should be chosen on the basis of their independence, and experience in the area, rather than their prior relationship with the contracting organisation.⁶² Some academics also argue that the legal advice provided to victims of trafficking should include information about compensation, the availability of which is a requirement of the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.⁶³ In shaping the kinds of legal advice provided, there is also a need to address the communication gaps between trafficked persons and the Australian legal system, as well as their frequent mistrust of the authorities.⁶⁴

2.5 Lack of culturally and linguistically appropriate support

Within the victim support program, it has been noted that clients need access to culturally appropriate information about their rights, particularly their right to seek support or advice from services outside the criminal justice system.⁶⁵ This is important according to Janet Phillips, as 'cultural sensitivities can [...] pose problems such as reluctance on the part of women from many Asian cultures to seek help from strangers in a foreign country.'⁶⁶ This also ties in to the

⁵⁹ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 38.

⁶⁰ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 39.

⁶¹ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 38.

⁶² Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 39; Georgina Costello. 'Winston Churchill Trust Report: Fellowship to study people trafficking law and policy in Italy and the USA', 2004. [15] <http://www.churchilltrust.com.au/res/File/Fellow_Reports/Costello%20Georgina%202004.pdf> at 2 April 2009. Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) [49-50] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

⁶³ Elizabeth Broderick. 2008. 'Trafficking: The Need for a Human Rights Based Approach'. Speech to the Inaugural Anti-Trafficking Forum. [11] <<http://www.antislavery.org.au/pdf/ElizBroderickKeynoteAddress.pdf>>; Anne Gallagher, *Human Rights and Human Trafficking: A Preliminary Review of Australia's Response*, [6] <<http://www.law.monash.edu.au/castancentre/events/2004/gallagherpaper-refereed.pdf>> at 14 May 2009.

⁶⁴ Marie Segrave, 'Surely something is better than nothing: The Australian response to the trafficking of women into sexual servitude in Australia', *Current Issues in Criminal Justice*, (2004) 16:1, 87.

⁶⁵ Elizabeth Broderick, 'Trafficking: The Need for a Human Rights Based Approach', presentation at the *Anti-Trafficking Forum*, Sydney (NSW), 24 July 2008), [8] <http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20080724_trafficking.html> at 27 Jan 2009.

⁶⁶ Janet Phillips, *People trafficking: an update on Australia's response*, Canberra (ACT): Australian Parliamentary Library, 2008, [10]. <<http://www.aph.gov.au/library/pubs/rp/2008-09/09rp05.pdf>> at 19

need for a greater use of translators, as suggested by David, who notes that translators who are familiar with Centrelink or the Australian tax system would be the most desirable for advising victims of their rights and duties.⁶⁷ At present, only three hours of translation services are available, which, as with the provision of legal advice, is arguably inadequate for the resolution of the complex issues faced by victims of trafficking.⁶⁸

2.6 Strengthening the link between victim support and prosecutions

Many authors note that the goals of police and prosecutors could be supported by implementing a more generous support scheme for victims. Burn and Simmons, as well as David, suggest that reforming the support program will benefit the Australian government, as both investigators and prosecutors have emphasised that trafficked persons who are secure and well-supported are more likely to be capable of providing a better quality of evidence, whether testifying against their captors or assisting police with their investigations.⁶⁹ Jenna Shearer Demir supports this comment in noting that a generous protection program for trafficked persons, especially one which does not prioritise deportation, will encourage cooperation with the authorities by providing benefits for the cooperation in incriminating their traffickers.⁷⁰ The government's restriction of victim support services to persons already involved in the criminal justice system therefore appears unhelpful in light of these criticisms as it excludes persons who may be capable of testifying against their captors at a later stage if given appropriate support.

2.7 Failure to incorporate the work of non-governmental support groups

The restriction of the Program's services to a sole private contractor has been the subject of additional criticism. Many authors believe that allowing support to be administered through a wider network of non-governmental service providers would assist the Support for Victims of People Trafficking Program with meeting the needs of all trafficked persons,⁷¹ especially those

May 2009. See also Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) [49-50] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

⁶⁷ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 39.

⁶⁸ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 39.

⁶⁹ Jennifer Burn and Frances Simmons. 'Rewarding Witnesses and Ignoring Victims: an evaluation of the new trafficking visa framework', (2005) *Immigration Review*, 10. Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, xi.

⁷⁰ Jenna S Demir, *Trafficking of Women for Sexual Exploitation: A Gender-Based Well-Founded Fear? An examination of refugee status determination for trafficked prostituted women from CEE/CIS countries to Western Europe* (2003) [23] <www.jha.ac/articles/a115.pdf> at 26 Feb 2009. See also Georgina Costello. 'Winston Churchill Trust Report: Fellowship to study people trafficking law and policy in Italy and the USA', 2004. [14] <http://www.churchilltrust.com.au/res/File/Fellow_Reports/Costello%20Georgina%202004.pdf> at 2 April 2009.

⁷¹ Georgina Costello. 'Winston Churchill Trust Report: Fellowship to study people trafficking law and policy in Italy and the USA', 2004. [13] <http://www.churchilltrust.com.au/res/File/Fellow_Reports/Costello%20Georgina%202004.pdf> at 2 April 2009; Bernadette McSherry and Susan Kneebone, 'Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights', (2008) 12: 1 *International Journal of Human Rights*, 81; Elaine Pearson, 'Australia' in Global Alliance against Trafficking in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (GAATW, 2007) [55-56] <www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf> at 26 Feb 2009.

who do not meet the entry requirements of the official scheme. Costello notes that funding for the work of NGOs is important because it:

enables NGOs to provide support to victims of trafficking who may be traumatised and fearful after experiencing psychological and physical coercion and even enslavement. Such support can be crucial in providing victims with the safety and assistance they need in order to provide information to police about their exploitation and testify against people traffickers in prosecutions.⁷²

The Italian model of funding a large and diverse group of non-governmental trafficking organisations is supported by Costello and Demir as an example of best practice in this area.⁷³ Costello also highlights the success of the United States' model, where funding for trafficking support programs is awarded to NGOs in a competitive process by an objective selection panel.⁷⁴ Evidently, the restrictive service provision through a single contractor is inadequate according to these commentators and prevents the involvement of the wider community in respect of this issue.⁷⁵

Despite these criticisms, there are signs of increased governmental collaboration with non-governmental organisations on trafficking issues, with the Federal Government's recent release of their Guidelines for NGOs in dealing with trafficked persons.⁷⁶ Minister for Women Tanya Plibersek has also commented that an increased level of engagement between NGOs and government representatives is occurring, with meetings occurring between these two groups in order to 'better identify victims and support them while in Australia'.⁷⁷ In addition, Minister Plibersek has publicly commented that the victim support system is undergoing review to become 'more compassionate and responsive' in its approach to supporting victims.⁷⁸ These reforms have the capacity to address the issues of service availability and content which have formed the basis of the academic criticism of the Support for Victims of People Trafficking Program.

2.8 Other criticisms

A variety of other specific criticisms of the Program and suggestions for its improvement have been identified in reviewing the academic literature on this scheme. These include:

⁷² Georgina Costello. 'Winston Churchill Trust Report: Fellowship to study people trafficking law and policy in Italy and the USA', 2004. [13] <http://www.churchilltrust.com.au/res/File/Fellow_Reports/Costello%20Georgina%202004.pdf> at 2 April 2009.

⁷³ Georgina Costello. 'Winston Churchill Trust Report: Fellowship to study people trafficking law and policy in Italy and the USA', 2004. [15-16] <http://www.churchilltrust.com.au/res/File/Fellow_Reports/Costello%20Georgina%202004.pdf> at 2 April 2009; Jenna S Demir, Trafficking of Women for Sexual Exploitation: A Gender-Based Well-Founded Fear? An examination of refugee status determination for trafficked prostituted women from CEE/CIS countries to Western Europe (2003) [38] <www.jha.ac/articles/a115.pdf> at 26 Feb 2009.

⁷⁴ Georgina Costello. 'Winston Churchill Trust Report: Fellowship to study people trafficking law and policy in Italy and the USA', 2004. [13] <http://www.churchilltrust.com.au/res/File/Fellow_Reports/Costello%20Georgina%202004.pdf> at 2 April 2009.

⁷⁵ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, xiii, xiv.

⁷⁶ Attorney-General's Department, *Guidelines for Non-Government Organisations working with trafficked people* (2009) <http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_GuidelinesforNon-GovernmentOrganisationsworkingwithtraffickedpeopleandmultilingualfactsheets> at 7 May 2009.

⁷⁷ Tanya Plibersek, presentation at the *Australian Trafficking Forum*, Sydney (NSW), 24 July 2008), [3] <http://www.antislavery.org.au/pdf/TanyPlib_Address.pdf> at 27 Jan 2009.

⁷⁸ Tanya Plibersek, presentation at the *Australian Trafficking Forum*, Sydney (NSW), 24 July 2008), [1] <http://www.antislavery.org.au/pdf/TanyPlib_Address.pdf> at 27 Jan 2009.

- That there are no official trafficking victim shelters or centres where victims of people trafficking can be sheltered, supported and support each other.⁷⁹ At present the only service of this nature is provided through Samaritan Accommodation (administered by the Salvation Army), which runs a facility for victims of trafficking and slavery in Sydney.
- That there should be greater availability of psychiatric and psychological support, rather than just counselling available for victims in the Program.⁸⁰ Many trafficked persons are victims of trauma and violence and require more than a token amount of psychological treatment. However, the budgetary constraints of the Program, as with respect to the provision of legal support, limit these services substantially.
- That there needs to be greater consideration of the financial needs of the clients, particularly if they are remitting money to their home country. Mere reliance on Centrelink benefits could be a source of anxiety and pressure for victims.⁸¹
- That the support scheme include protections which equate to the safeguards for victims in sexual assault trials. Such a scheme could include programs designed to prevent further trauma for the victim, and protect their anonymity.⁸²

3. Conclusion

It is clear that the depth and variety of criticism of the Support for Victims of Trafficking Program demonstrates serious problems with the government's current arrangements. Further Federal funding is evidently required in order to build on the support frameworks currently in place, and ensure that there the special needs of individual clients are provided for beyond the minimum services currently available. It is also apparent that adopting a reformed plan for victim support will not only aid the rehabilitation of victims, but also support the law-enforcement aims of the Australian government in its response to trafficking. A failure to implement these suggestions will therefore only serve to damage the Australian government's reputation in regard to their response to trafficking in persons.

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⁷⁹ Georgina Costello. 'Winston Churchill Trust Report: Fellowship to study people trafficking law and policy in Italy and the USA', 2004. [16] <http://www.churchilltrust.com.au/res/File/Fellow_Reports/Costello%20Georgina%202004.pdf> at 2 April 2009.

⁸⁰ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 38.

⁸¹ Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 60.

⁸² Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 5.