



FROM WOMEN'S LABOUR FORCE TO WOMEN'S FORCED LABOUR, MIGRATION & MARRIAGE.

Understanding the gaps in prevention and protection needs in trafficking and exploitation of women and girls in Australia.

An Evidence Review

November 2011

Report commissioned by Good Shepherd Australia New Zealand and prepared by Anti-Slavery Australia in partnership with the Jumbunna Indigenous House of Learning at the University of Technology, Sydney.

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EXECUTIVE SUMMARY

This report surfaces gaps in knowledge and services relating to the labour of women in Australia. Along with an assessment of the needs, it provides suggestions for a way forward in terms of possible partnerships for developing knowledge, services and advocacy.

The gaps considered include labour force, forced labour, forced migration and forced marriage.

LABOUR FORCE AND FORCED LABOUR

While women have over the long term been over-represented in part-time or casual employment, the increased use of precarious forms of employment is leaving all women, especially those from CALD backgrounds at risk. There is a need for both more legal protection and culturally and linguistically appropriate resources for community education on rights and services.

While it appears that exploitation of children through work is not on a significant scale in Australia, it is important that a means of keeping a national watch on this is found.

There is a clear history of exploitation of Indigenous women by way of overwork or government control of work or earnings. The situation of disadvantage in work remains in place for many today. Indigenous women are overrepresented among the unemployed and discouraged workers. Through the CDEP many are in effect underpaid for highly skilled work and long hours. The status of CDEP participants needs to be established so that more equitable outcomes can be put in place.

In Australia employment legislation and instituted monitoring and intervention via the Fair Work Act, Fair Work Australia and the Fair Work Ombudsman provide protection for workers. However, those in employment other than full time, permanent work are still relatively unprotected. Improvements are needed in relation to the relevant aspects of immigration law and anti-discrimination law and the anti-trafficking legislation needs a review.

In addition, services (including language resources and education) are needed to improve access to protection and legal assistance for vulnerable workers, especially Indigenous women and women from NESB or CALD backgrounds.

The report outlines the definitions in international and Australian laws of “people trafficking”, “slavery” and “forced labour” and makes the case for criminalising forced labour.

FORCED MIGRATION

Migrant women as a group tend to be vulnerable to varying degrees when it comes to work, because of such things as financial stress, language, lack of education or qualifications, social isolation or child care responsibilities. Among the most vulnerable are those on temporary work or student visas who suffer from a lack of affordable housing and poor access to information about work rights. Being without a valid visa adds another whole dimension.

FORCED MARRIAGE

For foreign partners of Australian citizens, family violence may mask forced or servile marriage, so education of community workers is needed for the full protection of the women concerned. All of these situations are complex legally and culturally, so community consultation is critical and the safety of each woman needs to have priority. The many opportunities for further work include research, community consultation, awareness raising, service provision and advocacy.

FROM LABOUR FORCE TO FORCED LABOUR, MIGRATION & MARRIAGE:

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1. INTRODUCTION

1.1 AIMS & TERMS OF REFERENCE

Good Shepherd Australia New Zealand commissioned an evidence review in relation to labour rights for women and girls, particularly those who are in transit, have been forced to migrate or are trafficked.

The research aimed to identify emerging problems for migrant and Indigenous women and girls in the context of employment and to identify gaps in services and legal protections.

Anti-Slavery Australia (Anti-Slavery) worked closely with staff at Good Shepherd Australia New Zealand in the preparation of this report to ensure that the content and recommendations were appropriately targeted to their needs. The outcomes of the research are intended to be used by Good Shepherd Australia New Zealand to guide resource allocation and the development of new services, programs, and research and advocacy strategies.

This research was conducted by Anti-Slavery in partnership with the Jumbunna Indigenous House of Learning at the University of Technology, Sydney.

1.2 GOOD SHEPHERD AUSTRALIA NEW ZEALAND

Good Shepherd Australia New Zealand is the organisational body that manages the ministries and works of the Sisters of the Good Shepherd in Australia and New Zealand. It works in the tradition of the Sisters of the Good Shepherd. Good Shepherd is a network of people and organisations working to enhance the dignity and worth of each person. Its mission is:

... to bring about change and partnerships which enhance life and increase hope for disadvantaged, marginalised and oppressed persons, families and communities, especially women and girls.

The following are some of the settings in which Good Shepherd agencies and Sisters are active: formation programs, family violence services, prisons, migrant groups, Indigenous education scholarships for women, asylum seeker centres, social policy and research, youth services, women's development, violence against women, anti-trafficking, child protection, harm

minimisation programs, alternative education, sexual assault programs, microfinance, aged care, and pastoral care.

Good Shepherd Australia New Zealand is an active member of Australian Catholic Religious Against Trafficking in Humans (ACRATH), providing significant funding and key personnel to support its work. Good Shepherd Australia New Zealand has also been independently active in research and advocacy to government departments concerning trafficking issues. Recent submissions to the Australian Government include responses to the Attorney General's Discussion Papers on forced and servile marriage and on the criminal justice response to slavery and people trafficking, reparations and vulnerable witness protections.¹

Good Shepherd Australia New Zealand is a member of the Good Shepherd Asia Pacific region and networks with other Good Shepherd organisations involved in migration and trafficking issues. Many Good Shepherd Sisters and organisations in the Asia Pacific region undertake prevention work such as providing information and conducting awareness raising activities, equipping those at risk of trafficking or debt bondage with emergency contacts, and orientation for those preparing to migrate overseas for work or marriage. Another major part of Good Shepherd prevention work is directed to addressing the dehumanising poverty which drives much labour migration and renders women and girls vulnerable to trafficking. This is done through projects aimed at providing alternative sources of income for women in prostitution and vulnerable individuals. Education and skills training are an example of preventative activities reducing vulnerability to trafficking.

Good Shepherd also takes part in care for survivors of trafficking in a number of countries. Care for survivors includes the provision of shelters, counseling, healthcare and legal assistance. Through its international networks, Good Shepherd also seeks to assist in safely repatriating survivors to reduce the risk of re-trafficking. Debriefing and assistance to reintegrate are provided in some countries.

Good Shepherd is involved in advocacy at a variety of levels with governments and the United Nations. Good Shepherd has Special Consultative Status with the Economic and Social Council (ECOSOC) and is a member of the NGO Committee on the Status of Women and the NGO Committee on Social Development.

1.3 ANTI-SLAVERY AUSTRALIA & THE RESEARCH TEAM

The prevention of human trafficking and labour exploitation is central to the mission of Anti-Slavery. Our research into human trafficking and our case-work with trafficked people has established Anti-Slavery as a leading authority on human trafficking in Australia.

Anti-Slavery has made a number of policy recommendations, informed by sound evidence based research. Our research informed by our work with clients is both scholarly and practical, and is

¹ GSANZ, *Response of Good Shepherd Australia New Zealand to Discussion Paper – Forced and Servile Marriage*, 3 March 2011; GSANZ
GSANZ, *Response of Good Shepherd Australia New Zealand to the Criminal Justice Response to Slavery and People Trafficking, Reparations and Vulnerable Witness Protections*, 25 February 2011:GSANZ

conducted through ongoing and collaborative dialogue with government and communities. The outcome of Anti-Slavery research and policy recommendations has directly impacted on the reform and development of the trafficking visa framework and victim support programs administered by the Australian Government Office for Women. The Director of Anti-Slavery, Associate Professor Jennifer Burn, is a member of the National Roundtable on People Trafficking. Jennifer Burn is an associate member of the University of Technology Sydney (UTS) Cosmopolitan and Civil Society Research Network. This network brings together researchers from across the University to share multi-disciplinary expertise and conduct research.

Anti-Slavery, together with the Australian Human Rights Commission, developed the 'Guidelines for NGOs working with trafficked people'. The guidelines address the importance of informed consent, the privacy of victims, confidentiality, the importance of providing culturally appropriate services and meeting professional standards and codes of conduct.²

The Anti-Slavery Research team included:

- Jennifer Burn, Associate Professor in the Faculty of Law at UTS and Director of Anti-Slavery Australia;
- Jemma Hollonds, Research Officer for this project;
- Kate Power, Research Assistant;
- Frances Simmons, Lawyer and Research Associate at Anti-Slavery Australia;
- Pam Stewart, Acting Director of Anti-Slavery Australia and academic in the Law Faculty at UTS.

We are very grateful for the additional assistance of Joanne Pugsley and Grace Thangasamy, who are completing Practical Legal Training with Anti-Slavery and who assisted in this research.

This research was conducted by Anti-Slavery in partnership with Nicole Watson of the Jumbunna Indigenous House of Learning at UTS. Nicole Watson is a member of the Birri-Gubba People and the Yugambeh language group. Nicole has a Bachelor of Laws from the University of Queensland and a Master of Laws from the Queensland University of Technology. We acknowledge and thank Michael Rawling in the UTS Faculty of Law for his advice about employment law.

Sandie Cornish of Rosemount Good Shepherd Youth & Family Services assisted in the final editing of this report.

1.4 SCOPE OF THE REPORT

This report examines emerging areas of concern with respect to labour rights for women and girls in Australia. It focuses on the labour rights of Indigenous and migrant women and girls, women in transit, trafficked women and women who migrate through forced marriage.

² Australian Government, Working Group of the National Roundtable on People Trafficking, *Guidelines for NGOs working with Trafficked People* (2nd ed.) 2010.

1.5 METHODOLOGY

The research was conducted with the guidance of a Steering Committee appointed by Good Shepherd Australia New Zealand and framed to identify key areas for further research and action by focusing on the available literature to find evidence pointing to gaps in service delivery for women and girls. Members of the Steering Committee were:

- Sandie Cornish, Research & Social Policy Manager, Rosemount Good Shepherd Youth & Family Services
- Michaela Guthridge, Justice Development Manager, Good Shepherd Australia New Zealand
- Kathy Landvogt, Acting Social Policy & Research Manager, Good Shepherd Youth & Family Service (*from April 2011*)
- Louise Rowling, Chair, Rosemount Good Shepherd Youth & Family Services Research & Evaluation Committee
- Marilyn Webster, Social Policy & Research Manager, Good Shepherd Youth & Family Service (*until April 2011*)
- Michael Yore, Director of Mission & Justice Good Shepherd Australia New Zealand.

The research was primarily desk-based and involved conducting a detailed literature review, covering a broad range of materials including academic literature, statistical reports and desk-based survey of services and programs.

The project was approved by the University Ethics Committee of the University of Technology, Sydney.

Interviews with a small number of participants allowed us to seek feedback regarding emerging issues and matters of concern. Interviews were conducted with the following key organisations:

- Asian Women at Work
- Brotherhood of St Laurence
- Immigrant Women's Speakout
- Northern Territory Working Women's Centre
- Queensland Working Women's Service
- Australians for Native Title and Reconciliation (ANTaR)
- Australian Council of Trade Unions (ACTU)
- United Voice
- Service Stars Community Jobs Alliance.

Nicole Watson attended the Annual Conference of the ACTU Indigenous Committee, held on 16 to 18 February, 2011 in Darwin.

1.6 LIMITATIONS OF THE RESEARCH

The research was desk-based and conducted within a very short time frame.

As we were unable to complete interviews prior to ethics approval being granted by the UTS University Ethics Committee, the number of people interviewed was limited. Thus researchers relied on anecdotal reports from interviewees and first-hand evidence, in addition to published research and academic literature.

2. RECOMMENDATIONS

WOMEN IN PRECARIOUS EMPLOYMENT

Recommendation 1

That Good Shepherd Australia New Zealand promote further research to more comprehensively identify the nature and extent of links between migrant work and precarious employment.

Recommendation 2

That Good Shepherd Australia New Zealand promote further research to assess the need for legal services for vulnerable migrant workers and community awareness about the rights of migrant workers under Australia's workplace relations laws.

Recommendation 3

That Good Shepherd Australia New Zealand consider developing collaborative relationships with existing advocacy and support bodies such as Asian Women at Work, to develop materials, enhance existing services and to lend skill and expertise in applications for funding for specific projects, such as multi-lingual web based material.

CHILDREN

Recommendation 4

That Good Shepherd Australia New Zealand take advantage of the current inquiry into whether Australia should have a federal children's commissioner and advocate for better protection of the rights of children, especially through consistency in the treatment of child protection issues across the whole of Australia.

FORCED AND SERVILE MARRIAGE

Recommendation 5

That Good Shepherd Australia New Zealand commission research to develop knowledge about the nature and extent of forced marriage in Australia and to identify available protections.

Recommendation 6

That Good Shepherd Australia New Zealand advocate to the Australian Attorney-General for the establishment of a community consultation group to advise the Australian Government on forced marriage.

Recommendation 7

That Good Shepherd Australia New Zealand work with Anti-Slavery and a community reference group to develop for NGOs, multilingual guidelines and awareness raising material on forced marriage, domestic violence and violence against women.

Recommendation 8

That Good Shepherd Australia New Zealand, in partnership with Anti-Slavery, develop teaching materials for use in schools which recognise the gender dimension of the human rights abuses of human trafficking, slavery, extreme labour exploitation, and forced and servile marriage as forms of violence against women, and provide information about the rights and protections available in law.

Recommendation 9

That Good Shepherd Australia New Zealand work with Anti-Slavery to develop training sessions and materials for community workers and multilingual workers about the link between domestic violence, trafficking and forced marriage.

TRAFFICKING, SLAVERY AND FORCED LABOUR

Recommendation 10

That Good Shepherd Australia New Zealand promote research to understand the links between forced marriage, sponsored partner migration and labour exploitation.

Recommendation 11

That Good Shepherd Australia New Zealand develop a professional and accountable service model to address gaps in protection of women trafficked to Australia. This would include provision of safe and appropriate housing, culturally appropriate services such as English language training, vocational training, medical, dental and psychological services.

Recommendation 12

That Good Shepherd Australia New Zealand promote the introduction of specific offences of labour trafficking and servitude in the Australian Criminal Code.

Recommendation 13

That Good Shepherd Australia New Zealand advocate for the introduction of a federal compensation scheme for victims of crime.

Recommendation 14

That Good Shepherd Australia New Zealand explore the feasibility of meeting the support gaps in service provision for trafficked women including accommodation, vocational training, English language training, psychological support and dental care.

INTERNATIONAL STUDENTS

Recommendation 15

That Good Shepherd Australia New Zealand advocate with Government about the responsibilities of education providers to ensure that international students are assisted to find and maintain suitable accommodation and that they are properly informed about Australian law and the protections that exist for all people under Australian law. This would include information about law enforcement in Australia, Australian working conditions and regulatory bodies and contact and referral information.

INDIGENOUS WOMEN AND GIRLS

Recommendation 16

That Good Shepherd Australia New Zealand promote further research to ascertain whether or not Community Development Employment Projects (CDEP) participants are employees within the meaning of the *Fair Work Act 2009* (Cth).

Recommendation 17

That Good Shepherd Australia New Zealand promote further research to determine the legal entitlements of CDEP workers, including but not limited to, paid parental leave and superannuation.

Recommendation 18

That Good Shepherd Australia New Zealand promote further research in relation to the impacts of the Northern Territory Emergency Response on the labour rights of Indigenous women and in particular, the effects of income management.

Recommendation 19

That Good Shepherd Australia New Zealand consider funding research into domestic trafficking, especially of Indigenous women and girls.

FAIR WORK ACT

Recommendation 20

That Good Shepherd Australia New Zealand promote research to evaluate the role of the Fair Work Ombudsman in enforcing the rights of migrant workers in the workplace and obtain gender disaggregated data about Fair Work actions involving migrant workers.

Recommendation 21

That Good Shepherd Australia New Zealand promote the undertaking of a comprehensive audit of access to legal services for vulnerable migrant workers in Australia.

Recommendation 22

That Good Shepherd Australia New Zealand invest in the production and distribution of multilingual information on the legal rights of vulnerable workers. This investment should occur in conjunction with community awareness campaigns to raise awareness of the rights of migrant women at work.

Recommendation 23

That Good Shepherd Australia New Zealand promote the implementation of the recommendations of the *Making it Fair Report*.

Recommendation 24

That Good Shepherd Australia New Zealand advocate for the Australian Government to undertake a comprehensive audit of access to legal services for Indigenous women, with particular attention paid to employment and discrimination law.

3. LABOUR RIGHTS OF WOMEN IN AUSTRALIA

3.1 GROWTH IN PARTICIPATION OF WOMEN IN THE WORKFORCE

In 2008, the Australian Bureau of Statistics reported that women's participation in the labour market changed markedly in the preceding 25 years.³ During that time, women's increased likelihood of employment positively impacted on their economic independence. However, while more women worked, their economic position in comparison with the position enjoyed by men remained unchanged. Some of the factors that explained the trend included changes in the way that women worked and the differences between partnered and single women.⁴ Historically, women participated in part-time work to supplement the primary wage of the male bread winner. However, many working women are now the primary source of income for the family or work with partners jointly contributing to the household income.

A feature of women's participation in the paid workforce is their over-representation in part-time and most often, casual employment.⁵ Dina Bowman from the Brotherhood of St Laurence observed that there has been a resurgence of casual work in Australia.⁶ Many women choose part-time or casual work because it allows them to accommodate family responsibilities. However, the conflict of work and family is likely only part of the reason why women are over-represented in part-time and casual work. Owens believes that working part-time has become the defining cultural indicator of women's work because one third of working women in every age group are employed part-time, not just women with young children.⁷

Undertaking casual work can be problematic for women who are trying to manage income generating and familial responsibilities, and can result in certain women becoming vulnerable to exploitation. Many casual work arrangements involve no written agreement or regulation and can lead to precarious work situations. High rates of casual work mean that many women have little job security and are vulnerable to losing their work at short notice, with potentially serious consequences for the women and their families.

The increase in participation of women in the workforce has not necessarily led to increased financial independence. In Australia, women's increased participation in the labour market has largely been in part-time and casual work. The participation of women in full-time employment barely changed between 1933 and 1994. In 1933, 25.2 per cent of women were in full-time

³ Australian Bureau of Statistics, Cat 4102 - *Australian Social Trends, 2008*

><http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Chapter8002008>< (accessed April 2011).

⁴ Ibid.

⁵ Austen and Birch, *Family Responsibilities and Working Women's Lives* Women's Economic Policy Analysis Unit (2000) 2.

⁶ Interview with Dina Bowman, Brotherhood of St Lawrence (Telephone Interview 12 April 2011).

⁷ Fudge, J., Owens, R., *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, (2006) 329, citing Australian Bureau of Statistics, Cat. No. 6203.0, *Labour Force, Australia*, June 2002

><http://www.abs.gov.au/ausstats/abs@.nsf/Products/6287.0~2009~Chapter~Participation>< (accessed April 2011).

employment, compared with 27.1 per cent in 1994.⁸ The majority of working women are engaged in casual or part-time work. In December 2010, 45.9 per cent of working women were engaged in part-time work, compared with 16.6 per cent of working men.⁹

For the year of 2009, the Australian Bureau of Statistics estimated that the total labour force participation rate for all Indigenous people aged 15 and over was 56 per cent.¹⁰ Of that group, Indigenous men were more fully represented in the labour force participation rate at 63 per cent, while for women the participation rate was only 49 per cent.¹¹ To compare the Indigenous labour force participation rate with the total participation rate for the 2009 year, the total participation rate was 65.6 per cent, for males the rate was 72.5 per cent and for women it was 58.8 per cent.¹² Between 2005 and 2009, the Indigenous population not in the labour force increased. Females accounted for 59 per cent of the total Indigenous population not in the labour force.¹³

Because of the part-time nature of women's work and the low paid status of their jobs, participation in the workforce does not necessarily guarantee an adequate income for women, particularly if they have dependent children. On average, women in full-time employment earn 17 per cent less than men.¹⁴ This figure is based on a comparison between full-time male and female workers. It widens to a gap of 35 per cent when total earnings, including those from part-time work, are taken into account.¹⁵

The low level of women's incomes has serious consequences for women later in life because it leads to reduced superannuation savings. In 2006, the average superannuation balance for women was \$35,520, compared with \$69,050 for men. This means women's balances are only 51 per cent as a proportion of men's balances.¹⁶

3.2 THE PROLIFERATION OF 'NON-STANDARD' WORK IN THE LABOUR MARKET

The standard form of employment in Australia is full-time, permanent work, with regular hours each week. Historically, most people in these roles have been men. However, changes in the

⁸ Hunter, R. *The Legal Production of Precarious Work. Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, (2006) 287.

⁹ Australian Bureau of Statistics, Cat. no. 4102.0, *Australian Social Trends, Data Cube, Work*, December 2010 ><http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/27641437D6780D1FCA2568A9001393DF?opendocument>< (accessed April 2011).

¹⁰ Australian Bureau of Statistics, Cat 6287.0 - *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2009, June 2010.*

><http://www.abs.gov.au/ausstats/abs@.nsf/Products/6287.0~2009~Chapter~Participation>< (accessed April 2011).

¹¹ Australian Bureau of Statistics, *Cat 6287.0 - Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2009, June 2010.*

><http://www.abs.gov.au/ausstats/abs@.nsf/Products/6287.0~2009~Chapter~Participation>< (accessed April 2011).

¹² Australian Bureau of Statistics, Cat 41.2.0, *Australian Social Trends, Data Cube – Work, Table 1 Work, National Summary 1999-2010*, December 2010.

¹³ Australian Bureau of Statistics, Cat 6287.0 - *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2009, June 2010.*

¹⁴ Australian Government Office for Women, Minister for the Status of Women, Tanya Plibersek, *Budget 2009-1- Women*, quoting Australian Bureau of Statistics, *Average Weekly Earnings Australia*, November 2008, Cat no 6302.0.

>http://www.fahcsia.gov.au/about/publicationsarticles/corp/BudgetPAES/budget09_10/women/Documents/womens_budget_statement.pdf< (accessed April 2011).

¹⁵ Australian Bureau of Statistics, Cat no. 6302.0, *Average Weekly Earnings Australia*, November 2008, Table 1, ><http://www.abs.gov.au/ausstats/abs@.nsf/ProductsbyReleaseDate/CD6CF8ED7831AE92CA2575BC00209639?OpenDocument>< at April 2011.

¹⁶ Australian Human Rights Commission, *Accumulating poverty? Women's experiences of inequality over the lifecycle: An issues paper examining the gender gap in retirement savings*, September 2009>http://www.hreoc.gov.au/sex_discrimination/publication/gender_gap/index.html#fn13< (accessed 23 February 2011).

global economic market have led to the emergence of many forms of work which diverge from this model of standard work. These changes include:

- Demands for flexible labour;
- Ability to access international labour markets;
- Outsourcing;
- Continual drive for increasing profit margins.¹⁷

As a result of these global economic forces, non-standard work has increased dramatically in the past 20 years, both in Australia and overseas. In Australia, casual work grew dramatically during the 1980s and early 1990s. It is estimated that more than 25 per cent of employees in Australia work on a casual basis.¹⁸

The ability to engage workers through a wide range of work relationships carries many benefits for employers, including having flexibility to change staffing levels to meet demands, and lower non-wage costs, such as overtime, insurance, payroll and training costs.¹⁹ However, for workers, being engaged through flexible work arrangements is often highly precarious because there is limited access to rights and protections that standard workers enjoy. For example, workers may experience one or more of the following problems:

- They have low security and can often be made laid off or put on shorter notice without difficulty;
- Earnings are unstable, not guaranteed, or so low that they do not provide for basic needs;
- Hours are irregular, at the discretion of the employer, or insufficient to generate adequate income;
- The employer can change the content or other aspects of the job without negotiation;
- The working environment is unregulated, such as at home, polluted or otherwise dangerous;
- Access to training and education is limited.²⁰

3.3 OVER-REPRESENTATION OF WOMEN AND PEOPLE FROM CALD BACKGROUNDS IN PRECARIOUS WORK

In Australia and around the world, casual and other non-standard work is performed primarily by women from minority ethnic backgrounds.²¹ Asian Women at Work approach this issue with migrant workers through the development of a holistic network of services that focuses on the migrant worker's life, addressing a multiplicity of factors often associated with women in precarious work. These factors include social isolation, language barriers, family law problems, legal rights and rights at work, health information and accommodation. At the heart of the Asian

¹⁷ Fudge, J., Owens, R., *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (2006) 167.

¹⁸ Owens, R., Riley, J., Murray, J., *The Law of Work*, (2011) p185; Hunter, R. *The Legal Production of Precarious Work. Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (2006) 285.

¹⁹ Fredman, S. *Precarious Norms for Precarious Workers. Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, (2006), 178-200, 180.

²⁰ Owens et al, *The Law of Work* (2011), p 474, citing John Burgess and Iain Campbell, 'The Nature and Dimensions of Precarious Employment in Australia' (1998) 8 *Lab Ind* 5, 11-16. Bernstein et al, 216-217.

²¹ Fudge, J., Owens, R., *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, (2006), 8, 13.

Woman at Work experience is the lack of multi-lingual information about all these issues.²² Lina Cabaero from Asian Women at Work and Jane Corpuz Brock from Immigrant Women’s Speakout both observed a chronic lack of information on labour rights and identified such information as being one of the biggest areas in need of culturally appropriate information translated into appropriate languages.²³ Asian Woman at Work would welcome opportunities to work in collaboration with other agencies, such as Good Shepherd Australia New Zealand, in developing multi-lingual materials and seeking funding for the production of the materials and the development of multi-lingual web-based material.

3.4 EXISTING SERVICES AND SUPPORT

Interview data confirms that working women, women from culturally and linguistically diverse (CALD) backgrounds and women in precarious work situations have identified the need for clear, accessible, accurate and culturally appropriate information about labour rights, standards and remedies. Women from CALD backgrounds also report that this information should be available in a variety of forms and in community languages.

Interview data from Asian Women at Work, Immigrant Women’s Speakout, Working Women’s Centres and the trade union movement suggest a pattern of reactive response to address a need rather than the development of an outward looking policy response to emerging issues. Lack of capacity and funding remains the significant limiting factor on the development of awareness raising materials. In some cases, the primary response is through individual casework, in others there is an attempt to inform and organise through specific campaigns and programs such as through union engagement.

The findings in this paper demonstrate that more research needs to be undertaken to assess the need for legal services for vulnerable women migrant workers and to raise community awareness about the rights of migrant workers under Australia’s workplace relations laws. For example, there are currently no requirements for employers of significant numbers of employees from non-English speaking backgrounds to provide Fair Work Information Statements in community languages. Industry awards and National Employment Standards provided by Fair Work Australia are not available in community languages, leaving many without the opportunity to be informed of what is in their award.²⁴ The *Making It Fair* Report recommends “that Fair Work Australia ensure that where a significant proportion of an organisation’s employees are from a non-English speaking background, that the explanation of the terms of an employment agreement have been explained in the employee’s own language”.²⁵

3.5 GAPS IN POLICY AND ADVOCACY, SERVICES AND SUPPORT

²² Interview – AWAT, Jennifer Burn & Lisa Cabaero, coordinator of Asian Women at Work, 11 April 2011.

²³ Ibid; Interview with Jane Corpuz Brock, Immigrant Women’s Speakout (Telephone Interview 12 April 2011).

²⁴ Ibid.

²⁵ House of Representatives Standing Committee on Employment and Workplace Relations, Parliament of the Commonwealth of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009) 167, Recommendation 16.

Our impression is that each of the organisations interviewed is working to capacity with a clear agenda for further growth, hampered by resource constraints. We were unable to gauge the extent of meaningful coordination between agencies and suspect that a possible lack of coordination between agencies is another reflection of an overall lack of capacity. All organisations agreed that a major concern was the information gap on labour rights and entitlements in Australia. For instance there is not one clearly accessible source of accurate information, including translated information about working women's rights and entitlements and, as Asian Women at Work reports, there is a critical need for culturally appropriate web-based information to be developed in community languages.

International academic research demonstrates high levels of exploitation in the migrant working population and there are Australian reports that show exploitation in particular migrant cohorts.²⁶ It appears that further academic research would provide a valuable insight into the local dimensions of this kind of labour exploitation and the role of the Fair Work Ombudsman in protecting the rights of migrant workers under the *Fair Work Act 2009* (Cth) (FWA).

The Fair Work Ombudsman has statutory responsibilities to provide education, assistance and advice on the FWA, promote and monitor compliance with the FWA, investigate any act or practice that may be contrary to relevant Commonwealth laws, commence proceedings or make applications to enforce Commonwealth workplace laws. These responsibilities are addressed in Chapter 9 of this report. However, there remain significant gaps in the provision of information about legal rights and the provision of support and assistance to vulnerable migrant workers who experience exploitation in Australia.

All women in casual work and precarious work situations are especially vulnerable to exploitation. Agencies such as Asian Women at Work and Immigrant Women's Speakout in Sydney focus on human rights, migration entitlements and labour rights of migrant women, while the working women's centres address the employment situation of all women, including Indigenous women. For Indigenous women, organisations such as ANTaR, ACTU, Queensland Working Women's Centre and Northern Territory Working Women's Centre have stated that there are insufficient protections for working Indigenous women.

There are significant gaps in the legal framework protecting vulnerable migrant workers and Indigenous Australians. Anti-Slavery has recommended a formal review of Australia's anti-trafficking laws to evaluate if the existing legislative framework adequately covers all forms of human trafficking and exploitation.²⁷ While it is important to close the gaps in the existing criminal framework, any review of Australia's response to trafficking should consider the broader issues of pathways to remedies for vulnerable workers who are exploited in Australian workplaces.

²⁶ ABC, 'Poultry Producer under Investigation for Worker Mistreatment', *Lateline*, Broadcast on 21/10/2010, Sydney Australia, available at ><http://www.abc.net.au/lateline/content/2010/s3045057.htm>< at April 2011; Howes, Paul, *Rigging Pay Against Migrant Workers*, (2011) The Sydney Telegraph, ><http://www.dailytelegraph.com.au/rigging-pay-against-migrant-workers/story-fn6bmfwf-1226016316034>< at April 2011.

²⁷ See Anti-Slavery Project, *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protection: Response to the Australian Government Attorney-General's Department Discussion Paper* (2011); See also Frances Simmons and Jennifer Burn, 'Evaluating Australia's Response to all forms of Trafficking: Towards Rights-centred Reform', (2010) 84 *The Australian Law Journal* 712 (recommending a review of Australia's legislative response to trafficking).

In particular, there is a critical need for community awareness campaigns that distribute information about the rights of vulnerable migrant workers in the workplace and promote referrals to appropriate services. A national audit needs to be undertaken to assess the capacity of existing legal services to meet the needs of vulnerable migrant workers and identify measures to improve access to justice.

3.6 KEY AGENCIES AND POTENTIAL PARTNERSHIPS

All the agencies referred to above would value a partnership with Good Shepherd Australia New Zealand. Asian Women at Work specifically requested assistance in the development of a website, preparation of material for translation and web maintenance. Immigrant Women's Speakout and Asian Women at Work already work in partnership with each other. They would welcome a partnership with Good Shepherd Australia New Zealand, especially in the continued development of radio resources. The Northern Territory Working Women's Centre also reflects the need for greater collaboration in the development of crucial information for working women in a range of employment situations, including precarious employment.

3.7 OPPORTUNITIES FOR SERVICE DELIVERY INCLUDING EDUCATION SERVICES

As an example of culturally appropriate legal information, Immigrant Women's Speakout developed radio plays for women who prefer to learn about legal information and resources orally rather than in printed form. These radio plays are about domestic violence and are produced in nine community languages: Arabic, Dari (Afghanistan), Dinka (Sudan), Khmer (Cambodia), Krio (Sierra Leone), Mandarin (China), Somali (Somalia), Sudanese Arabic (Sudan) and Vietnamese.²⁸

RECOMMENDATIONS

Recommendation 1

That Good Shepherd Australia New Zealand promote further research to more comprehensively identify the nature and extent of links between migrant work and precarious employment.

Recommendation 2

That Good Shepherd Australia New Zealand promote further research to assess the need for legal services for vulnerable migrant workers and community awareness about the rights of migrant workers under Australia's workplace relations laws.

Recommendation 3

That Good Shepherd Australia New Zealand consider developing collaborative relationships with existing advocacy and support bodies such as Asian Women at Work, to develop materials, enhance existing services and to lend skill and expertise in applications for funding for specific projects, such as multi-lingual web-based material.

²⁸ For more information, see the Immigrant Women's Speakout webpage ><http://www.speakout.org.au/rsrscs.html>> (accessed April 2011).

4. CHILD LABOUR IN AUSTRALIA

4.1 INCIDENCE OF CHILD EXPLOITATION IN AUSTRALIA

According to ABS statistics, in 2006 6.6 per cent of all children aged 5 to 14 years had worked at some point in the previous year; of these 42 per cent were girls, accounting for 5.7 per cent of all girls.²⁹ These statistics also showed that most of the work done by children took place on farms and in family businesses and most work was done on weekends and before and after school.³⁰ From this information, it is difficult to determine what the nature of the work being performed by children is and what the impact on them might be. However, everyday experience tells us that the majority of work performed by children in Australia is unlikely to be exploitative or to have a serious negative impact on a child's wellbeing.

There have been anecdotal reports of more serious forms of child labour occurring on a somewhat isolated basis. For example, there have been reports of child prostitution occurring in some parts of Australia.³¹ In 1995, the Textile, Clothing and Footwear Union of Australia found incidences of children working alongside their parents who were outworkers due to the pressure to complete the work.³²

In 2009, two unaccompanied minors were referred to the Australian Federal Police as possible victims of labour trafficking. The police did not find evidence of labour trafficking and the children were referred to a state child protection authority for support.³³ To date there is no evidence that these forms of child exploitation are currently occurring on a significant scale in Australia. However, it is important that procedures and services exist which are able to address instances of child exploitation in an appropriate and effective manner when they arise.

4.2 PROTECTION FOR CHILDREN IN EMPLOYMENT

Children in employment are protected by a variety of state and federal laws and agencies.³⁴ In all states and territories, children are entitled to the same protections as adult employees. In addition, many states and territories have specific legislation to protect children in employment, such as the *Child Employment Act 2006* (Qld) which limits the hours of work that school-aged

²⁹ Australian Bureau of Statistics, Cat 6211.0, *Child Employment, June 2006*
>[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/1EE6107CE7FA755BCA2572820014F534/\\$File/62110_jun%202006.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/1EE6107CE7FA755BCA2572820014F534/$File/62110_jun%202006.pdf)< (accessed April 2011).

³⁰ Australian Bureau of Statistics, Cat 6211.0, *Child Employment, June 2006*
>[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/1EE6107CE7FA755BCA2572820014F534/\\$File/62110_jun%202006.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/1EE6107CE7FA755BCA2572820014F534/$File/62110_jun%202006.pdf)< (accessed April 2011).

³¹ See for example, Yasmine Phillips, *The Sunday Times (Perth)*, 'Girls as young as 12 working as child prostitutes', 2 January 2011, available at: <http://www.perthnow.com.au/news/western-australia/girls-as-young-as-12-working-as-child-prostitutes/story-e6frg13u-1225815484530>; Bryan Littlely et al, *The Advertiser*, 'Prostitutes as young as 13', 24 June 2007, ><http://www.adelaidenow.com.au/news/prostitutes-as-young-as-13/story-e6freo8c-1111113816895>.

³² Fair Wear, *Hidden Cost of Fashion*, available at: <http://www.awatw.org.au/fairwear/outworkers/statistics.html>< (accessed 1 March 2011).

³³ Anti-People Trafficking Interdepartmental Committee, Australian Government *Trafficking in Persons: The Australian Government Response: 1 May 2009-30 June 2010* (2010) 12.

³⁴ *Fair Work Act 2009* (Cth), s 27(2); See also for example *Child Employment Act 2003* (Vic); Children and Community Services Act 2004 (SA); Children and Young People (Employment) Standards 2009 (ACT).

children may engage in and prohibits them from performing work that may be harmful to their safety and social welfare.

There are numerous agencies which regulate and protect the interests of child workers including state and territory child protection agencies, children's commissioners and departments of education and youth.³⁵

Currently, the state-based child protection system is the central mechanism for protecting the rights of children. An inevitable consequence of such a state-based system is that child protection, the regulation of child labour and remedies differ in each Australian jurisdiction.

Recently proposals have been made for the establishment of a Commissioner for children and young people on a federal level. Achieving consistency across Australia in areas of child protection is a compelling argument in support of the establishment of a National Children's Commissioner.³⁶

4.3 EXISTING SERVICES AND SUPPORT

There are a range of services and organisations in Australia able to provide support to children in exploitative labour situations, including the well-regarded advocacy and research community law centre, the National Children's and Youth Law Centre.

Child protection agencies are likely to come into contact with children who are in or are vulnerable to exploitation.

Specialist children's legal centres operate in some parts of the country. Generalist legal centres and employment law centres are also able to provide advice to children. However, the ability of children to access these services is likely to be less than that of the general population.

4.4 GAPS IN POLICY AND ADVOCACY, SERVICES AND SUPPORT

It appears that there is currently no national coordinated approach to policy or service provision in relation to children in employment. Responsibility for these issues is shared between numerous state and territory government bodies in the areas of child protection, employment law, youth issues, and children's commissioners.

There is a lack of data about the nature of child employment occurring in Australia and on the impact it has on children.

³⁵ Fair Work Australia and Ombudsman do not deal with child employment in Australia. Child employment laws are covered by state and territory legislation. The state legislation has different application and coverage in each state or territory: *Industrial Relations (Child Employment) Act 2006* (NSW); *Children and Young People Act 2008* (ACT); *Children and Young People (Employment) Standards 2009* (no 1) (ACT); *Child Employment Act 2006* (QLD); *Education Act 1972* (SA); *Education Act 1994* (Tas); *Children, Young Persons and Their Families Act 1997* (Tas); *Children and Community Services Act 2004* (WA); *School Education Act 1999* (WA); *Care and Protection of Children Act 2007* (NT); *Child Employment Act 2003* (Vic).

³⁶ Australian Human Rights Commission. *An Australian Children's Commissioner Discussion Paper*, October 2010. Available at: http://www.hreoc.gov.au/human_rights/children/2010_commissioner_children.html

The absence of an overarching, federal responsibility for monitoring and protecting the rights of children has led to recommendations by many advocates for the establishment of a National Children's Commissioner.

At the time of writing this report, the Senate Legal and Constitutional Affairs Committee was holding an inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010, introduced as a private Senator's bill. The purpose of the bill is to establish an independent statutory office of Commonwealth Commissioner for Children and Young People, to oversee the rights of young Australians with powers to ensure recognition of their needs and views.³⁷ The purpose of the office of Commissioner for Children and Young People will be to recognise and advocate for the rights and needs of young people in Australia, and to ensure that Australia's domestic and international obligations are upheld.³⁸ The establishment of a Commonwealth Commissioner would also be intended to assist in meeting Australia's obligations under the *United Nations Convention on the Rights of the Child* through the provision of clear minimum human rights standards, based in legislation, for the wellbeing of children and young people in Australia.³⁹

4.5 OPPORTUNITIES FOR SERVICE DELIVERY INCLUDING EDUCATION SERVICES

The experience of Good Shepherd Australia New Zealand in working across a broad range of social justice issues related to children and families puts Good Shepherd Australia New Zealand in a key position to identify areas where vulnerable children in Australia could benefit from changes in policy and legislation.

Mainstream agencies and services which could provide support to children in precarious employment situations could be trained to provide child-specific services and outreach.

Organisations that work with working women could include a focus on educating women about the rights of children and the impact of certain kinds of work on children.

RECOMMENDATIONS

Recommendation 4

That Good Shepherd Australia New Zealand take advantage of the current inquiry into whether Australia should have a federal children's commissioner and advocate for better protection of the rights of children, especially through consistency in the treatment of child protection issues across the whole of Australia.

³⁷ Senate Selection of Bills Committee, *Report No. 11 of 2010*, 30 September 2010, Appendix 7.

³⁸ Explanatory Memorandum, Commonwealth Commissioner for Children and Young People Bill 2010 (EM), p. 1; and Senator Sarah Hanson-Young, *Senate Hansard*, Second Reading Speech, Commonwealth Commissioner for Children and Young People Bill 2010, 29 September 2010, pp 278-279.

³⁹ Legal and Constitutional Affairs Committee, Commonwealth of Australia, *Commonwealth Commissioner for Children and Young People Bill 2010* (2011) 12; see also Explanatory Memorandum, *Commonwealth Commissioner for Children and Young People Bill 2010* 1.

5. PEOPLE TRAFFICKING, SLAVERY AND FORCED LABOUR

People trafficked to Australia through deception or fraud for the purpose of exploitation, people enslaved in Australia and those in Australia in forced marriage situations are vulnerable and living in situations of extreme exploitation.

5.1 PEOPLE TRAFFICKING

People-trafficking is defined by the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention on Transnational Crime 2000* (the *Trafficking Protocol*). The *Trafficking Protocol* defines trafficking as:

*'...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.'*⁴⁰

Under the *Trafficking Protocol* the consent of adult victims of trafficking is irrelevant if it was obtained by using force, threats, coercion or abusing a position of power or vulnerability.⁴¹ The *Trafficking Protocol* recognises that traffickers can control their victims through physical or psychological coercion. The phrase “an abuse of position of power or a position of vulnerability” includes nonviolent coercion where the person involved believes that there is “no real and acceptable alternative but to submit to the abuse involved”.⁴² Coercion may include psychological coercion to maintain control in circumstances where the victim is isolated, vulnerable to legal threats, fearful of deportation or economic destitution and dependent upon their trafficker for food and housing.⁴³

⁴⁰ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, GA Res. 25, annex II, UN GAOR, 55th Sess., Supp. No. 49, at 60, UN Doc. A/45/49 (Vol. I) (2001), entered into force 9 September 2003. At October 2009, the Trafficking Protocol had 117 signatories and 133 parties.

⁴¹ Article 3(b) provides that the recruitment, transportation, harbouring or receipt of children by any means for the purpose of exploitation will constitute trafficking, regardless of whether consent is present.

⁴² United Nations General Assembly, *Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, UN Doc. A/55/383/Add.1, 3 November 2000, note 63.

⁴³ The UNODC *Model Law Against Trafficking in Persons* recommends that laws criminalizing trafficking should specifically define an abuse of a position of vulnerability as “referring to any situation in which the person involved believes he or she has no real or acceptable alternative but to submit or taking advantage of the vulnerable position a person is placed in by virtue of a range of factors including (but not limited to) having entered a country illegally or without proper documentation, reduced capacity to form judgments by virtue of being a child, illness, infirmity or a physical disability, pregnancy, promises or giving of sums of money or other advantages to those having authority over a person, or being in a precarious position from the standpoint of social survival”: United Nations Office on Drugs and Crime, *Model Law Against Trafficking in Persons*, (2009) 22.

The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth) gives effect to Australia's obligations as a signatory to the *Trafficking Protocol* by inserting people-trafficking offences into the *Criminal Code Act 1995* (Cth) (Criminal Code).⁴⁴ These provisions apply where a trafficker organises or facilitates entry of a person into Australia by using threats or deception, or where the organiser is reckless as to whether the person's entry will result in exploitation. Additional offences deal with cases where a person is deceived about their involvement in the provision of sexual services, the extent to which the person is free to leave, or whether the person owes a debt.⁴⁵ The Criminal Code also contains specific offences regarding trafficking in children and domestic trafficking. Migrant workers, especially women, are vulnerable to trafficking for many personal, local and regional reasons including the need to earn income for family survival. Linguistic and cultural isolation, lack of knowledge about local laws, distrust of authority, especially law enforcement and fear of deportation heighten the potential for exploitation. While the *Trafficking Protocol* is framed to address trafficking of all people, the vulnerability of women and children to trafficking is paramount, and specifically referred to in the title of the Protocol being - *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the Convention on Transnational Crime 2000*.⁴⁶

5.2 SLAVERY

Slavery is defined in the *International Convention to Suppress the Slave Trade and Slavery 1926*⁴⁷ as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.⁴⁸ Additionally, the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956*⁴⁹ prohibits 'practices similar to slavery', including debt bondage, serfdom, servile marriage and child labour, 'whether or not [these practices] are covered by the definition of slavery'.⁵⁰

In Australia, slavery is defined in the Criminal Code as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person'.⁵¹ In 2008, the High Court handed down the landmark decision in *The Queen v Tang*,⁵² finding that the slavery provisions in the Criminal Code were appropriate and adapted to implement Australia's international obligations.⁵³ The High Court identified four powers attaching to the right of ownership:

⁴⁴ *Australian Criminal Code Act 1995* (Cth), Division 271.

⁴⁵ *ibid.*

⁴⁶ This is reflected in article 2, subparagraph (a) of The Trafficking Protocol, which requires that "particular attention" be paid to combating, and prevent trafficking in women and children. It is noted that UNODC observes the profile of trafficking victims is "highly influenced by local laws and priorities, which often focus on child victims and victims of sexual exploitation. With this caveat ... [in 2006] Two-thirds of trafficking victims were women". See United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, (2009) pp 10-11.

⁴⁷ Opened for signature 25 September 1926, 212 UNTS 17 (entered into force 18 June 1927).

⁴⁸ Art 1(1). The language of article 1(1) has 'proved to be abiding' and is now accepted to define slavery at international customary law: UN, Security Council, International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Kunarac, Kovac and Vukovic* (IT-96-23 & it-96-23/I-T) Judgment, 22 February 2001, [519].

⁴⁹ Opened for signature 30 April 1956, 226 UNTS 3 (entered into force 30 April 1957).

⁵⁰ Art 1. *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956*

⁵¹ *Criminal Code Act 1995* (Cth) Division 270.

⁵² *The Queen v Tang* [2008] HCA 39 at 30.

⁵³ *Ibid.*, at 34.

- the power to use a person’s labour in a substantially unrestricted manner;
- the entitlement to the fruits of a person’s labour without compensation commensurate to the value of the labour;
- the power to control and restrict a person’s movements; and
- the power to buy and sell a person.⁵⁴

In distinguishing between the crime of slavery and harsh and exploitative working conditions, the High Court held that the capacity to deal with a person as an object of sale and purchase ‘may be a powerful indication that a case falls on one side of the line [between harsh employment and slavery]’.⁵⁵

5.3 FORCED LABOUR

The International Labour Organization (ILO) conventions on forced labour, the *Forced Labour Convention 1930* and the *Abolition of Forced Labour Convention 1957*, define forced or compulsory labour as: ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.⁵⁶

The *Convention on Forced Labour* was drafted to address the human rights abuses of extreme labour exploitation. Forced labour is not merely the payment of low wages or poor working conditions, or situations of economic necessity, where a person feels tied to their job because of financial pressure or the lack of alternate employment.⁵⁷

The ILO defines the ‘menace of a penalty’ to include physical violence or restraint, death threats to the worker or family, threats to report illegal workers to the police or immigration officials, threats to shame workers to family members or more subtle forms of threat, such as psychological threats.⁵⁸ Penalties may also include financial penalties linked to debt and non-payment of wages accompanied by threats of dismissal for refusal to work overtime.

In the Australian Criminal Code, there is no specific offence of ‘forced labour’. Rather, forced labour is part of the definition of ‘exploitation’ in relation to the trafficking offences. ‘Exploitation’ is defined in the Criminal Code as when the exploiter’s conduct causes a person to enter into a situation of slavery, *forced labour*, sexual servitude or unlawful organ removal. Section 73.2(3) of the Criminal Code defines forced labour as ‘the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats’ is either ‘not free to cease providing labour or services’ or ‘is not free to leave the place or area where the person provides labour or services’.

The absence of a specific offence of forced labour represents a gap in the Australian criminal law. The existing trafficking in persons offences specifically relate to people brought to Australia through force or threat for exploitation, while the offence of slavery is taken to be reserved for the most serious offences. In our experience vulnerable migrant groups, such as international

⁵⁴ Ibid, at 26.

⁵⁵ Ibid, 32.

⁵⁶ *Abolition of Forced Labour Convention 1957* (ILO No. 150) Article 2.

⁵⁷ International Labour Organization, *The Cost of Coercion: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (2009) 5.

⁵⁸ Ibid, 5-6.

students, may be exploited in forced labour after arrival in Australia. Under the current law this would not be trafficking, and depending on the extent of control exercised by the exploiter, may not be slavery. The inclusion of a forced labour offence would be appropriately located within a hierarchy of offences criminalising exploitation and trafficking of persons, helping to “bring Australia into line with its international human rights and labour law obligations;

- amendments to the Criminal Code that would broaden the scope of criminal liability – these amendments would ensure easier prosecution and conviction of perpetrators of crimes that are recognised under international law;
- amendments that would acknowledge the rights of victims of trafficking, slavery and like offences to dignity and respect;
- amendments that would acknowledge the pain that the victims of trafficking and similar offences have suffered;
- amendments that would enable victims to feel as though they have been given an opportunity to be heard and to tell their story.”⁵⁹

5.4 PREVALENCE OF TRAFFICKING-RELATED ACTIVITIES

Slavery, trafficking and forced labour are clandestine activities and consequently, it is difficult to estimate accurately the number of people affected in Australia and worldwide.⁶⁰ Globally, the ILO estimates at least 12.4 million people are in forced labour, more than 2.4 million have been trafficked across borders and 9.8 million are exploited by private agents.⁶¹ The Asia-Pacific region is the most severely affected region in the world, with the ILO estimating that 9.4 million people in the Asia-Pacific region experience these kinds of human rights abuses.⁶²

In Australia, there is little reliable research on the prevalence of trafficking; however, some information can be drawn from official statistics regarding criminal and immigration processes. From 1 January 2004 to 30 June 2009, the Australian Federal Police investigated 270 allegations of trafficking⁶³ with 131 people accessing the government-funded victim support program.⁶⁴ On 1 July 2009, a new trafficking visa scheme came into effect, which improved the ability of victims to obtain visas and access support.⁶⁵ Between 1 May 2009 and 30 June 2010, 15 people were granted a Bridging visa F, 11 suspected victims were given Criminal Justice Stay visas, and 15 people and 6 dependent children were granted a Witness Protection (Trafficking) visa.⁶⁶ The Witness Protection (Trafficking) visa is available to people who have made a contribution to and cooperated closely with a prosecution or investigation of a trafficking offence. It is also available to immediate family members.

⁵⁹ GSANZ, *Response of Good Shepherd Australia New Zealand to*

⁶⁰ Frances Simmons & Jennifer Burn, ‘Evaluating Australia’s response to all forms of trafficking: Towards rights-centred reform’, (2010) 84 *Australian Law Journal* 712, 713.

⁶¹ International Labour Organization, *The Cost of Coercion: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (2009) 1.

⁶² *Ibid.*

⁶³ Anti-Trafficking Interdepartmental Committee, Australian Government, *Trafficking in Persons: The Australian Government Response: January 2004-April 2009* (2009) 19.

⁶⁴ *Ibid.* at 30.

⁶⁵ For a detailed review of the new scheme, see Jennifer Burn & Frances Simmons, ‘Prioritising protection – a new visa framework for trafficked people’, *Immigration Review* (2009), 413-10 and Jennifer Burn & Frances Simmons, ‘Trafficking and slavery in Australia: An evaluation of victim support strategies’ (2006) 15 *Asian Pacific Migration Journal*, 553-7.

⁶⁶ Anti-People Trafficking Interdepartmental Committee, Australian Government, *Trafficking in Persons: The Australian Government Response: 1 May 2009 – 30 June 2010* (2010) 9.

5.5 FOREIGN PARTNERS OF AUSTRALIAN CITIZENS & FAMILY VIOLENCE

In 2009-10 year, 44,755 partner visas were granted to non-citizens sponsored to Australia by their Australian citizen or permanent resident partner.⁶⁷

Long term partners (married couples, de facto and same sex partners) may be granted a permanent visa after visa processing (a long term partner is one where the relationship has been ongoing for five years or for two years where the couple has children), but most partner visas are granted for an initial period of two years. After that time, the relationship is assessed again by the Department of Immigration and Citizenship and if the relationship is genuine and continuing and other visa requirements are met, a permanent visa will be granted.

During the two year temporary visa partner stage, a victim of family violence does not have to stay in an abusive relationship to be granted the permanent visa. The visa holder can claim a permanent visa if the relationship has broken down due to family violence. The family violence provisions in Division 1.5 (Special provisions relating to family violence) were first introduced into the *Migration Regulations 1994* (Cth) in 1994 as a response to community experience and concerns that victims of domestic violence may choose to stay in an abusive relationship rather than be forced to leave Australia. In 2009-10 year, 705 applications for the benefit of the family violence provisions were made to the Department of Immigration and Citizenship.⁶⁸

Family violence is defined as:

'a reference to conduct, whether actual or threatened, towards:

- *the alleged victim, or*
- *a member of the family unit of the alleged victim, or*
- *a member of the family unit of the alleged perpetrator, or*
- *the property of the alleged victim, or*
- *the property of a member of the family unit of the alleged victim, or*
- *the property of a member of the family unit of the alleged perpetrator*

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety'.⁶⁹

To meet the immigration requirements the visa applicant is required to complete a statutory declaration about the violence and give the Department of Immigration and Citizenship evidence about the family violence and the effect of the violence. The visa holder must also produce evidence of the family violence prepared by a person who is considered to be a 'competent person'. Other kinds of evidence can be accepted instead of the statements by competent people where the visa applicant can provide the Department of Immigration and Citizenship with a court

⁶⁷ *ibid*, 57.

⁶⁸ *ibid*.

⁶⁹ *Migration Regulations 1994* (Cth). Division 1.5, Regulation 1.21(1).

order issued against the partner or evidence of a conviction of the partner of assault against the visa holder or a joint undertaking given to a court that the partner has committed violence against the visa applicant.⁷⁰

Anecdotal evidence from domestic and family violence workers is that the family violence provisions may mask forced or servile marriage. For this reason, education of community workers is critical as they often have first contact with the person in need. While the family violence provisions may assist women who have experienced family violence through the grant of a permanent visa that is unrelated to their original sponsoring partner, such women may also be victims of crimes such as trafficking and slavery. Comprehensive identification of the nature of the harm experienced may bring with it access to a level of support and financial compensation that may not have been otherwise apparent.

5.6 FORCED AND SERVILLE MARRIAGE

In response to an increasing focus in Australia on forced and servile marriage, the Australian Attorney-General issued a discussion paper in November 2010. The paper asked whether additional legislative and non-legislative measures are needed to provide: (a) adequate deterrence against the practices of forced and servile marriage, and (b) adequate protections for victims of forced marriage.⁷¹

The Anti-Slavery response to the Attorney-General's discussion paper was that Australia should consider a hybrid of criminal and civil measures to fully implement its international obligations to prohibit slavery and practices similar to slavery and to protect people who are facing or experiencing situations of forced marriage.⁷² The starting point for our research was to note that 'forced marriage' is not defined in international or Australian domestic law, but is understood to be a marriage that is entered into without the full and free consent of one or both of the parties to the marriage, such as where consent to the marriage is coerced through duress or fraud or through physical or psychological coercion. "Servile marriage" is defined in the 1956 *Supplementary Convention* as a practice similar to slavery where a woman does not have the right to refuse being given in marriage in exchange for payment in money or in kind for the benefit of family or other people.⁷³

In researching the Anti-Slavery response, we consulted with community groups, convened a seminar to discuss the issues and conducted research. Little is known about patterns of forced marriage in Australia and accurate data is difficult to obtain. In the same way that research into the dimension of human trafficking is difficult to conduct, forced marriage is a hidden practice located within families and family obligation. Anecdotal reports of forced marriage are common and there is a clear need for researchers to investigate the nature and extent of forced marriage in Australia. Recent court cases illustrate that young people in Australia have been faced with the prospect of being forced into marriage in countries outside Australia.

⁷⁰ *Migration Regulations 1994 (Cth)*, Division 1.5.

⁷¹ Attorney-General's Department, *Discussion Paper: Forced and Servile Marriage* (2010).

⁷² Anti-Slavery Project. *Forced and Servile Marriage. Submission in response to the Australian Government Attorney-General's Department Discussion Paper*, February, 2011.

⁷³ United Nations. *Supplementary Convention on the Abolition of Slavery, the Slavery Trade, and Institutions and Practices Similar to Slavery*, 226 (adopted 7 September 1956), Article 1(a)(i).

In 2010 a 17 year old girl saved herself from a forced marriage in Lebanon by calling the Australian Federal Police.⁷⁴ The Federal Magistrates Court issued an order restraining her family from taking her outside of Australia.⁷⁵ In 2010 the Victorian Department of Human Services successfully applied for an order from the Family Court to prevent the parents of a 14 year old girl from taking her overseas to be married to another minor.⁷⁶ In 2011, an Australian born woman, Ms Kreet, successfully petitioned the Family Court for orders that her marriage, which occurred in India in 2009, was void for duress.⁷⁷ Ms Kreet travelled to India where she believed she would marry Mr U, her Australian boyfriend. When she arrived her parents confiscated her passport. When Ms Kreet's father repeatedly threatened Ms Kreet that he would have Mr U's sisters and mother raped and kidnapped, Ms Kreet married Mr Sampir.

Australian citizens are not the only people to seek protection from being forced to marry abroad. Women who fear being subjected to forced marriage abroad have successfully sought protection visas in Australia arguing that they would be forced to marry if returned to their country of origin.

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Through our preliminary reviews we know that there has been little research in the Australian community about forced marriage and that forced marriage itself is misunderstood in the Australian community. Many community workers report situations of extreme labour exploitation of a woman in a marriage and explain that abuse of human rights as forced marriage. This kind of exploitation may in fact be trafficking or slavery, but not necessarily forced marriage, which refers to a lack of consent existing at the time of the marriage. The lack of clarity and understanding around the human rights abuses of slavery, trafficking and forced marriage leads to two conclusions. Firstly, there is a need for further research to develop our understanding about the nature and extent of forced marriage in Australia. The second conclusion is related to the first; it is critical to consult with and inform the community about the meaning of slavery, trafficking and forced marriage and to frame best practice responses in consultation with the community. While there is a substantial Australian response to trafficking and slavery, a lack of awareness about slavery and trafficking may mean that victims of these abuses are not identified and as a consequence miss out on available services and protections. Anecdotally, it appears that many women in relationships sharing characteristics of trafficking or slavery find limited protection through the operation of the family violence provisions in the *Migration Act 1958* (Cth).

While forced marriage is an area that clearly requires cultural sensitivity and community consultation, it is critical that any response has the safety and well-being of the person at risk of forced marriage or experiencing forced marriage at the centre of all efforts. In some instances the extent of coercion may be so serious that the conduct itself may be appropriately

⁷⁴ *Police save Sydney Girl from forced marriage (2010) ABC News*, > <http://.abc.net.au/news/stories/2010/06/03/2916750.htm>< at June 3 2010.

⁷⁵ *Kandal & Khyatt & Ors* [2010] FMCAfam 508.

⁷⁶ *Department of Human Services & Brouker and Anor* [2010] FamCA 742 (Mushin J found that both of the children proposed to be married were not of marriageable age within the terms of the *Marriage Act 1961* (Cth) and made a parenting order restraining the child's parents from removing her from Australia, placing her on the Airport Watch List and prohibiting the parents from applying for a passport for the child until she was eighteen years old).

⁷⁷ *Kreet & Sampir* [2011] FamCA 22.

⁷⁸ [2010] RRTA 1136 (17 December 2010) (facing forced marriage to brother in law in Zambia with the Tribunal finding (at 129) that if the applicant were to return to her husband's family, there was a very real chance, that she would suffer the harm she fears in the form of the sexual cleansing and forced marriage to her brother in law).

characterised as the kind of conduct that should be framed within a criminal justice response. On the other hand, the criminal law may not necessarily be the best response or the kind of response sought by a woman living in a forced marriage. For these reasons, community consultation is essential to agree on the balance between civil protection and criminal sanctions.

In its own submission in response to the Discussion Paper, Good Shepherd Australia New Zealand identified the following six principles which it holds should underpin reforms:

- Need for community engagement and education;
- Additional immigration and emigration safeguards to prevent forced and servile marriage;
- Systemic service provider coordination and training;
- Obligation to identify and support women and children who are victims of forced and servile marriage;
- Civil penalties to empower and protect women and children;
- Criminal penalties to deter and prosecute offenders.⁷⁹

5.7 EXISTING SERVICES AND SUPPORT

In addition to the agencies referred to in Chapter 1, specific agencies in Australia have a focus on trafficking, slavery and forced labour.

ACRATH - The Australian Catholic Religious Against Trafficking in Humans is endorsed by Catholic Religious Australia - the peak body for 180 religious orders in Australia. ACRATH is committed to working towards the elimination of human trafficking in Australia, the Pacific and internationally. ACRATH has a strong focus on policy development, advocacy and victim support. Good Shepherd Australia New Zealand was a founding member and has provided significant financial support and leadership within ACRATH.

Anti-Slavery Australia is the only specialist legal and research centre in Australia with a dedicated focus on slavery, trafficking and forced labour. Current areas of research include forced marriage and financial compensation for trafficked people.

The Australian Red Cross offers supported case work services to people who have been identified as trafficked by the Australian Federal Police. The service is culturally appropriate and focuses on the empowerment of the individual. The Australian Red Cross service is funded by the Australian Government Office for Women.

The Josephite Counter-Trafficking Project is a congregational ministry of the Sisters of St Joseph to respond to the needs of people who are trafficked. JCTP offers culturally sensitive support and mentoring to women of Asian origin who have been trafficked to Australia.

Project Respect has a mission of supporting women in the sex industry in Australia and to help prevent the exploitation and enslavement of women by the industry. Project Respect works to empower women who have been in the sex industry, through community education, advocacy and activism.

⁷⁹ GSAZ, *Response of Good Shepherd Australia New Zealand to Discussion Paper – Forced and Servile Marriage*, 3 March 2011, 3.

The Salvation Army in Sydney offers a supported accommodation service for migrant women who have experienced human trafficking and partners with the Josephite Counter-Trafficking Project, the Salvation Army across Australia and other community groups.

5.8 GAPS IN POLICY AND ADVOCACY, SERVICES AND SUPPORT

Major areas indicated for advocacy and reform include further research into the understanding and prevalence of forced marriage in Australia. This would involve considerable collaboration with communities across Australia. The establishment of a community advisory council would fill a gap between government intervention and community knowledge. One vital area for further work includes the development of multilingual guidelines and awareness raising material about forced marriage and the intersection between forced marriage, trafficking, slavery and domestic violence. This work is best done in collaboration with community agencies with a focus on violence against women intervention strategies and to ensure the human rights of women in these vulnerable situations. Educating young men and women in schools about human rights and respectful relationships is critical and clearly linked to the overall improvement in women's security safety and advancement. Cyndy Connole from United Voice has observed the effectiveness of such early intervention strategies in educating migrant youth in Victoria about issues such as forced marriage.⁸⁰

Women who are trafficked or enslaved have a range of needs, including safe housing, medical and psychological services, dental care, legal advice and representation, visa support, financial support, English language training, vocational training and job-search support. Currently these needs are often unmet. The lack of appropriate housing is a very difficult issue. At Anti-Slavery, we have often struggled to find suitable accommodation for our clients and we know that this is also a challenge for the Australian Red Cross. The Salvation Army provides a model of supported accommodation although it is clear that other forms of accommodation are often welcomed by vulnerable clients.

The Anti-Slavery experience of working with trafficked women is that there is a desperate need for vocational assistance. The women we assist are often unskilled and yet have a thirst for vocational training and employment. In our experience these women are hampered by lack of English language ability, lack of vocational skill and lack of assistance in finding a job. We know clients who have decided that they do not want to work in the sex industry but have been unable to find other employment. A well designed vocational support service would be a wonderful advance and could make a real life difference to women who have been trafficked to Australia, have assisted the police and yet are unable to move into alternative employment.

Legislative reform is critical and the law would be enhanced if there were a specific offence of labour trafficking and servitude in the Criminal Code. Additionally finding the most appropriate way to ensure that trafficked people receive a level of financial compensation is a critical area for advocacy and one that has already attracted the attention of agencies like ACRATH and Anti-Slavery.

⁸⁰ Interview with Cyndy Connole, United Voice (Telephone Interview 3 May 2011).

RECOMMENDATIONS

Recommendation 5

That Good Shepherd Australia New Zealand commission research to develop knowledge about the nature and extent of forced marriage in Australia and to identify available protections.

Recommendation 6

That Good Shepherd Australia New Zealand advocate to the Australian Attorney-General for the establishment of a community consultation group to advise the Australian Government on forced marriage.

Recommendation 7

That Good Shepherd Australia New Zealand work with Anti-Slavery and a community reference group to develop for NGOs, multilingual guidelines and awareness raising material on forced marriage, domestic violence and violence against women.

Recommendation 8

That Good Shepherd Australia New Zealand, in partnership with Anti-Slavery, develop teaching materials for use in schools which recognise the gender dimension of the human rights abuses of human trafficking, slavery, extreme labour exploitation, and forced and servile marriage as forms of violence against women, and provide information about the rights and protections available in law.

Recommendation 9

That Good Shepherd Australia New Zealand work with Anti-Slavery to develop training sessions and materials for community workers and multilingual workers about the link between domestic violence, trafficking and forced marriage.

Recommendation 10

That Good Shepherd Australia New Zealand promote research to understand the links between forced marriage, sponsored partner migration and labour exploitation.

Recommendation 11

That Good Shepherd Australia New Zealand develop a professional and accountable service model to address gaps in protection of women trafficked to Australia. This would include provision of safe and appropriate housing, culturally appropriate services such as English language training, vocational training, medical, dental and psychological services.

Recommendation 12

That Good Shepherd Australia New Zealand promote the introduction of specific offences of labour trafficking and servitude in the Australian Criminal Code.

Recommendation 13

That Good Shepherd Australia New Zealand advocate for the introduction of a federal compensation scheme for victims of crime.

Recommendation 14

That Good Shepherd Australia New Zealand explore the feasibility of meeting the support gaps in service provision for trafficked women including in accommodation, vocational training, English language training, psychological support and dental care.

6. MIGRANT WORKERS IN AUSTRALIA

The Australian economy relies heavily on the participation of migrant workers; 26 per cent of people in the Australian labour force were born overseas and 59 per cent of these people were born in countries where English is not the primary language spoken.⁸¹

6.1 RELATIONSHIP BETWEEN IMMIGRATION, PRECARIOUS WORK & LABOUR EXPLOITATION

While the connection between migrant workers and precarious work requires further research, the migration experience itself is a shared experience. People experiencing financial stress, cultural isolation and other forms of disadvantage are more likely to accept work that is precarious. In contrast to skilled migration, women in precarious employment are more likely to have migrated to Australia through the family, humanitarian and refugee visa categories. Because vulnerable women and migrants in these visa categories often have low levels of education, skills and professional experience, they also have fewer employment options and weaker bargaining power. Vulnerable women, including migrants and Indigenous women, often experience many additional forms of disadvantage which contribute to their vulnerability to exploitation and breaches of their rights, such as domestic violence and stress of family responsibilities. Susan Assad from Queensland Working Women's Service has observed that women who are victims of violence and forms of abuse tend to be in precarious employment such as casual or contracting work where their entitlements are virtually non-existent and their access to entitlements that do exist is limited.⁸²

A number of risk factors within the migration context are potentially linked to exploitation.

6.2 PERMANENT MIGRANTS

In 2008-2009, the Australian Government's permanent migration program consisted of 67 per cent for skilled migration, 32.9 per cent for family stream migration and 0.1 per cent for special migration, including humanitarian migration.⁸³ Skilled migration as a proportion of total permanent migration has grown from 47 per cent in 1996-1997.⁸⁴

To be eligible for general skilled migration visas, applicants must meet several criteria including: having skills and qualifications assessed as suitable for the Australian labour market; being between 18 and 44 years of age; having good English language ability and having recent skilled work experience or having recently completed an Australian qualification.⁸⁵ This means that most

⁸¹ Australian Bureau of Statistics, Cat 3416.0, *Perspectives on Migrants*, June 2010, ><http://www.abs.gov.au/ausstats/abs@.nsf/mf/3416.0>< (accessed April 2011).

⁸² Interview with Susan Assad, Queensland Working Women's Service (Telephone interview, 19 April 2011).

⁸³ Commonwealth of Australia, *Population Flows – Immigration Aspects 2008-2009 edition*, (2010), Department of Immigration and Citizenship, ><http://www.immi.gov.au/media/publications/statistics/popflows2008-09/pop-flows.pdf>< (accessed April 2011) 29.

⁸⁴ Productivity Commission, Commonwealth of Australia *Population and Migration: Understanding the numbers* (2010), 34-35.

⁸⁵ Commonwealth of Australia, *Population Flows – Immigration Aspects 2008-2009 edition*, (2010), Department of Immigration and Citizenship, <http://www.immi.gov.au/media/publications/statistics/popflows2008-09/pop-flows.pdf> at April 2011, 33.

skilled migrants have good education and skills and are likely to be employed in high skilled and well-paid industries.

Migrants in the family and humanitarian migration streams are also likely to have better education and skills than the general population in their home countries.⁸⁶ The reason for this may be that wealthier and better educated families have greater ability to undertake the process of migration, including accessing information about the migration process and paying the significant costs involved.

Approximately 60 per cent of all recent migrants and temporary residents in 2007 had a non-school qualification.⁸⁷

6.3 TEMPORARY MIGRANTS

The Australian temporary visa scheme allows people to travel to and stay in Australia for a specified period of time. There are many different kinds of temporary visas offering a limited stay in Australia. Some of these include visas for students, visitors, working holiday makers, temporary partner visa holders, skilled and business people. In 2009-10 year, there were 3,416,576 visitor visas granted to people who applied for the visa from outside Australia,⁸⁸ 67,980 subclass 457 (Business Long Stay) visas granted,⁸⁹ 269,828 student visas granted,⁹⁰ and 183,161 working holiday visas granted.⁹¹

While visitor visas prohibit work in Australia, some visas do have work rights attached to them. These include subclass 457 visa holders, who are usually sponsored by an employer to work in Australia for a period of up to four years. Category 457 visas have more flexible English language and skills requirements than other skilled migration visas and are favoured by employers because they enable them to bring in foreign workers to meet fluctuating demands for labour. In recent years, there have been reports that migrants on temporary business visas have been forced into situations of exploitation and forced labour.⁹²

6.4 INTERNATIONAL STUDENTS

Following attacks on Indian students in Melbourne and Sydney in 2009, the Australian Senate initiated an inquiry into student welfare through a reference to the Senate Standing Committee on Education, Employment & Workplace Relations (EEWR)⁹³. The Inquiry addressed student welfare including student safety, adequate and affordable accommodation, social inclusion,

⁸⁶ Colic-Pesker, V. *The 'Visibly Different' Refugees in the Australian Labour Market: Settlement Policies and Employment Realities. Refugees, Recent Migrants and Employment: Challenging Barriers and Exploring Pathways* (2009) pp 67-69.

⁸⁷ Australian Bureau of Statistics, Cat 6250.0, *Labour Force Status and Other Characteristics of Recent Migrants, Australia*, November 2007, [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/7A12ECFE4A0E12D5CA2574560014CD36/\\$File/62500_nov%202007.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/7A12ECFE4A0E12D5CA2574560014CD36/$File/62500_nov%202007.pdf) at April 2011.

⁸⁸ Department of Immigration and Citizenship, *Annual Report 2009-10* (2010) 78.

⁸⁹ *Ibid*, 64.

⁹⁰ *Ibid*, 60

⁹¹ *Ibid*, 84.

⁹² Australian Government, *Visas, Immigration and Refugees: Employer Sponsored Workers*, (2010) Department of Immigration and Citizenship ><http://www.immi.gov.au/skilled/skilled-workers/sbs/>< at April 2011.

⁹³ Australian Senate Standing Committee on Education, Employment & Workplace Relations, Commonwealth of Australia *Welfare of International Students* (2009).

student visa requirements, adequate international student supports, employment rights and protections from exploitation and appropriate pathways to permanency⁹⁴.

In a market where there is a shortage of accommodation generally, international students face additional hurdles as they struggle to find reasonable accommodation. These hurdles include language difficulties and lack of information about their legal rights generally and particularly tenancy rights and obligations. Recent newspaper articles in the Sydney press⁹⁵ focus on the vulnerability of international students as they seek to access decent housing. Reports of overcrowding, labour exploitation of students and sexual exploitation of women highlight the real difficulties of international students. The Committee recommended that education and training providers be required to provide information on their website about accommodation in Australia, including information about temporary rights and responsibilities.⁹⁶

While the provision of information on a provider's website would go part of the way to inform prospective and possibly current, international students about the accommodation market in Australia, it is clearly apparent that more than a guide to accommodation is needed. Arguably, educational providers have an ethical responsibility to ensure that the housing stock available to students is affordable and of reasonable quality. Anecdotal reports highlight the financial stress on international students who are especially vulnerable to abuse and susceptible to coercion and exploitation by unethical landlords.

Most international students are permitted to work while they are in Australia. There are restrictions on the number of hours that can be worked during course time. There have been recent reports that international students are being forced to work long hours to support themselves⁹⁷ and to work to such an extent that they breach their visa conditions and work beyond the allowable number of hours a week. Many international students are unaware of their work rights upon arrival in Australia. In an interview, United Voice raised the need for education providers such as universities to provide work rights sessions to vulnerable students.⁹⁸ Sessions of this nature have been provided by United Voice in the past and have had some success in raising awareness of work rights for international students in Australia.

6.5 UNEMPLOYMENT AND UNDEREMPLOYMENT OF MIGRANTS

Despite the relatively high education levels of migrants, they experience higher levels of unemployment than the general population in Australia. Migrants from non-English speaking backgrounds and migrants in non-skilled migration streams have particular difficulty finding work initially.

According to information collected by the Department of Immigration and Citizenship, migrants who arrived in the period from January 2001 to August 2005 had an unemployment rate of 9.2 per

⁹⁴ Ibid.

⁹⁵ Paul Sheehan, *Cul de sac of broken dreams*, *Sydney Morning Herald* 21 March, 2011, Available at: <http://www.smh.com.au/opinion/society-and-culture/culdesac-of-broken-dreams-20110320-1c23o.html>

⁹⁶ Senate Standing Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* (2010), recommendation 4.

⁹⁷ Australian Government, *Visas, Immigration and Refugees: Student Visa Options*, (2010) Department of Immigration and Citizenship, ><http://www.immi.gov.au/students/>< at April 2011.

⁹⁸ Interview with Cyndy Connole, United Voice (Telephone interview 03 May 2011).

cent (compared with 5 per cent of Australian born people). Of these, migrants born in English-speaking countries had an unemployment rate of 5.6 per cent, while those born in other countries had a rate of 11.4 per cent.⁹⁹ Migrants in the family stream and humanitarian stream (i.e. not in a skilled stream) also had significantly higher levels of post migration unemployment.¹⁰⁰

Furthermore, research has shown that many employed migrants, including women, are in jobs that are significantly below their skill level.¹⁰¹ The Department of Immigration and Citizenship believes that up to 20 per cent of skilled migrants do not use their qualifications in Australia.¹⁰²

In its inquiry into overseas skills recognition, the Productivity Commission identified numerous barriers which prevent migrants from finding work and finding work which matches their skills, including English language proficiency, lack of recognition of overseas skills and work experience, lack of local work experience, perceived performance and behavioural traits of migrants by employers and discrimination.¹⁰³

Migrant women face an additional barrier of being responsible for managing the family and the home. According to Ho, migration to Australia actually widens the gender gap in employment rates for many migrant women. Upon migrating, many families lose the family and social networks which supported them at home and women often bear responsibility for facilitating settlement of the family into the new environment.¹⁰⁴

The recommendations of the inquiry included that the Department of Immigration and Citizenship provide better information to migrants about the process of skills recognition and consider developing new services for migrants to gain work experience and undertake English language training focused on workplace culture and technology.

6.6 VULNERABILITY OF MIGRANT WOMEN TO EXPLOITATION

We are Asian women workers. We are skilled and dedicated. We work very hard but we are never treated as we deserve. Our hard working efforts are not recognised. We are bullied and harassed. Often we are not paid even the minimum wage, or our other entitlements.

And because we are migrants and can't speak English very well, we could not tell anybody what is going on. We are scared of the boss. We fear we will lose our jobs so we always put up with whatever happens to us, and feel uncomfortable to speak out or to complain. We didn't believe exploitation could happen in Australia. We never expected this to be part of our 'new life'

⁹⁹ Joint Standing Committee on Migration, Commonwealth of Australia *Negotiating the Maze: Review of arrangements for overseas skill recognition, upgrading and licensing*, (2006) 53

¹⁰⁰ *Ibid*, 263-265.

¹⁰¹ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf. Broadbent et al, *Reaching Out: Enhancing the accessibility of an employment rights advisory service for migrant women*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Broadbent,%20Strachan,%20Bailey,%20Ressia.pdf>.

¹⁰² Joint Standing Committee on Migration, Commonwealth of Australia *Negotiating the Maze: Review of arrangements for overseas skill recognition, upgrading and licensing*, (2006) 52.

¹⁰³ *Ibid*, 52, 275.

¹⁰⁴ Ho, C., "Women crossing borders: the changing identities of professional Chinese migrant women in Australia." (2006), 3(2) 1, *Journal of Multidisciplinary International Studies*, 7-8.

*here until we experienced it ourselves. We feel like third class citizens. For a long time we have felt like we are not important and we are ignored.*¹⁰⁵

VULNERABILITY TO BREACHES OF WORK RIGHTS

Like many women, migrant women working in Australia are often employed in precarious work. Migrants from all backgrounds experience barriers to finding meaningful employment. However, migrants with low skills and education are particularly disadvantaged.¹⁰⁶ In this context, it is problematic that there is little data available to demonstrate the actual work situations of migrant women or the incidence of breaches of their work rights. However, several community organisations that work with migrant women workers around Australia have been able to obtain valuable information about their experiences through their contact and small-scale research.

Discrimination at work and workplace bullying is commonly reported by migrant workers, particularly by those who are racially and culturally visible.¹⁰⁷ Migrant women are unlikely to report these incidences due to lack of knowledge about their rights, lack of confidence, fear of consequences if they speak out against employers, lack of knowledge about where to get help and low expectations of how the legal system can help.¹⁰⁸ Loss of job or breach of work rights can have severe consequences for women and their families.

Migrant women often have multiple forms of disadvantage - financial, education, language, child care, relationship breakdown, domestic violence, housing stress, lack of friends and lack of social support. For these reasons, some migrant women workers may be especially vulnerable to more serious forms of exploitation, such as forced labour, trafficking and slavery.

CASE STUDY - ASIAN WOMEN AT WORK

Asian Women At Work is a community organisation in Sydney with over 1300 migrant women worker members. Most members are of Vietnamese and Chinese backgrounds. In an interview, AWAW found that when looking at work rights and problems at work for migrant women, it is important to consider their personal lives and their cultural isolation and to address these issues through the adoption of a holistic approach.¹⁰⁹ AWAW prioritises work rights and during the period of Work Choices gave voice to the experiences of migrant women workers in Sydney.

In a paper presented at an academic labour law conference, Angela Zhang from AWAW said:

Many of our women live in constant fear that they may be sacked, a situation that was worse under Work Choices, as the message that came through

¹⁰⁵ The Hon Penny Sharp, 'Cries from the Workplace: 20 Women, 20 Stories by Asian Women at Work Incorporated', (Speech delivered at Parliament of NSW, Hansard, 08 April 2008); Citing: Asian Women at Work, *Cries from the Workplace – 20 women, 20 stories: Stories of Migrant Women Workers in Sydney* (2008) > http://acrath.org.au/wp-content/uploads/2011/02/Cries_from_the_Workplace-20_women_20_stories_Apr2008.pdf< at April 2011.

¹⁰⁶ Ethnic Communities' Council of Victoria, *Real Jobs: Employment for migrants and refugees in Australia: Policy Discussion Paper No. 3* (2008) >http://eccv.org.au/library/file/policy/ECCV_Discussion_Paper_3_Real_Jobs.pdf< (accessed April 2011).

¹⁰⁷ *ibid*; Nguyen, M, Moving Towards Cultural Competency, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT ><http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Nguyen.pdf>< (accessed April 2011).

¹⁰⁸ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf.

¹⁰⁹ Interview with Lina Cabaero, Asian Women at Work (Telephone interview 12 April 2011).

strongly in the media was that employers could now do what they like. These are our women. They are women you would describe as being in 'precarious employment'.¹¹⁰

AWAW speaks of five women working in a nail shop who complained to their boss that they were not being paid correctly. An argument broke out and the boss went to the police accusing one of the women of hitting her. The worker now has a temporary Apprehended Violence Order against her and is terrified.¹¹¹

In observing the impact of the *Fair Work Act*, AWAW concluded that the most effective campaign would be one that prioritised education, enforcement and legal protections.

UNDERSTANDING THE VULNERABILITIES OF MIGRANT WOMEN TO TRAFFICKING, FORCED LABOUR, DOMESTIC SERVITUDE AND FORCED MARRIAGE

Financial stress is a major factor leading women to undertake employment in poor conditions.¹¹² Many migrant women have poor English skills and low qualifications and are forced to work in low paid and unskilled industries, such as cleaning, home-based textile work (outworkers) or hospitality. These industries typically have little industrial regulation. Their status as casual employees, independent contractors, or agency workers might affect their ability to access many work rights.

Migrant women may be socially isolated, particularly if they are recent migrants, or are in Australia only temporarily. Because of language barriers and social isolation, migrant women have little knowledge about Australian workplace laws, their rights as workers, or where they can get assistance with work-related issues. Many women rely on informal networks, including family and friends, to inform them about their rights.¹¹³

Experiences of women in their home countries impact on their attitudes towards work in Australia. The culture and practices in Australian workplaces are often unfamiliar to migrant workers. For example, some migrants are used to hierarchical workplaces where employers have much more power than employees and work rights are enforced arbitrarily. This can lead some migrants to be reluctant to raise concerns at work. They have low expectations of what their entitlements are at work. Adjusting to workplace culture in Australia can take a long time and difficulty in adjusting is likely to lead to low retention rates.¹¹⁴

¹¹⁰ Angela Zhang, 'Will the Fair Work Act bring improvements for migrant women workers?', *The Economic and Labour Relations Review* (2010) 21, 69-74 at 70.

¹¹¹ Ibid.

¹¹² Ethnic Communities' Council of Victoria, *Real Jobs: Employment for migrants and refugees in Australia*, Policy Discussion Paper No. 3, 2008. Available at: http://eccv.org.au/library/file/policy/ECCV_Discussion_Paper_3_Real_Jobs.pdf.

¹¹³ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf.

¹¹⁴ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf. Nguyen, M, *Moving Towards Cultural Competency*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Nguyen.pdf>.

Language is also a significant barrier to fitting in at work and many migrants say that unfamiliarity with language specific to the workplace, such as jargon and slang, can exclude them from participating in the workplace.¹¹⁵

Family roles and responsibilities, and the lack of affordable childcare, can often prevent women from participating in the regular workforce and accessing support services such as language classes.¹¹⁶ Another barrier for migrant women to working and participating in training or study is the lack of transport. Migrant women are often dependent on public transport and its unavailability or cost can limit their ability to participate in work and training.¹¹⁷

Domestic violence is another factor that impacts on women in the workplace, including migrant women. There is growing recognition that domestic violence has a significant impact on women in the workplace, including through injury or illness, stress and possibly, relocation. Women who experience violence have been found to be more likely to have disrupted work histories and work in part-time or casual employment compared with women with no experience of violence.¹¹⁸ Experiences of torture and trauma can also affect their ability to enter and remain in the workforce.¹¹⁹

6.7 IRREGULAR MIGRATION

People in Australia without Australian citizenship or appropriate visa permission that entitles them to be in Australia are vulnerable to labour exploitation, partly due to lack of knowledge about workplace protection, fear of authority, law enforcement and deportation. The Department of Immigration and Citizenship estimates that in 2009-2010, the number of people in Australia without visa permission was 53,900¹²⁰, although there are no published figures providing a gender and age analysis of the total group of unlawful non-citizens in Australia. The precarious

¹¹⁵ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf. Broadbent et al, *Reaching Out: Enhancing the accessibility of an employment rights advisory service for migrant women*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at:

<http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Broadbent,%20Strachan,%20Bailey,%20Ressia.pdf>. Nguyen, M, *Moving Towards Cultural Competency*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Nguyen.pdf>. Sandra Dann, Sonya Carmody, Teresa Von Wasserling, Milijana Stojadinovic, Working Women's Centre SA, *Vulnerable women workers: are the regulatory changes improving their position? Issues for vulnerable women accessing Working Women's Centres*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at:

<http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Dann,%20Carmody,%20Von%20Wasserling,%20Stojadinovic,Milijana.pdf>. Ethnic Communities' Council of Victoria, *Restricted Access: Humanitarian migrant women and employment in Victoria*, Policy discussion paper, 2009.

¹¹⁶ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf. Alexandra Heron, OECD, *Migrant Women and the Labour Market: Diversity and challenges*, paper delivered to OECD and European Commission Seminar, Brussels, September 2005, citing <http://www.ifau.se/upload/pdf/se/2001/wp01-14.pdf>.

¹¹⁷ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf. Alexandra Heron, OECD, *Migrant Women and the Labour Market: Diversity and challenges*, paper delivered to OECD and European Commission Seminar, Brussels, September 2005, citing <http://www.ifau.se/upload/pdf/se/2001/wp01-14.pdf>.

¹¹⁸ Australian Domestic and Family Violence Clearinghouse, Fact Sheet, 2010, <http://www.adfvc.unsw.edu.au/workplace/Fact%20Sheet%20April%202010.pdf>; Ethnic Communities' Council of Victoria, *Restricted Access: Humanitarian migrant women and employment in Victoria*, Policy discussion paper, 2009.

¹¹⁹ Nguyen, M, *Moving Towards Cultural Competency*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Nguyen.pdf>. Ethnic Communities' Council of Victoria, *Restricted Access: Humanitarian migrant women and employment in Victoria*, Policy discussion paper, 2009.

¹²⁰ Department of Immigration and Citizenship, *Annual Report 2009-10* (2010) 159.

immigration status of migrant women who live in Australia without a valid visa or who are working in breach of their visa conditions may leave them especially vulnerable to exploitation.

Women who come to Australia through irregular means often come from disadvantaged backgrounds. Around the world, women are more likely to experience poverty than men because of systemic discrimination in education, employment, health care, legal rights and many other areas.¹²¹ As a result, women are less likely to have the money, education, language and work experience necessary to migrate to Australia.¹²² Women are also less likely to be able to access knowledge about how to migrate legally and they are more likely to accept offers of work overseas where there is a risk of exploitation because of financial need.

It is essential that pathways of access to such women are made possible, without putting them at risk of deportation.

6.8 EXISTING SERVICES AND SUPPORT

In addition to the agencies referred to in Chapter 1, specific agencies in Australia have a focus on trafficking, slavery and forced labour.

Immigrant services such as Immigrant Women's Speakout and Asian Women at Work in Sydney (and their counterparts in other states) offer invaluable assistance to migrant women.

Nationally Community Legal Centres and Legal Aid Commissions provide legal advice to some disadvantaged people in the Australian community.

Working Women's Centres and Trade Unions, such as **United Voice** have a focus on the employment status and rights of women in employment, including precarious employment.

6.9 GAPS IN POLICY AND ADVOCACY, SERVICES AND SUPPORT

In addition to the gaps noted in Chapter 5, international students are often vulnerable to exploitation and it is clear that considerable advocacy could be undertaken to improve the working and living conditions of these students.

RECOMMENDATIONS

Recommendation 15

That Good Shepherd Australia New Zealand advocate with Government about the responsibilities of education providers to ensure that international students are assisted in finding and

¹²¹ See for example: United Nations Department of Economic and Social Affairs, *The World's Women 2010: Trends and Statistics*, 2010, ST/ESA/STAT/SER.K/19, >http://unstats.un.org/unsd/demographic/products/Worldswomen/WWW_full%20report_color.pdf< (accessed 1 March 2011).

¹²² Ho, C., "Women crossing borders: the changing identities of professional Chinese migrant women in Australia." (2006), 3(2) 1, *Journal of Multidisciplinary International Studies*, 4.

maintaining suitable accommodation and are properly informed about Australian law and the protections that exist for all people under Australian law. This would include information about law enforcement in Australia, Australian working conditions and regulatory bodies. International students should be provided with this information, and contact and referral information.

Note also Recommendations 3, 7, 12 & 13

7. INDIGENOUS WOMEN AND GIRLS

7.1 HISTORICAL CONTEXT

Throughout the twentieth century, Indigenous women's working lives mirrored shifts in Indigenous policy, the most draconian of which was protectionism. Protectionism was a form of wardship applicable only to Indigenous people. It encompassed various pieces of State and Commonwealth legislation, operating throughout the late nineteenth century to the earlier part of the twentieth century.

Protectionism was fuelled by a number of forces and in particular, the belief that Indigenous people were a dying race. There were also humanitarian concerns for Indigenous women who lived on the fringes of colonial society and were vulnerable to sexual violence. But the solution to such atrocities was not prosecution of the perpetrators. Rather, Australian legislators tightened their grasp around the victims. In regulating the lives of Indigenous people, they drew from templates that had long been imposed on England's 'troublesome' populations.

In her comprehensive history of Queensland's Aboriginal Affairs bureaucracy, Kidd has drawn linkages between eighteenth century approaches to regulating the English poor and protectionism.¹²³ In the minds of British reformers, the poor had to be saved from criminality and depravity through indoctrination with the norms of industriousness and piety. Poor children were placed into reformatories, where they were prepared for lives of menial labour. Parental consent was unnecessary.

Protectionism similarly rendered Indigenous women vulnerable to exploitative work practices. The most common employment for Indigenous women during the protectionist era was domestic service in white households. Indigenous domestics frequently worked 15-hour days, lived in sub-standard conditions and endured sexual harassment from their male employers.¹²⁴

Drawing from the English tradition of apprenticing young wards, the New South Wales Protection Board adopted a form of compulsory apprenticeships for young Aboriginal girls. Over 500 Aboriginal girls were apprenticed to affluent Sydney households in the earlier part of the twentieth century.¹²⁵ Many worked seven days per week, were underfed and denied access to wages that were managed by the Protection Board. Theoretically, the women were supposed to be paid their savings at the expiration of their apprenticeship, but historical evidence suggests

¹²³ Rosalind Kidd, *The Way We Civilise* (1997)

¹²⁴ Thom Blake, *A Dumping Ground* (2001) 132.

¹²⁵ Inara Walden, "'That was slavery days': Aboriginal domestic servants in New South Wales in the twentieth century' (1995) 69 *Labour History* 196.

otherwise.¹²⁶ Their dire poverty was grasped by Roberta Sykes, when she stumbled upon a list of deceased apprentices:

*"I felt faint as I read through and found I had in my hand perhaps the earliest list of black deaths in custody ... Girl taken, aged 13, died three years later, aged 16; girl taken, aged 8, died four years later, aged 12; girl aged 13, died aged 14; taken 13, died 18; taken 13, died 17; taken aged 7, died age 12 ... and so on".*¹²⁷

Welfare payments and in particular, maternity payments, were also liable to control by government institutions. Even when Indigenous women were allowed some discretion in spending government payments, they were still subject to surveillance. In New South Wales, the Protection Board issued a list of items acceptable for purchase that included food, clothing and medical treatment. Purchases were scrutinised and deviations from the list attracted chastisement. A woman's spending could be scrutinised over several years before she was finally considered trustworthy.¹²⁸

7.2 EXISTING DATA AND GAPS IN KNOWLEDGE

Indigenous women's disadvantage continues today in a myriad of ways. The unemployment rate for Indigenous women in 2007 was 14.7 percent; more than three times the national female unemployment rate.¹²⁹ Indigenous women are also three times more likely to be discouraged workers than are non-Indigenous women.¹³⁰ Indigenous women currently work in a variety of occupations, but appear to be most prevalent in lower paid personal services occupations, such as welfare support, administration and cleaning.¹³¹ Indigenous people are also over-represented among Australia's part-time workforce.¹³² Unsurprisingly perhaps, Indigenous people earn on average 41 per cent less than non-Indigenous people.¹³³

Poor employment outcomes have a symbiotic relationship with other markers of socio-economic disadvantage, such as homelessness, poor health, limited education and experience in the criminal justice system.¹³⁴ A lack of access to formal child care has also been identified as a factor contributing to the high rate of discouraged workers among Indigenous women.¹³⁵

¹²⁶ Ibid.

¹²⁷ Ibid at 205.

¹²⁸ Susan Greer, "In the interests of the children": accounting in the control of Aboriginal family endowment payments' (2009) 14(1-2) *Accounting History* 166.

¹²⁹ Commonwealth of Australia, *Australia's combined sixth and seventh report on the implementation of the Convention on the Elimination of all forms of Discrimination against Women* (2008) [9.45].

¹³⁰ Hunter and Gray cited by Kirrily Jordan and Dante Mavec, 'Corporate Initiatives in Indigenous employment: The Australian Employment Covenant two years on' (Working Paper No. 74, Centre for Aboriginal Economic Policy Research, 2010) 6.

¹³¹ Australian Bureau of Statistics, 2006 Census of Population and Housing, New South Wales.

¹³² Jordan and Mavec, above n 134.

¹³³ ACTU, *ACTU Indigenous Committee Charter of Indigenous Employment Rights* (2008), > <http://www.actu.org.au/Images/Dynamic/attachments/6451/Charter%20of%20Indigneous%20Employment%20Rights%2019%20May%202008.pdf> < at April 2011; citing Australian Bureau of Statistics, Cat 1318.3, *Queensland Statistics*, April 2008 > <http://www.abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyReleaseDate/D52AB760F39CEBF4CA25744B00155A90?OpenDocument> < at April 2011.

¹³⁴ In relation to the latter, see Boyd Hunter and Anne Daly, 'Interactions between crime and fertility in the labour supply of Indigenous Australian Women' (CAEPR Working Paper No. 40, Australian National University, 2008).

¹³⁵ Boyd Hunter and Matthew Gray, 'Family and social factors labour force status' (2002) 62 *Family Matters* 18.

Indigenous women continue to experience discrimination in the workplace. A recent analysis of the experiences of Indigenous women workers in urban Queensland identified multiple forms of discrimination that included racist comments, bullying, being overlooked for promotions and a reluctance on the part of managers to respond appropriately to allegations of racism.¹³⁶

7.3 LABOUR RIGHTS OF INDIGENOUS WORKERS IN 'SOCIAL SECURITY' WORK PROGRAMS

The most enduring employment program for Indigenous people is the Community Development Employment Projects (CDEP) Program. CDEP remains the largest employer of Indigenous women in remote communities and for many it is their only source of employment. In 2008, 7,019 Indigenous women were participating in CDEP.¹³⁷

BACKGROUND TO THE CDEP

CDEP began in an era of significant change in Indigenous affairs. Legislative bars on Indigenous people's access to social security were being removed, equal wages had been awarded to Aboriginal workers in the northern pastoral industry and the Commonwealth Department of Aboriginal Affairs (DAA) was still in its infancy. Some Aboriginal people in remote communities were concerned by the potentially deleterious social impacts of the sudden and widespread introduction of unemployment benefits into remote Australia. Their response was CDEP.

CDEP was first introduced in the Northern Territory community of Bamyili, in 1977.¹³⁸ Later that year, the Commonwealth announced the creation of the CDEP program. Aboriginal Councils were to be funded to provide work on community development projects for willing individuals. In determining the monies made available to Councils, individuals' entitlements to unemployment benefits were to be taken into account.

CDEP enabled communities some flexibility in determining their priorities for development. Consequently, CDEP funded a range of projects, from the delivery of essential services to community enterprises. Participants also enjoyed a degree of flexibility. Part-time employment allowed greater time for the fulfillment of cultural responsibilities. Individuals who were desirous of working for longer hours could be paid 'top up' wages, in addition to the equivalent of an income support payment.

At the time of its inception, there was no legislative basis for the CDEP program.¹³⁹ In spite of its nexus with social security, CDEP was administered by DAA, rather than the Department of Social

¹³⁶ Hellene T Demosthenous, Boni Robertson and Catherine M Demosthenous, *Indigenous Women's Experiences of Work: Key Issues in Urban Queensland*, Security4Women Incorporated (2010).

¹³⁷ Australian Bureau of Statistics, Cat 6287.0 - *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2009, June 2010*, [9.48].

¹³⁸ Race Discrimination Commissioner, *The CDEP Scheme and Racial Discrimination*, Human Rights and Equal Opportunity Commission (1997), 7.

¹³⁹ *Ibid* at 8.

Security. Throughout the 1980s CDEP expanded into metropolitan and urban areas, becoming the biggest single program in the Commonwealth Indigenous affairs budget.¹⁴⁰

From the beginning there were conflicts within the Government over the status of CDEP. Participants were treated as wage earners for the purposes of the *Income Tax Assessment Act*. However, the Department of Social Security categorized CDEP as a Commonwealth funded employment program.¹⁴¹ As a consequence, CDEP participants were excluded from a range of supplementary benefits enjoyed by low wage earners, such as rent assistance, even though some were earning wages below the poverty line.¹⁴²

In 1995 the federal Race Discrimination Commissioner conducted an Inquiry into CDEP, after receiving numerous complaints about the treatment of CDEP workers and in particular, their ineligibility for benefits received by other low income workers. While conceding that it was ultimately a matter for judicial determination, the Commissioner considered that CDEP might be categorised as a special measure because it was designed to ameliorate Indigenous people's disadvantage in accessing mainstream labour markets.¹⁴³ However, the Commissioner expressed concern that the human rights of participants could be compromised by the lack of a guaranteed minimum income and inconsistency in how the program was categorised within Government.¹⁴⁴ The Commissioner recommended that the Commonwealth treat CDEP participants uniformly as wage earners.¹⁴⁵

Two years later, CDEP was scrutinised by the Spicer Review, which revealed mixed results.¹⁴⁶ On the one hand, CDEP had enjoyed a degree of success in creating jobs and encouraging pride and cohesion within communities. However, it had been unsuccessful in raising Indigenous incomes. A significant number of participants did not work, due to either a desire not to work, or the lack of meaningful work available.¹⁴⁷ As a result of the no-work-no-pay rule, those individuals were being paid far less than they would have been as Newstart Allowance recipients.

The review also considered that there appeared to be few industrial relations problems in CDEP organisations. However, compliance with applicable awards and legislative obligations was variable.¹⁴⁸ Spicer recommended that the Aboriginal and Torres Strait Islander Commission (ATSIC) develop an industrial relations policy to ensure that CDEP organisations complied with applicable legislative standards, including matters such as superannuation, occupational health and safety and unfair dismissals.¹⁴⁹ In spite of the soundness of this recommendation it is yet to be implemented.

In his 2006 *Social Justice Report*, the Aboriginal and Torres Strait Islander Social Justice Commissioner summarised the major criticisms of CDEP:

¹⁴⁰ Sisto, Valentin, 'CDEP: Mutual obligation that works' (2006), Uniya Briefing Paper, available at > http://www.uniya.org/research/mo_disisto_mar06.pdf< at April 2011, p 55, citing Sanders, W and F Morphy (2004), 'Introduction', in F Morphy and W Sanders (eds), *The Indigenous Welfare Economy and the CDEP Scheme*, ANU E Press.

¹⁴¹ *Ibid.*

¹⁴² *Ibid* 7.

¹⁴³ Race Discrimination Commissioner, *The CDEP Scheme and Racial Discrimination*, Human Rights and Equal Opportunity Commission (1997), 7.

¹⁴⁴ *Ibid* 4.

¹⁴⁵ *Ibid* 44.

¹⁴⁶ Ian Spicer, *Independent Review of the Community Development Employment Projects (CDEP) Scheme* (1997).

¹⁴⁷ *Ibid* 23.

¹⁴⁸ *Ibid* 136.

¹⁴⁹ *Ibid* 145.

- [It] is an alternative form of employment for Indigenous peoples, even where there are other jobs available in the local labour market;
- [It] is a destination or dead-end, rather than a pathway to 'real' and sustainable employment;
- It lets governments at all levels get away with not providing essential services to Indigenous communities;
- It devalues work done by CDEP participants because a 'real job' would earn a 'real wage'; and
- CDEP participants do not have access to superannuation, long-service leave and union membership.¹⁵⁰

In relation to the Commissioner's final point, it should be remembered that the legal status of CDEP participants is yet to be subject to judicial determination.

Pearson has argued that CDEP acts as a disincentive to obtaining 'entry-level real' work.¹⁵¹ The former Minister for Indigenous Affairs, Mal Brough, even claimed that CDEP was a cause of child abuse.¹⁵² Conversely, other commentators argue that CDEP not only enables Indigenous people to live and work on their own lands, but also provides a means for the delivery of services such as night patrols, child care centres and garbage collection. It also facilitates the attainment of national objectives, such as land and sea management.¹⁵³

INDIGENOUS WOMEN & CDEP

There has been limited research on the gender specific impacts of CDEP. Indigenous women employed as CDEP workers have performed a variety of functions, some of which has been highly skilled work in areas such as aged care and education.¹⁵⁴ In an unpublished report, the Northern Territory Working Women's Centre identified a number of disadvantages faced by Indigenous women CDEP workers, including a lack of recognition of the skills they brought to their positions, uncertainty over award coverage and neglect of workplace health and safety.¹⁵⁵

In its feedback on the Productivity Commission's draft report, *Paid Parental Leave: Support for Parents with Newborn Children*, the Northern Territory Office of Women's Policy brought these issues into stark relief:

"Although conditions of service varied from community to community and depended on the host organisation many women on CDEP reported that they did not have long term economic security or personal, maternity, recreational, sick or cultural leave, no superannuation, no long service leave or ongoing training, and no long term job security even though they had identified the

¹⁵⁰ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report* (2006) 39-40.

¹⁵¹ Noel Pearson, *Up from the Mission* (2009) 286.

¹⁵² Felicity Wright, 'Throwing the baby out with the bathwater: the decision to axe CDEP' (2007) 27(4) *Artlink* 73.

¹⁵³ Stephen Johnson, 'CDEP and the People of the Sea' (2007) 91 *Arena Magazine* 33.

¹⁵⁴ Rachael Uebergang, Kerriann Dear and Sandra Dann, *Increasing Indigenous Economic Opportunity: The Future of the CDEP and Indigenous Employment Programs*, available at: <http://www.wwc.org.au/uploads/pdfs/NWWC%20Increasing%20Indigenous%20Economic%20Opportunity%20Submission.pdf> at 18 March 2011.

¹⁵⁵ Susan Murdoch, *ATSI Women on the CDEP Scheme: Workplace issues identified by the Project Officer on behalf of the NT Working Women Centre/ Darwin/ NT* (2002).

CDEP placements as being long term positions. This reflected the lack of job prospects in their community...¹⁵⁶

Women employed as interpreters, night patrol workers, carers and health workers participating on the CDEP scheme are on call to carry out their duties seven days a week at any hour of the day or night in the community. They are not paid award rates for this work and are often placed in physical danger when dealing with violent and abusive individuals and groups yet they do not receive award rates, penalty rates, or have conditions of service that include paid maternity leave.¹⁵⁷

RECENT CHANGES TO CDEP

In recent years there have been significant changes to CDEP. As part of its 'Closing the Gap' strategy, the Commonwealth Government has pledged to halve the employment gap between Indigenous and non-Indigenous Australians by 2018.¹⁵⁸ It has been estimated that in practice, this means that 10,000 new jobs will need to be created each year; a figure that is unlikely to be achieved.¹⁵⁹ CDEP is now geared towards work readiness, rather than community development.

In July 2009, CDEP ceased to operate outside of remote areas. CDEP continues to operate in remote areas, but in two streams. The first stream, the 'old' CDEP, is being gradually phased out. Between 1 July 2011 and 30 September 2011 participants in the old CDEP will 'move off' CDEP wages, on a 'community by community basis.'¹⁶⁰ The 'new' CDEP is akin to a work for the dole scheme and catches individuals who commenced the program after 1 July 2009.

THE IMPACTS OF THE NORTHERN TERRITORY EMERGENCY RESPONSE ON CDEP

The above changes to CDEP need to be considered in tandem with the Northern Territory Emergency Response (NTER). The NTER was the Commonwealth's response to the report, *Little Children are Sacred*,¹⁶¹ which revealed widespread allegations of child abuse in Aboriginal communities in the Northern Territory. As part of its NTER reforms, the Howard Government abolished CDEP in the Northern Territory. The Rudd Government restored CDEP in the Northern Territory, but has largely maintained the original NTER.

A central element of the NTER is income management. For those living under the NTER, fifty percent of their income support payments and one hundred per cent of lump sum payments are quarantined for expenditure on essentials. Quarantined funds may only be utilized by way of a debit card, which in turn, can only be used at licensed stores. The income management regime was applied on the basis of physical presence in a declared Northern Territory area on 21 June

¹⁵⁶ Ibid.

¹⁵⁷ Northern Territory Government, Office of Women's Policy, *Paid Parental Leave* http://www.pc.gov.au/_data/assets/pdf_file/0004/85216/subdr414.pdf at 18 March 2011.

¹⁵⁸ Australian Government, *Increasing Indigenous Employment Opportunity: Proposed Reforms to the CDEP and Indigenous Employment Programs* (2010) 1.

¹⁵⁹ Jon Altman and Nicholas Biddle, 'Rudd overpromised on Indigenous employment', *Crikey*, 4 June 2010 <http://www.crikey.com.au/2010/06/04/closing-the-gap-rudd-overpromised-on-indigenous-unemployment/> at 15 March 2011.

¹⁶⁰ Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, *Community Development Employment (Projects) (CDEP) Program, Program Guidelines 2009-12* (2009).

¹⁶¹ Pat Anderson and Rex Wild, *Little Children are Sacred Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal children from Sexual Abuse*, (2007).

2007,¹⁶² leaving little room for consideration of individual circumstances. The result is that many CDEP workers in the Northern Territory are effectively working for the Newstart Allowance, half of which is quarantined.

Little research has been undertaken in relation to the impacts of these changes on the working lives of Indigenous women in the Northern Territory. However, an unpublished paper by Paddy Gibson of the Jumbunna Indigenous House of Learning, UTS, revealed some deeply troubling allegations.¹⁶³ Of particular concern are complaints that Aboriginal workers are performing skilled work for up to forty hours per week, for the Newstart Allowance. A case study from the research paper is contained below:

CASE STUDY

'Rosie is a 45 year old single parent who has been the coordinator of a successful Arts Centre for over three years at Atitjere. Rosie has six children and is a foster parent to four other children. She lives in a tin shed with no amenities and goes to work for only her Centrelink benefits, which are 50 per cent income managed.

Rosie has been painting for over ten years and is selling her work from the Art Centre, where she works for 40 hours per week.

Before the Shires were established in 2008, she had access to the Women's Bus for trips to Alice Springs, to get paints and supplies and to go to exhibitions. This was funded by the Community Government Council.

The Art Centre was in the process of completing a business plan, to get proper funding for her role as Coordinator and for several positions for part-time workers to be trained in IT and management systems. Despite the Business Plan being completed with assistance from an Alice Springs company and a member of the Shire Manager's family, no positions have been created.

Exhibitions of Rosie's and other women's work were set up without permission at a major arts festival in Alice Springs in 2009. No transport was available for them to even attend the opening and there was no consultation about pricing.

Rosie continues to work - signing her time sheet for 40 hours - that goes to the Shire CDEP Supervisor every week.

After repeated requests she eventually saw her pay slip in December 2009, which does not describe her position as Coordinator - it just says CDEP.

Rosie is responsible for incoming stock management, computer records and portfolios for all 40 artists registered in the area, supplying outstation artists with canvas and materials, display and sales, and record keeping, cleaning and

¹⁶² *Social Security and Other Legislation (Welfare Payment Reform) Act 2007 (Cth) Schedule 1.*

¹⁶³ Paddy Gibson, 'Working for the Basics Card in the Northern Territory' (Discussion Paper, *Jumbunna Indigenous House of Learning, University of Technology, Sydney*) (2010).

upkeep of the building and garden area. She has learned with help from friends how to use the computer and scanner to keep digital records and email.

Rosie expresses deep sadness about the loss of the bus to travel to Alice Springs and the loss of control over the Art Centre which she loves. She is also upset that she and other women who work very hard see no change in their income or prospects for earning real wages.¹⁶⁴

The writer attended the recent annual conference of the Indigenous Committee of the ACTU. The conference was held in Darwin and was attended by approximately 20 CDEP workers affected by the NTER. They expressed profound despair and disempowerment. Some expressed the belief that the most basic statutory protections available to workers, such as occupational health and safety standards, were not applicable to them. Whether this is in fact the case should be subject to further analysis.

7.4 EXISTING SERVICES AND SUPPORT

Indigenous women have access to Working Women's Centres in South Australia, Queensland and the Northern Territory. According to the Northern Territory Working Women's Centre, in 2008, 30 per cent of women who sought assistance from them for a work related matter were Indigenous, as were almost half of those who sought intensive assistance. Those women came from urban, remote and rural areas.¹⁶⁵ Rachael Uerbergang from the Northern Territory Working Women's Centre has observed a chronic lack of information on work rights and participation in the Indigenous communities in the Northern Territory.¹⁶⁶ The Northern Territory Working Women's Centre aims to approach this lack of information by obtaining an Aboriginal liaison position to go out to Indigenous communities and provide information on work rights to Indigenous women and girls.¹⁶⁷

Indigenous workers are also represented by the Australian Council of Trade Unions (ACTU). The Indigenous Committee of the ACTU is responsible for the promotion of Indigenous rights and Indigenous people's active participation in trade unions.¹⁶⁸ At its annual Indigenous conference in February, the ACTU announced a 'new partnership with Indigenous Australians to campaign to improve the lives of all Aboriginal and Torres Strait Islander people through decent jobs and sustainable economic development.'¹⁶⁹

Aboriginal people who have been affected by CDEP reforms have also been supported by advocacy bodies. Australians for Native Title and Reconciliation, (ANTaR), is currently running a campaign for reform of the NTER. The campaign, *A Better Way*, advocates for greater community ownership

¹⁶⁴ Ibid 16-17.

¹⁶⁵ Rachael Uerbergang, Kerriann Dear and Sandra Dann, *Increasing Indigenous Economic Opportunity: The Future of the CDEP and Indigenous Employment Programs*, available at: <http://www.wwc.org.au/uploads/pdfs/NWWC%20Increasing%20Indigenous%20Economic%20Opportunity%20Submission.pdf> at 18 March 2011.

¹⁶⁶ Interview with Rachael Uerbergang, Northern Territory Working Women's Centre (telephone interview 18 April 2011).

¹⁶⁷ Ibid.

¹⁶⁸ Australian Council of Trade Unions, *Role and function of the Aboriginal and Torres Strait Islander Committee*, <<http://www.actu.org.au/Publications/RoleandFunctionoftheAboriginalandTorresStraitIslanderCommittee.aspx>> at 3 May 2011.

¹⁶⁹ Australian Council of Trade Unions, *Unions to form new partnership to advance economic and social justice for Indigenous Australians*, Press Release (16 February 2011).

of the solutions to contemporary problems. In a 2010 report, ANTaR argued that reforms to CDEP have '[placed] significant constraints on Aboriginal controlled organisations, threatening the viability of otherwise successful community enterprises and projects and significantly increasing unemployment and associated disengagement in regional and remote communities.'¹⁷⁰

Interview participants from ANTaR and ACTU commented that while Aboriginal Legal Service is in place, it has scarce resources and must prioritise criminal matters. This means that it is very difficult for Indigenous Australians to access employment advice from Aboriginal Legal Service as criminal advocacy work takes up most of their time. While services such as Legal Aid are able to provide such services, this space is not always considered culturally safe or appropriate for Aboriginal women in need of assistance.¹⁷¹

7.5 GAPS IN POLICY, ADVOCACY, SERVICES AND SUPPORT

The disadvantage faced by Indigenous women workers is brought into stark relief by the absence of judicial determinations and academic commentary on the legal rights of CDEP workers. This void is all the more galling when one considers the lengthy history of discrimination endured by Indigenous women workers. While poverty within Indigenous communities is now a matter of public record, the nexus between this poverty and equitable enjoyment of labour rights appears to have been overlooked by policy-makers and arguably, the entire machinery of Australian workplace laws.

It is imperative that research be undertaken in order to determine the rights of CDEP workers. Such research would provide a foundation for community education and advocacy for law reform.

7.6 TRAFFICKING IN INDIGENOUS COMMUNITIES

A literature review reveals that to date there has been no research into modern day trafficking of Indigenous women and girls and little appreciation of other kinds of exploitation associated with Indigenous women and girls in transit.

Research into Indigenous protection is complex, politically charged and under-researched. However, while there are credible reports of exploitation of Indigenous women and girls at rural truck stops in Australia,¹⁷² the Australian Federal Police are unaware of any evidence of trafficking and request that any information about this kind of exploitation to be handed to them.¹⁷³

¹⁷⁰ Australians for Native Title and Reconciliation, *A Better Way: Success Stories in Aboriginal Community Control in the Northern Territory* (2010) 8.

¹⁷¹ Interview with Sheena Watt, Indigenous Officer, Australian Council of Trade Unions (Telephone Interview 12 April 2011).

¹⁷² ABC News, 'MP gives evidence of Alice child prostitution', 27 February 2011, available at:

<http://www.abc.net.au/news/stories/2011/02/27/3149973.htm>; ABC News, 'Calls to extend intervention amid truckie sex claims', 14 March 2008, available at: <http://www.abc.net.au/news/stories/2008/03/14/2189685.htm>; ABC News, 'New allegations emerge in Boggabilla sex scandal', 15 March 2008, available at: <http://www.abc.net.au/news/stories/2008/03/14/2190126.htm>; Australian Crime Commission, *Problem Sexual Behaviour in Children: A Review of the Literature*, available at: http://www.crimecommission.gov.au/publications/other/_files/problem_sexual_behaviour/introduction.pdf; 'Ampe Akelyerenemane Meke Mekarle' Little Children are Sacred, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal children from Sexual Abuse*, 2007, pp63-64, available at: http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf.

¹⁷³ ABC News. *No proof of Indigenous girls soliciting for sex*, 24 February 2011.

><http://www.abc.net.au/news/stories/2011/02/24/3147481.htm?site=darwin>< (accessed April 2011).

Domestic trafficking in persons offences are set out in Division 271 of the Criminal Code. These provisions make it an offence to organise or facilitate the movement of a person within Australia by the use of force or threats that have the effect of coercing the victim's consent to the travel. It is also an offence to deceive a person about the fact that they will be exploited, required to provide commercial sexual services, be subject to debt bondage or the confiscation of documents.

Aggravated offences apply if a person intends that the victim will be exploited after the travel, that they will be subject to cruel, inhuman or degrading treatment or engage in conduct that gives rise to a danger of death or serious harm. These offences can attract 12 years imprisonment.¹⁷⁴ An increased penalty of 25 years applies where the victim is a child. It is an offence to move a person under the age of 18 intending or being reckless that the child will be used to provide sexual services or will be otherwise exploited.

There are important jurisdictional limitations on the domestic trafficking in persons offences because the offences must be linked to the powers set out in the Australian Constitution. This means that for an offence of domestic trafficking to be made out one of the following must apply to the conduct giving rise to the offence: part of the conduct constituting the offence happened outside Australia; involved transportation across state borders either for a reward or in connection with commerce; occurred within a territory or involved transport to or from a territory; involved a corporation, the postal, telegraphic or telephonic service or where the victim of the conduct is a non-citizen of Australia.

Criminal conduct involving exploitation of children is most serious and it is important to address the exploitation within a sound and workable framework. Using the language of trafficking may not be the best response in all situations of child sexual exploitation.¹⁷⁵ Coordination between governments at state and federal levels is critical in ensuring that exploitation of people is dealt with consistently across Australia. Commonwealth trafficking in persons offences may be appropriate in some circumstances (as set out above), but it is far more likely that state-based child protection and criminal legislation, with culturally appropriate victim support will provide the most comprehensive and best practice approach. Where there are inconsistencies between jurisdictions, this is clearly an area where the interests of the child require all bodies cooperate to ensure that children's interests are paramount. The appointment of a Commissioner for Children would ensure that there is consistency between states and coordination with federal agencies.

There has been little research in the area of domestic violence and forced marriage and this is an area that Good Shepherd Australia New Zealand may like to explore. Domestic trafficking has been neglected in research; there is a body of anecdotal material suggesting that Indigenous girls are trafficked. To understand the possible nature of this kind of violence, a best practice approach would be to work with Indigenous family workers; to raise awareness about trafficking (and indeed, forced marriage) and to better understand the nature of any possible exploitation.

¹⁷⁴ *Criminal Code Act 1995* (Cth) Division 271.

¹⁷⁵ See also Hunt, Sarah, 'Colonial Roots, Contemporary Risk Factors: A cautionary exploration of the domestic trafficking of Aboriginal women and girls in British Columbia, Canada' (2010) 33 *Alliance News*, 24.

RECOMMENDATIONS

Recommendation 16

That Good Shepherd Australia New Zealand promote further research to ascertain whether or not Community Development Employment Projects (CDEP) participants are employees within the meaning of the *Fair Work Act 2009* (Cth).

Recommendation 17

That Good Shepherd Australia New Zealand promote further research to determine the legal entitlements of CDEP workers, including but not limited to, paid parental leave and superannuation.

Recommendation 18

That Good Shepherd Australia New Zealand promote further research in relation to the impacts of the Northern Territory Emergency Response on the labour rights of Indigenous women and in particular, the effects of income management.

Recommendation 19

That Good Shepherd Australia New Zealand consider funding research into domestic trafficking, especially of Indigenous women and girls.

Note also Recommendations 4.

8. LEGAL PROTECTIONS AND SERVICES FOR MIGRANT AND INDIGENOUS WOMEN AND GIRLS IN EMPLOYMENT

8.1 EXISTING LEGAL PROTECTIONS & GAPS

EMPLOYMENT LAW

The daily working conditions of migrant and Indigenous women are the result of many different forces, one of which is employment law. Employment law governs the relationship between an employer and employee. In Australia, the principal source of federal employment law is the *Fair Work Act 2009* (Cth) (FWA), which came into operation on 1 January 2010.¹⁷⁶ The FWA provides for terms and conditions of employment; rights and responsibilities of employees and employers in relation to employment; compliance with and enforcement of the Act and the establishment of Fair Work Australia and the Office of the Fair Work Ombudsman.¹⁷⁷

¹⁷⁶ The *Fair Work Act 2009* (Cth) was introduced on 1 July 2009 and replaced the *Workplace Relations Act 1996* (Cth).

¹⁷⁷ The Fair Work Act covers employers and employees. Section 12 of the FW Act notes employee is defined in the first Division of each Part (other than Part 1-1) in which the term appears. The definition in the Part will define *employee* either as a national system employee or as having its ordinary meaning. However, there may be particular provisions in the Part where a different meaning for the term is specified. There is a significant body of common law determining whether a person in an employment relationship: see generally *Hollis v Vabu* (2001) 207 CLR 21; *Stevens v Brodribb Sawmilling Co* (1986) 160 CLR 16. The FW Act regulates private sector employment, except in Western Australia. The FW Act indicates there is no general intention to exclude certain state and territory employment laws.

Employment law provides the strongest protection to employees engaged in full-time, permanent work; there is only limited protection under the FWA for casual workers and independent contractors are not protected. This can be problematic for migrant and Indigenous women, who are more likely to be engaged in casual work and are excluded from much of the law's protection because the precarious nature of their employment.¹⁷⁸ For those vulnerable women who are covered by employment law, there are many barriers that prevent them from accessing protection, including lack of knowledge of rights, inability to access legal services and lack of enforcement. The enforcement regime under Australia's workplace relations system relies heavily on the assumption that individual workers will be able to identify breaches of their workplace rights and initiate complaints.¹⁷⁹ However, unless vulnerable workers receive clear, accurate information about their legal entitlements in a language they understand, they will not have the capacity to challenge exploitative and unlawful working conditions.

THE FAIR WORK ACT, FAIR WORK AUSTRALIA & THE FAIR WORK OMBUDSMAN

The FWA establishes Fair Work Australia, a national workplace relations tribunal and the independent office of the Fair Work Ombudsman.¹⁸⁰ Fair Work Australia deals with minimum wages and equal remuneration, unfair dismissal and unlawful termination protections, industrial action, right of entry and stand down, minimum National Employment Standards (NES), modern awards, enterprise agreements and workplace determinations transfer of business; and enterprise bargaining disputes.

The Fair Work Ombudsman (FWO) has statutory responsibilities to provide education, assistance, and advice on the FWA, promote and monitor compliance with the Act, investigate any act or practice that may be contrary to relevant Commonwealth laws, commence proceedings or make applications to enforce Commonwealth workplace laws. Where appropriate, the FWO may seek penalty orders against employers for contraventions of FWA, and represent employees or outworkers who are, or who may become a party to legal proceedings under the Commonwealth workplace laws.

The FWO investigates the above matters through the use of Fair Work Inspectors. The FWO estimates that their Fair Work Inspectors are responsible for providing workplace relations advice, education and compliance services to more than 90 per cent of the employees and workplaces around Australia.¹⁸¹ The FWO has a specific unit that handles workplace discrimination under s 351 of the FWA, which prohibits an employer from taking adverse action against an employee on the grounds of race, colour, sex, sexual preference, age, physical and mental disability, marital status, family or carer's responsibility, pregnancy, religion, political opinion, national extraction or social origin.

The FWO investigates the workplace conditions of foreign workers. International students or people holding working or 457 visas may work while in Australia temporarily. The FWA protects all

¹⁷⁸ See for example Owens, R., Riley, J., Murray, J., *The Law of Work*, (2011); Hunter, R. *The Legal Production of Precarious Work. Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*, (2006), 301-302.

¹⁷⁹ Owens, R., Riley, J., Murray, J., *The Law of Work*, (2011) 314.

¹⁸⁰ *Fair Work Act 2009* (Cth), Part 5-1 and 5-2.

¹⁸¹ Campbell, Michael 'Perspectives on the Working Conditions of Temporary Migrant Workers in Australia' (2010) 18(2) *People and Place* 51 (noting that those that remain outside of our jurisdiction are in the building industry and those subject to the workplace relations laws of Australia).

migrant workers including a small minority who work without a valid visa or in breach of their visa conditions.¹⁸² Over the last 3.5 years Inspectors have conducted approximately 1,700 investigations into minimum workplace entitlements owed to foreign workers and recovered more than \$2.7 million in underpaid wages.¹⁸³

The FWO identifies foreign workers as “vulnerable” and likely to require more specific support and protection than other workers. The FWO attributes this vulnerability to a multiplicity of factors: language and cultural barriers, limited knowledge of Australian workplace law, increased likelihood of being targeted for exploitation and precarious visa arrangements leading to fears about deportation.¹⁸⁴ To reduce these barriers, the FWO is employing a range of strategies including access to translators at no cost to workers, publication of fact sheets in 26 community languages, community awareness through non-English speaking radio broadcasts running anonymous investigations where the complainant is not identified and initiating court action for breaches of the FWA involving foreign workers.¹⁸⁵

The FWO can initiate court action to penalise employers who contravene the FWA, the *Fair Work* regulations, a fair work instrument, the minimum National Employment Standards, a national minimum wage order, an equal remuneration order or any other legislation over which the FWO has jurisdiction.¹⁸⁶ In deciding whether the public interest requires that the proceedings be commenced, the FWO may consider the fact that some workers - including foreign workers - are particularly vulnerable to exploitation in the workplace.¹⁸⁷ The ability of Fair Work Australia to take action against employers who underpay foreign workers has been illustrated in a number of recent cases¹⁸⁸, but to date there has been no statistical analysis of the FWO efforts to protect vulnerable women workers from exploitation.

At this early stage in the operation of the FWA it is difficult to evaluate its effectiveness in protecting the rights of vulnerable workers. The *Making it Fair* report has observed that “there is a lack of disaggregated statistical data on women in the workforce, more so for cases of multiple labour disadvantages (such as Indigenous, culturally and linguistically diverse and immigrant women, and women with disabilities)”. The *Making it Fair* report further recommends that, as a matter of priority, the Australian Government “collect information of workforce participation of Indigenous women to provide a basis for pay equity analysis and inform future policy direction”.¹⁸⁹ Data should also be collected on vulnerable migrant workers in the workforce. This should include gender disaggregated data on the cases where the FWO has taken action to protect the rights of migrant workers.

¹⁸² Ibid, 52.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid, pp 52-53.

¹⁸⁶ Fair Work Ombudsman, ‘FWO Litigation Policy GM1, available online <https://www.fairwork.gov.au/guidancenotes/GN-1-FWO-Litigation-Policy.pdf> .

¹⁸⁷ Fair Work Ombudsman, ‘FWO Litigation Policy GM1, [17.7]a) available online <https://www.fairwork.gov.au/guidancenotes/GN-1-FWO-Litigation-Policy.pdf> .

¹⁸⁸ *Iser v Penang Kayu Nasi Pty Ltd and Poh Meng Hong* [2009] X02915424 (13 May 2009)

Komiatis v Education Training and Employment Australia Pty Ltd [2008] W02752864 (18 September 2009)

¹⁸⁹ Standing Committee on Employment and Workplace Relations, Parliament of the Commonwealth of Australia, *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009), Recommendation 55.

NATIONAL EMPLOYMENT STANDARDS

The FWA provides a safety net of minimum terms and conditions of employment called the National Employment Standards (NES). The NES provide ten minimum conditions, which apply to full-time and part-time employees and cannot be stripped from any agreement or award.¹⁹⁰ Minimum wages are not included in the NES, but are provided for in modern awards. However, many of the minimum terms and conditions set out the NES do not protect casual employees and do not cover independent contractors. Two NES entitlements apply to all full time and part-time employees, whether or not they are covered by the national workplace relations system: parental leave and related entitlements and notice of termination. However, most of the NES conditions do not apply to casual employees.¹⁹¹ Because vulnerable women are more likely to be reliant on casual and non-standard employment, they are less likely to be protected by the NES.

NES 1 provides for 38 maximum weekly hours of work. An employer must not request or require an employee to work more than 38 hours a week, or for a part-time employee, their ordinary hours unless the additional hours are reasonable.¹⁹² However, because there is no weekly limit on what might constitute reasonably additional hours, Owens *et al* have suggested that “[t]he 38 hour week is... a kind of fictional standard that may or may not reflect actual working hours, depending on the extent to which the employers utilise the available flexibility”.¹⁹³

Under *NES 2* employees with more than 12 months of continuous service are guaranteed ‘the right to request flexible working arrangements’¹⁹⁴ enabling parents or carers with children under school-age or children with a disability to request a change to their working arrangements to assist with child care. The relevant right is a procedural right to request flexible working conditions, not a substantive right to have that request granted; the employer retains the right to refuse the request on ‘reasonable business grounds’, a phrase that the FWA leaves undefined.¹⁹⁵ The civil remedies under Part 4-1 for breaching the NES do not apply if the employer refuses a request other than on reasonable business ground.¹⁹⁶ *NES 2* does not protect employees who have not been in continuous employment for at least 12 months. The *Making It Fair* report recommended amending *NES 2* to protect the right of *all employees* to request flexible working arrangements.¹⁹⁷

NES 3 provides that workers with more than 12 months of ‘continuous service’ immediately before the birth of their child are entitled to parental leave and related entitlements.¹⁹⁸ *NES 4* protects the right of all non-casual employees to annual leave for 4 weeks each year, plus an

¹⁹⁰ *Fair Work Act 2009* (Cth), s 55.

¹⁹¹ Casual employees do have the benefit of two days unpaid carers leave and two days compassionate leave per occasion, maximum weekly hours, community service leave (except jury service) to reasonably seek a day off on a public holiday, provision of the Fair Work Information Statement. In addition casual employees who have been employed for at least 12 months by an employer on a regular and systematic basis and with an expectation of ongoing employment are entitled to make requests for flexible working arrangements and parental leave.

¹⁹² *Fair Work Act 2009* (Cth), s 62.

¹⁹³ Owens, R., Riley, J., Murray, J., *The Law of Work*, (2011) 328.

¹⁹⁴ *Fair Work Act 2009* (Cth), s 65(1).

¹⁹⁵ *Fair Work Act 2009* (Cth), s 65(5).

¹⁹⁶ *Fair Work Act 2009* (Cth), s 44.

¹⁹⁷ House of Representatives Standing Committee on Employment and Workplace Relations, *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009) The Parliament of the Commonwealth of Australia, 159, Recommendation 14.

¹⁹⁸ Up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, and other forms of maternity, paternity and adoption related leave.

additional week for shift workers.¹⁹⁹ *NES 5* entitles all non-casual employees to personal/carer's leave and compassionate leave.²⁰⁰ Under *NES 6* all employees are entitled to leave to perform "eligible community service activities" including voluntary emergency activities, with an entitlement to be paid for up to ten days for jury service.

NES 7 preserves certain long service leave entitlements held before 1 January 2010 pending the development of a uniform national long service leave standard. *NES 8* entitles employees to be absent from work on a public holiday and to be paid at their base rate of pay for the ordinary hours of work, except where reasonably requested to work.

NES 9 has two parts: the first provides for notice of termination, the second for redundancy pay.²⁰¹ Neither entitlement applies to employees employed for a specified period of time or for a specific task, casual or seasonal employees or employees who are terminated because of serious misconduct. *NES 9* requires an employer to provide up to four weeks notice of termination (five weeks if the employee is over 45 and has at least two years of continuous service) and up to 16 weeks redundancy pay, both based on length of service.

NES 10 requires employers to provide new employees with a Fair Work Information Statement containing information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, right of entry, transfer of business and the roles of Fair Work Australia and the FWO.²⁰² However, Owens *et al* have observed that the obligation to provide an information statement does not impose a duty upon employers to provide workers "with a comprehensive statement of their *actual* entitlements (such matters as rates of pay, allowances, starting and finishing times and so on)," adding:

*"Vulnerable workers, including young people and those from non-English speaking backgrounds, require more than a general pointer to the legislative scheme as is found in the Fair Work Information Statement: they require a simple statement that explains the nature of their legal relationship with their employer and written confirmation of the terms of their actual entitlements in order for them to understand whether or not their legal entitlements are being met."*²⁰³

There are currently no requirements for employers of significant numbers of employees from non-English speaking backgrounds to provide Fair Work Information Statements in community languages. Without a working understanding of their rights and entitlements at work, vulnerable workers do not have the knowledge to assert their rights at work. The *Making It Fair* Report recommends "that Fair Work Australia ensure that where a significant proportion of an organisation's employees are from a non-English speaking background, that the explanation of the terms of an employment agreement have been explained in the employee's own language".²⁰⁴

¹⁹⁹ *Fair Work Act 2009* (Cth), s 87(1).

²⁰⁰ 10 days paid personal carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.

²⁰¹ *Fair Work Act 2009* (Cth), s 117.

²⁰² *Fair Work Act 2009* (Cth), s 124.

²⁰³ Owens, R., Riley, J., Murray, J., *The Law of Work*, (2011) ,313.

²⁰⁴ House of Representatives Standing Committee on Employment and Workplace Relations, Parliament of the Commonwealth of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009) 167 Recommendation 16.

Organisations representing migrant women workers, such as Asian Women at Work, have also identified the need for industry awards and NES to be translated into community languages, so that migrant workers can access information on their rights at work.²⁰⁵

NATIONAL MINIMUM WAGE & MODERN AWARDS

The national minimum wage acts as a safety net for employees in the national workplace relations system to provide minimum rates of pay for employees not covered by awards or agreements. National minimum wage orders are made by the Minimum Wage Panel of Fair Work Australia.²⁰⁶

Fair Work Australia has an obligation to establish and maintain a safety net of fair minimum wages taking into account the minimum wage objective²⁰⁷ and the modern awards objective,²⁰⁸ which are set out in the FWA and which recognise, *inter alia*, the principle of equal remuneration for work of equal or comparable value,²⁰⁹ relative living standards and the needs of the low paid.²¹⁰

Modern awards cover people in a particular industry or occupation and provide enforceable employment standards in addition to the NES. The purpose of modern awards is to establish one set of minimum conditions for employers and employees working in the same industries and occupations.

The FWA provides that modern awards, together with the NES, provide a fair and relevant minimum safety net and the Act specifically provides that a modern award must not include terms that discriminate against an employee because of, or for reasons including, the employee's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.²¹¹ The *Making It Fair report* recommended that FWA should be amended to clearly provide that an award must provide for equal remuneration for men and women employees for work of equal or comparable value.²¹²

ENTERPRISE AGREEMENTS

Some employers and employees may choose to create enterprise agreements that cover the wages and conditions that apply to their business. The FWA requires that employees and employers bargain in good faith when they are making enterprise agreements and that these agreements result in employees being better, rather than worse off - the 'Better off Over All' test. If bargaining breaks down, Fair Work Australia can make workplace determinations which operate like enterprise agreements (Part 2-5). A bargaining representative or union can apply for

²⁰⁵ Interview with Lina Cabaero, Asian Women at Work (telephone interview 11 April 2011).

²⁰⁶ From the first full pay period on or after 1 July 2010 the national minimum wage is \$569.90 per week (before tax), or \$15 per hour.

²⁰⁷ *Fair Work Act 2009* (Cth), s 284.

²⁰⁸ *Fair Work Act 2009* (Cth), s 134(1)

²⁰⁹ *Fair Work Act 2009* (Cth), s 284(1)(d), s 134(1)(e).

²¹⁰ *Fair Work Act 2009* (Cth), s 284(1)(c), s 134(1)(a).

²¹¹ *Fair Work Act 2009* (Cth), s 153(1).

²¹² House of Representatives Standing Committee on Employment and Workplace Relations, Parliament of the Commonwealth of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009) 25, Recommendation 10.

a low-paid authorisation allowing for bargaining for a multi-enterprise agreement. Fair Work Australia may make a 'low paid workplace determination' with the consent of the parties or a 'special low paid workplace determination' where there is no reasonable prospect of agreement.

UNFAIR DISMISSAL LAWS

Part 3-2 of the FWA deals with unfair dismissal. An employee has access to unfair dismissal remedies if the employee has completed a period of service with his or her employer of at least 12 months (if the employer is a small business) or, in other cases, six months and the employee is covered by a modern award or an enterprise agreement.²¹³ This means that casual employees may make unfair dismissal claims, but only on the basis of the same qualifying period as permanent employees and where they have a reasonable expectation of continuing employment. A worker will be unfairly dismissed if the dismissal was harsh, unjust or unreasonable or in the case of workers at small businesses, the dismissal was not consistent with Small Business dismissal code, and the dismissal was not a case of genuine redundancy.²¹⁴

The remedies for unfair dismissal are reinstatement or compensation.²¹⁵ Employees at small businesses (with less than 15 full-time employees) will not be able to access the unfair dismissal remedies if the employer complies with the Small Business Fair Dismissal Code. As the *Making it Fair* report observed:

*The concentration of women in low paid part-time and casual employment in small business operations in, for example, the retail, catering and restaurants sectors, means a large number of women do not enjoy equal protection from unfair dismissal.*²¹⁶

Applications under the unfair dismissal provisions of the FWA must be made within 14 days of when the dismissal took effect. Unfair dismissal claims made outside of the 14 day time limit can be accepted by Fair Work Australia only where there are "exceptional circumstances".²¹⁷ The South Australia Working Women's Centre has observed the 'the 14 day limit for lodging a notice of unfair dismissal is an impediment for some women, particularly those from NESB or CALD backgrounds.'²¹⁸

²¹³ *Fair Work Act 2009* (Cth), ss 382, 383.

²¹⁴ *Fair Work Act 2009* (Cth), s 385.

²¹⁵ *Fair Work Act 2009* (Cth), ss 390–392

²¹⁶ House of Representatives Standing Committee on Employment and Workplace Relations, Parliament of the Commonwealth of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009) 154.

²¹⁷ *Fair Work Act 2009* (Cth), ss 394(2), (3)).

²¹⁸ Sandra Dann, Sonya Carmody, Teresa Von Wasserling, Milijana Stojadinovic, Working Women's Centre SA, *Vulnerable women workers: are the regulatory changes improving their position? Issues for vulnerable women accessing Working Women's Centres*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT.

><http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Dann,%20Carmody,%20Von%20Wasserling,%20Stojadinovic,Milijana.pdf>< (accessed April 2011).

LAW ON 'INDEPENDENT CONTRACTORS'

The NES do not protect independent contractors. There is no legislation which defines who is an employee by virtue of entering into a contract of service and an independent contractor, who agrees to work for someone else in a contract for services.²¹⁹

To determine whether a worker is an employee or an independent contractor, the Courts apply a 'multiple indicia' common law test to determine the status of the work. The critical element is the control over the worker but the law is complex and unpredictable.²²⁰ Each determination is ultimately based on the particular conditions and practices of the workplace.²²¹

While the rights of independent contractors are set out in the *Independent Contractors Act 2006* (Cth), the FWA does prohibit sham contracting. The sham contracting provisions prohibit a person and/or company from engaging, or proposing to engage, a worker as an independent contractor where the worker in reality is, or would be, an employee.²²² This results in workers missing out on minimum entitlements.

8.2 EXPANDING THE PROTECTION OF EMPLOYMENT LAW

It is clear that many people who provide work are not in practice protected by employment law. The law's strongest protections apply to people engaged in full-time, permanent work, leaving people engaged in other forms of work, such as casual work, outworkers, contractors and agency work relatively unprotected and largely uninformed of workplace rights. The consequences of not regulating many of these work situations is that employer practices may go unchecked and become institutionalised.²²³ Vulnerable women are more likely to be engaged in precarious employment. The *Making It Fair* Report made recommendations to amend the FWA to strengthen women's bargaining power and reduce gender inequity in the Australian Workforce.²²⁴

8.3 THE INTERSECTION OF IMMIGRATION AND WORKPLACE RELATIONS LAWS

Precarious immigration status can leave migrant women particularly vulnerable to exploitation in the workplace.²²⁵ The *Migration Legislation Amendment (Worker Protection) Act 2008* (Cth) requires employers who sponsor migrant workers to work in Australia on temporary visas to ensure those workers are employed under the same conditions of employment and salary as Australian workers possessing the same skills and qualification.²²⁶

²¹⁹ Owens, R., Riley, J., Murray, J., *The Law of Work*, (2011), 155.

²²⁰ Owens, R., Riley, J., Murray, J., *The Law of Work*, (2011), 156.

²²¹ Fair Work Ombudsman, *Independent Contractors and employees factsheet*, Fair Work Australia, Australian Government > <http://www.fairwork.gov.au/resources/fact-sheets/workplace-rights/pages/independent-contractors-and-employees-fact-sheet.aspx> < (accessed April 2011).

²²² *Fair Work Act 2009* (Cth), ss357-359.

²²³ Bernstein, S., Lippel, K., Tucker, E., Vosko, L., *Precarious Employment and the Law's Flaws: Identifying Regulatory Failure and Securing Effective Protection for Workers*, (2006), 212.

²²⁴ See, in particular, House of Representatives Standing Committee on Employment and Workplace Relations, Parliament of the Commonwealth of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009).

²²⁵ Campbell, Michael 'Perspectives on the Working Conditions of Temporary Migrant Workers in Australia' (2010) 18(2) *People and Place* 51, 52.

²²⁶ For a critical appraisal of these changes see Joanna Howe, 'The Migration Legislation Amendment (Worker Protection) Act 2008: Long Overdue Reform, But Have Migrant Workers been Sold Short?' (2010) 23 *Australian Journal of Labour Law* 251.

The *Migration Amendment (Employer Sanctions) Act 2007* (Cth) prescribes penalties for employers who knowingly or recklessly allow an unlawful non-citizen to work or to allow a non-citizen to work in breach of his other visa conditions. Each of the four offences will be deemed an aggravated offence if the worker is exploited and the accused either had knowledge of this fact, or was reckless to the fact. The term “exploited” is defined to mean the condition of forced labour, sexual servitude, or slavery, with the meaning of these terms taken from the Criminal Code.²²⁷

The offence of exploitation under the *Migration Amendment (Employer Sanctions) Act 2007* could be broadened to ensure the aggravated offences target the exploitation of workers to include forced labour, sexual servitude, slavery and practices similar to slavery (including debt bondage). The views of the FWO should be sought on whether the aggravated offence should also punish employers who exploited unlawful non-citizens in contravention of the minimum standards of the FWA.

8.4 OTHER LAWS THAT APPLY TO PEOPLE AT WORK

Employment law is supplemented by a range of other laws that regulate aspects of the workplace and work. Anti-discrimination law prohibits discrimination in connection with employment. Occupational Health and Safety Laws aim to prevent workplace death, injury and disease.²²⁸ Each state and territory has its own workers compensation scheme and the Commonwealth has schemes covering public servants working in the federal sphere, the military and seafarers. In 2009, Safe Work Australia was established to develop proposals to improve work health and safety laws and workers compensation arrangements across Australia as part of an initiative of the Council of Australian Governments.²²⁹

The most extreme forms of exploitation may fall within criminal offences of trafficking, slavery, sexual servitude and debt bondage. However, convictions in trafficking matters are rare. Therefore, consideration should be given to how to improve access to justice outside the criminal justice system.²³⁰ Trafficked people may be able to seek compensation under State and Territory statutory victims’ compensation schemes, FWA, discrimination and occupational, health and safety law, the *Trade Practices Act* or by taking civil action against their trafficker (for example, tortious remedies for battery, assault or false imprisonment).

ANTI-DISCRIMINATION LAW

Federal and states laws prohibit discrimination on a range of different grounds. Four federal anti-discrimination acts prohibit discrimination in employment on the grounds of:

- race, colour, descent or national or ethnic origin;

²²⁷ *Migration Act 1958* (Cth), s 245AH.

²²⁸ The laws regulating OHS in Australia are complex and not discussed in this report. Australia has nine OHS jurisdictions and ten specific OHS statutes (six state Acts, two territory Acts and two Commonwealth Acts) and over 50 other legislative instruments applying to specific industries such as offshore petroleum, mining, construction, and public health, public safety. The regulation of OHS is currently the subject of a national review to inform the development of a model OHS Act; see Australian Government, *National Review into OHS Model Laws*, ><http://nationalohsreview.gov.au/>< (accessed April 2011).

²²⁹ *Safe Work Australia Act 2008* (Cth).

²³⁰ For more detailed discussion see Anti-Slavery Project, *The Criminal Justice Response to Slavery and People Trafficking: Reparation; and Vulnerable Witness Protection: Response to the Australian Government Attorney-General’s Department Discussion Paper* (2011).

- sex;
- marital status;
- pregnancy or potential pregnancy;
- family responsibilities;
- disability;
- people with disabilities in possession of palliative or therapeutic devices or auxiliary aids;
- people with disabilities accompanied by an interpreter, reader, assistant or carer;
- a person with a disability accompanied by a guide dog or an 'assistance animal'; and
- age.²³¹

The *Sex Discrimination Act 1984* (Cth) (the SDA) also makes sexual harassment in the workplace unlawful, while the *Racial Discrimination Act 1975* (Cth) prohibits offensive behaviour based on racial hatred and the *Disability Discrimination Act 1992* (Cth) prohibits harassment of people with disabilities.

A person who has been discriminated against under the *Sex Discrimination Act 1984* (Cth), the *Racial Discrimination Act 1975* (Cth), the *Disability Discrimination Act 1992* (Cth) or the *Age Discrimination Act 2004* (Cth) can make a complaint, in writing, to the Australian Human Rights Commission.

The Commission will investigate the complaint and, if possible, seek to resolve the complaint through conciliation. If the complaint is not resolved through conciliation or discontinued for some other reason, the complainant can make an application to the Federal Magistrates or the Federal Court.

While the informality of the complaint process may encourage many to take action, many do not report discrimination for fear of adverse treatment. If the matter fails to be resolved at conciliation, the cost of court proceedings can deter complainants from pursuing the matter further.

The *Making It Fair Report* observes that "the current anti-discrimination model puts the burden of responsibility onto the aggrieved party to lodge a complaint... [but] those who are the most vulnerable to exploitation and discrimination are generally less able to access complaints mechanisms".²³²

To improve Australia's response to systemic discrimination the *Making It Fair Report* recommended amending the SDA to enable the Sex Discrimination Commissioner to commence self-initiated complaints for alleged breaches of the SDA, without requiring individual complaints

²³¹ *Sex Discrimination Act 1984* (Cth); *Racial Discrimination Act 1975*(Cth); *Disability Discrimination Act 1992* (Cth); *Age Discrimination Act 2004*(Cth).

²³² House of Representatives Standing Committee on Employment and Workplace Relations, Commonwealth Parliament of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009) 239; Similarly, the Senate Legal and Constitutional Affairs Committee inquiry *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, (2009) found that "An inquiry into the effectiveness of the *Sex Discrimination Act* found that "individuals seeking to enforce their rights under the Act confront a series of almost insuperable difficulties not the least of which is obtaining legal representation"; see further Senate Standing Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* (2010), >http://www.ema.gov.au/www/agd/agd.nsf/Page/Publications_GovernmentResponseToSenateStandingCommitteeonLegalandConstitutionalAffairs2008reportintotheeffectivenessoftheSexDiscriminationAct1984< at April 2011.

and empowering the Commission to commence legal action in the Courts for a breach of the SDA.²³³

CRIMINAL LAW

In the last decade, Australia has introduced new criminal offences prohibiting slavery, sexual servitude and people trafficking.²³⁴ While Australian law prohibits trafficking for forced labour, the formulation of the trafficking and slavery offences in the Criminal Code reflect a preoccupation with sex trafficking.²³⁵ Although there is a specific offence of sexual servitude and deceptive recruiting, there are no stand-alone offences of servitude, forced labour or deceptive recruitment for labour services. The existing offence of sexual servitude only covers commercial sexual exploitation. The picture of labour trafficking in Australia is still in soft focus and frontline agencies and services are sometimes unaware that Australia's anti-trafficking laws can apply to the worst cases of labour exploitation.²³⁶

In 2009, the Australian Government sought submissions in response to two discussion papers on extreme forms of exploitation.²³⁷ The first discussion paper focused on the criminal justice response to people trafficking and slavery and sought comment on arguments for and against, introducing a specific offence of forced labour. The second discussion paper invited submissions on what legislative and non-legislative measures the Australian Government could implement to respond to the practices of forced and servile marriage.

Anti-Slavery has recommended a formal review of Australia's anti-trafficking laws to evaluate if the existing legislative framework adequately covers all forms of human trafficking and exploitation.²³⁸ While it is important to close the gaps in the existing criminal framework, any review of Australia's response to trafficking should consider the broader issues of pathways to compensation for trafficked people, legal and social protection, and the challenges of addressing a spectrum of exploitative practices.

8.5 BARRIERS TO ACCESSING LEGAL SERVICES

Vulnerable migrant women face significant barriers protecting their rights at work. The first challenge is access to justice. Cultural and linguistic barriers mean that many migrant workers do not know their rights, do not know where to seek help, fear losing their job or being deported

²³³ House of Representatives Standing Committee on Employment and Workplace Relations, Commonwealth Parliament of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009), Recommendations 19 and 20.

²³⁴ The *Criminal Code Amendment (Slavery and Sexual Servitude) Offences Act 1999 (Cth)*; The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 (Cth)*.

²³⁵ Parliamentary inquiries into trafficking in Australia have focused on trafficking for sexual servitude: see e.g., Senate Legal and Constitutional Legislation Committee, *Inquiry into Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004* (2004); Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude* (2004). The title of the Transnational Sexual Exploitation and Trafficking Team, established in 2003, reflected the focus of initial law enforcement efforts.

²³⁶ *Ibid.*

²³⁷ Attorney-General's Department, *Discussion Paper on Forced and Servile Marriage*, (2009); Attorney-General's Department, *Discussion Paper on the Criminal Justice Response to Slavery and People Trafficking; Reparation and vulnerable witnesses*, (2009).

²³⁸ See Anti-Slavery Project, *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protection: Response to the Australian Government Attorney-General's Department Discussion Paper* (2011); See also Frances Simmons and Jennifer Burn, 'Evaluating Australia's Response to all forms of Trafficking: Towards Rights-centred Reform', (2010) 84 *The Australian Law Journal* 712 (recommending a review of Australia's legislative response to trafficking).

and may not be aware of minimum pay entitlements.²³⁹ There have been many reports documenting the obstacles that migrant and refugee women face accessing legal and support services in Australia.²⁴⁰

Indigenous women also face significant barriers in accessing legal services.²⁴¹ For Indigenous women, there is reported lack of assistance in criminal law representation and in particular, areas of civil law such as employment law. While Aboriginal Legal Services' primary focus is on criminal law, many argue that they are inadequately funded to provide even this limited coverage. Social disadvantage and social exclusion, particularly in the fields of health and education can compound the difficulties in accessing legal services.²⁴² English is not the first language in some Indigenous communities and this can present challenges for Indigenous women, particularly in remote communities, seeking legal representation. Further, many Indigenous women are employed in isolated areas of regional Australia, where they have little access to information and minimal options of work. However, to date, recommendations that the Australian Government undertake a comprehensive audit of the access to legal services for Indigenous women have not been implemented. The 2009 report of the Senate Legal and Constitutional Committee Inquiry into Access to Justice recommended that:

*Federal, state and territory governments jointly fund a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of rural, regional and remote communities and Indigenous women's needs, to be jointly undertaken with state/territory legal aid commissions, community legal centres, Aboriginal legal services, National Legal Aid and the Law and Justice Foundation NSW.*²⁴³

8.6 ENFORCEMENT

Some employers are proactive about protecting the rights of their employees, but others resist regulation, making it difficult for employees to change their circumstances. If employees are unaware of their workplace entitlements it is unlikely they will have sufficient power to challenge abusive and exploitative practices.²⁴⁴ Vulnerable workers are unlikely to be advised of their entitlements, they have low expectations of what they are entitled to, they have few social supports, lack of knowledge about how to access legal assistance and if they are in precarious work, little bargaining power and might risk dismissal without remedy.

²³⁹ Bernstein, S., Lippel, K., Tucker, E., Vosko, L., *Precarious Employment and the Law's Flaws: Identifying Regulatory Failure and Securing Effective Protection for Workers*, (2006), 216.

²⁴⁰ Women's Legal Resource Centre, 'A long way to equal: An update of 'Quarter Way to Equal: a Report on Barriers to Access to Legal Services for Migrant Women', 2007 (noting the priority areas for legal services and family law, immigration law and domestic violence); Women's Legal Resource Centre, 'Quarter Way to Equal: A Report on Barriers to Access to Legal Services for Migrant Women', (1994); *Senate and Constitutional Affairs Committee, Migrants and Refugees, Inquiry into Legal Aid and Access to Justice, June 2004*.

²⁴¹ See, for example; Legal and Constitutional Affairs References Committee, Parliament of the Commonwealth of Australia, *Access to Justice* (2009); the *Senate and Constitutional Affairs Committee, Indigenous people, Inquiry into Legal Aid and Access to Justice, June 2004*; Australian Law Reform Commission (1994) *Equality Before the Law: Justice for Women*, Report no 69, [5.24]-[5.37].

²⁴² SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009).

²⁴³ Legal and Constitutional Affairs References Committee, Parliament of the Commonwealth of Australia, *Access to Justice* (2009), Recommendation 1.

²⁴⁴ Bernstein, S., Lippel, K., Tucker, E., Vosko, L., *Precarious Employment and the Law's Flaws: Identifying Regulatory Failure and Securing Effective Protection for Workers*, (2006), 216.

Geographic isolation can compound existing vulnerabilities and make it hard for workplace inspectors to regulate workplaces in remote regional areas.²⁴⁵ However, the FWO does have powers to commence proceedings or make applications to enforce Commonwealth workplace laws and, where appropriate, seek penalties for contraventions.²⁴⁶ The FWO also represents workers who are, or might become a party to proceedings and has facilitated the recovery of unpaid wages for foreign workers who have returned to their country of origin.²⁴⁷ Further research will be required to evaluate the impact of the FWO in enforcing the FWA, particularly with respect to migrant workers.

8.7 SERVICES FOR PROTECTING VULNERABLE WOMEN AT WORK

Even when women are protected by employment law and other laws, there are many barriers which prevent them from accessing protection. Legal protection cannot effectively overcome cultural barriers, financial disadvantage, family pressures, low skill levels and education and isolation. Given the limitations of legal protections, having a wide range of services to assist women is essential for ensuring adequate protection for vulnerable women. Because of the multiple disadvantages that women face, no single sector is able to address all their needs. In their submission to the *Making it Fair* inquiry, Associate Professor Taks and Dr Anne Junor argued:

*'Culturally and linguistically diverse women are at a range of disadvantages in the workplace, not because of individual deficits such as low skills, but because of structural deficiencies in Australia's social and labour market frameworks for receiving immigrants. Many sources of voice and participation have been closed off. The erosion of English language tuition over the past 20 years, and strict guidelines governing timing of post-arrival access, have made access to English impossible for women with children. Status as spouse of a primary immigrant, ongoing issues of overseas skills recognition, loss of skills currency in fields such as IT and engineering, religious discrimination based on dress codes and the low value given to fluency in other languages, have all been barriers to employment. The migrant resource centres, including women's centres, which flourished before 1995, have lost most of their funding. The upshot is a tendency to concentration in low-paid occupational segments regardless of skill levels, and a denial of voice and organising capacity.'*²⁴⁸

The *Making It Fair Report* recommended the Minister for Immigration and Citizenship review the adequacy of English language tuition and the need to reinstate these programs and investigate options to improve the current processes for the accreditation of overseas migrants.²⁴⁹ The report

²⁴⁵ *ibid.*

²⁴⁶ *Fair Work Act 2009* (Cth), s 682(d).

²⁴⁷ *Fair Work Act 2009* (Cth), s 682(f).

²⁴⁸ House of Representatives Standing Committee on Employment and Workplace Relations, Commonwealth Parliament of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009) 11.

²⁴⁹ House of Representatives Standing Committee on Employment and Workplace Relations, Commonwealth Parliament of Australia *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009) 328, Recommendations 57 and 58.

also recognised the critical importance of community awareness campaigns that inform migrant women about their rights at work.²⁵⁰

COMMUNITY SERVICE & SOCIAL SUPPORT

Community support is an important source of support for women with work related problems.²⁵¹ Advocacy based organisations are important in providing employment advice and worker representation to people from diverse backgrounds and people in precarious work situations.²⁵² Women in work or participating in work readiness programs may require a wide range of social supports to address their multiple forms of disadvantage. For example, some programs have found that active engagement with the families of women in work programs assists participation and boosts retention rates.²⁵³

8.8 EXISTING SERVICES AND GAPS

WORKING WOMEN'S SERVICES

Working Women's Services exist in a number of states and territories. Due to a lack of funding, the NSW Centre is no longer in place. The future funding of existing centres is in question. This is regrettable, when considering the work that these centres have done in assisting working women including women from CALD backgrounds who are in need of accessible advice.

The Northern Territory Working Women's Centre (NTWWC) is a community-based, independent organisation that provides information, advice and support to low income women about workplace problems across the whole of the Territory. In 2009-2010 42 per cent of their clients are women from CALD backgrounds, including 22 per cent from Aboriginal backgrounds.²⁵⁴ NTWWC provides education to CALD and Aboriginal community organisations and groups, including high schools, pre-vocational colleges, language education centres and employment service providers. In 2008-2009, 50 per cent of participants were Aboriginal and 34 per cent were from CALD backgrounds. They are trialing bi-cultural delivery of workplace rights education to refugee and emerging communities.²⁵⁵

The Queensland Working Women's Service (QWWS) is a community-based not-for-profit organisation that provides a free and confidential information and referral service to women on employment related matters.²⁵⁶ In 2009, in response to concern that their service was not being

²⁵⁰ Ibid, 329.

²⁵¹ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf.

²⁵² Broadbent et al, *Reaching Out: Enhancing the accessibility of an employment rights advisory service for migrant women*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Broadbent,%20Strachan,%20Bailey,%20Ressia.pdf>.

²⁵³ Heron, OECD, *Migrant Women and the Labour Market: Diversity and challenges*, paper delivered to OECD and European Commission Seminar, Brussels, September 2005, citing <http://www.ifau.se/upload/pdf/se/2001/wp01-14.pdf>.

²⁵⁴ Nguyen, M, Moving Towards Cultural Competency, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Nguyen.pdf>.

²⁵⁵ Nguyen, M, Moving Towards Cultural Competency, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Nguyen.pdf>.

²⁵⁶ Broadbent et al, *Reaching Out: Enhancing the accessibility of an employment rights advisory service for migrant women*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Broadbent,%20Strachan,%20Bailey,%20Ressia.pdf>.

accessed by women from CALD backgrounds, QWWS conducted research with migrant women to identify ways to increase accessibility.

EMPLOYMENT PROGRAMS

There are a number of federally funded employment programs in place across Australia. However, many of these programs are often inaccessible for the most vulnerable women and girls. This is particularly so when considering the lack of translated material for migrant women about their work and legal rights. Many federally funded employment programs are not focused on meeting the particular needs of migrant and Indigenous women and girls.

Anti-Slavery conducted research and interviews with a number of organisations which offer employment programs for vulnerable women and girls.

The *Given the Chance* program is offered by the Brotherhood of St Laurence; further detail is given below.

In Victoria, *Workforce Participation Partnerships* fund a variety of projects to assist disadvantaged job seekers, including migrant communities. The WPP has funded migrant resources centres and other migrant organisations to deliver tailored employment services. It is reported to have been successful.²⁵⁷

New Futures Training is a program run by the Victorian Co-operative on Children's Services for Ethnic Groups, which trains people from CALD backgrounds, predominantly women, to become certified childcare workers. The training has been shown to have multiple social benefits for women and their families, including enhancing the participation of parents in the learning and development of their children.

ARA Jobs is a Job Services Australia provider which offers specialist employment and training services to Culturally and Linguistically Diverse communities.²⁵⁸

Service Stars Community Job Alliance in Victoria was launched in 2008 and works with diverse communities in Victoria to provide jobs. The Alliance works mainly with migrant women from African communities to provide jobs. More information is provided below.

Employment programs should have strong connections with migrant family and youth services. There is an increasing need for family support services to address and alleviate the pressures that the resettlement process places on families.²⁵⁹

²⁵⁷ Ethnic Communities' Council of Victoria, *Real Jobs: Employment for migrants and refugees in Australia*, Policy Discussion Paper No. 3, 2008. Available at: http://eccv.org.au/library/file/policy/ECCV_Discussion_Paper_3_Real_Jobs.pdf.

²⁵⁸ Australian Refugee Association, Job Services Australia, <<http://www.arajobs.net/arajobs/default.aspx>>.

²⁵⁹ Refugee Council of Australia, *Australia's Refugee and Special Humanitarian Program: Current Issues and Future Directions, Views from the Community Sector*, 2006, available at: http://www.refugeecouncil.org.au/docs/resources/submissions/2006-07_intakesub.pdf (accessed 1 March 2011), p55.

CASE STUDIES OF EFFECTIVE SERVICES FOR ENHANCING PROTECTION OF WOMEN'S LABOUR RIGHTS

Asian Women at Work (AWAW) have developed service models that combine social activities with the provision of information about legal rights and entitlements. Examples include organising bus trips where information about rights is provided during the bus journey, organising a film evening (in 2011 AWAW took 20 women to see a film - the women had been in Australia for over ten years and had never had an opportunity to go to the movies), AWAW attend children's swimming lessons to speak to the mothers of children, and in an impressive and innovative collaboration they have partnered with the Department of Primary Industries to present information about fishing to women.

Immigrant Women's Speakout is a community organisation working to represent the ideas and issues of immigrant and refugee women in New South Wales. The organisation has identified labour rights as one of the biggest areas in need of culturally appropriate information translated into appropriate community languages.²⁶⁰ Jane Corpuz Brock from Immigrant Women's Speakout has observed the necessity of such information for all migrant women, including those who can speak English, due to complex concepts such as superannuation which may not exist in their home countries.²⁶¹ In the past, Immigrant Women's Speakout provided radio plays about domestic and family violence for CALD women who may not be able to access information in a written format. These radio plays were made available in nine community languages and were very effective in providing accessible information on domestic violence to migrant women. Anti Slavery recommends that Good Shepherd Australia New Zealand work with Immigrant Women's Speakout to provide similar radio plays on migrant women's rights at work.

EXAMPLES OF CASE STUDIES FOR MIGRANT WORKERS

GIVEN THE CHANCE

This is a training and employment program run by the Ecumenical Migration Centre of the Brotherhood of St Laurence which provides refugees with support moving into work.²⁶² The program uses a case management approach to deliver integrated services including mentoring to provide personal and employment-related support, employment training to build confidence and enhance skills and work placements to promote understanding of the Australian labour market and work culture, build networks and gain experience. An external evaluation showed that the program compared favourably with the equivalent government Job Network scheme, with 55 per cent of participants gaining paid employment and 22 per cent entering study. The program also contributed to strengthening

²⁶⁰ Interview with Jane Corpuz Brock, Director of Immigrant Women's Speakout (telephone interview, 12 April 2011).

²⁶¹ Ibid.

communities by helping refugees to become involved in the wider community and the wider community to become more inclusive of refugees.²⁶³

OTHER EXAMPLES OF EMPLOYMENT PROGRAMS

Behind the Label: This was a three year project run by the NSW Government from 2001-2004 to address the issue of exploitation of outworkers. The program provided language training, skills recognition courses to upgrade skills in the clothing industry, providing training in other areas such as childcare or aged care, information technology and beautician skills. Some participants undertook job placements. The project initially encouraged outworkers to join social networks before joining the training program, and this is considered to have been vital to retaining participation in the courses. An evaluation report exists, but is available only at the National Library of Australia.

United Voice program providing apprenticeships to youth in Victoria: United Voice recently began undertaking work for the Victorian Police, using a simple model to provide young African and Indigenous people in Victoria with apprenticeships. The model involves the provision of training to go into jobs, information on work rights and information on being safe at work. United Voice provides apprenticeships by approaching employers and only offers training and information if a job will be available for participants. The model has been economical and effective in practice and has had some success in Victoria.²⁶⁴

Service Stars Community Job Alliance: Service Stars works with communities, mainly migrant women from African communities, to provide people with jobs. Jane Farrell, the Director of the Alliance, launched the Alliance due to previous experience with migrant workers, observing that a lot of the migrant community in Australia has been forced into low paid work that does not lead to ongoing or fulfilling employment in the future.²⁶⁵ Service Stars' model focuses on having relationships with large scale employers and approaching those employers to provide jobs for its clients in classes of 10-15. Service Stars has placed 67 people in jobs since 2008, most of whom have been women from African communities. The model is very simple and focuses on the provision of decent and appropriate work - its clients will not be placed in jobs that are not appropriate or do not lead to ongoing work.²⁶⁶ Service Stars aims to put people in jobs that make them feel valued in the community and give people a sense of belonging. In an interview, the Director of Service Stars commented that clients have said they are able to move to a new place and that life could begin.²⁶⁷ Service Stars has a very effective model for the provision of

²⁶² Brotherhood of St Lawrence, *Given the Chance*, available at: <http://www.bsl.org.au/Services/Refugees-and-migrants/Given-the-Chance.aspx>.

²⁶³ Mestan, K., for Brotherhood of St Lawrence, *Given the Chance: An evaluation of an employment and education pathways program for refugees*, 2008, available at: http://www.bsl.org.au/pdfs/Mestan_GiventheChance_evaluation_summary.pdf.

²⁶⁴ Interview with Cyndy Connole, United Voice (telephone interview on 3 May 2011).

²⁶⁵ Interview with Jane Farrell, Director of Service Stars Community Job Alliance (telephone interview, 4th May 2011).

²⁶⁶ Ibid.

²⁶⁷ Ibid.

appropriate and valuable work for migrant women. The Alliance aims to employ people from within migrant communities to work with their model and to help those in their community. This is a matter of funding.

8.9 DIFFICULTY MEASURING EFFECTIVENESS OF EMPLOYMENT PROGRAMS

Measuring the effectiveness of employment support programs is complicated because there are no accepted indicators for measuring effectiveness. Some programs measure the employment outcomes of participants. However, it is difficult to assess the quality of employment and in particular, the precariousness of the work, to determine whether employment outcomes have actually improved. In addition, measuring employment outcomes does not measure the long-term outcomes or the wide range of social benefits of participation.²⁶⁸

8.10 TARGETED EMPLOYMENT SERVICES FOR DISADVANTAGED MIGRANTS

Lessons for effective services:

- Training about Australian workplace laws is needed to provide women with an understanding of their basic rights at work, how their rights can be enforced and what services are available to them if they have any problems.²⁶⁹ This is important for building confidence and empowering women.
- Cross-cultural training about workplace culture, including the relationship between employers and employees is needed, including how to ask questions at the workplace, how to speak up when something is wrong.
- Some services have found that role-plays and story-telling are useful for demonstrating ways of resolving workplace situations.²⁷⁰
- Training could include participation of employers to build greater understanding of barriers facing migrants.²⁷¹
- Programs should include follow-up after the formal training has ended to check in with participants and provide an opportunity for ongoing relationship and evaluation.²⁷²
- Some programs have also included mentoring, personal development and motivational courses. This has been seen by many projects as central to the long-term effectiveness of programs.²⁷³
- Focus on widening women's job options.²⁷⁴

²⁶⁸ Alexandra Heron, OECD, *Migrant Women and the Labour Market: Diversity and challenges*, paper delivered to OECD and European Commission Seminar, Brussels, September 2005, citing <http://www.ifau.se/upload/pdf/se/2001/wp01-14.pdf>.

²⁶⁹ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf.

²⁷⁰ Nguyen, M, Moving Towards Cultural Competency, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Nguyen.pdf>.

²⁷¹ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf.

²⁷² Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf.

²⁷³ Bond, S., for Brotherhood of St Laurence, *Women on the Move: Evaluating a refugee mentoring pilot project*, 2010, available at: http://www.bsl.org.au/pdfs/Bond_Women_on_the_Move_evaluation_2010.pdf. Alexandra Heron, OECD, *Migrant Women and the Labour Market: Diversity and challenges*, paper delivered to OECD and European Commission Seminar, Brussels, September 2005, citing <http://www.ifau.se/upload/pdf/se/2001/wp01-14.pdf>.

²⁷⁴ Alexandra Heron, OECD, *Migrant Women and the Labour Market: Diversity and challenges*, paper delivered to OECD and European Commission Seminar, Brussels, September 2005, citing <http://www.ifau.se/upload/pdf/se/2001/wp01-14.pdf>.

- Young women may require particular targeted assistance to address the particular difficulties involved in leaving education and entering the workforce.
- Work readiness programs may require relatively long-term participation, for six months or more, to allow time for disadvantaged women to develop the necessary language skills, work skills, and undertake cultural adjustment to the workplace. Short programs of 2-3 months have been found to be significantly less effective in terms of employment outcomes.²⁷⁵
- Experience in Australia and overseas has shown that an essential part of work readiness programs is work experience and job placements. Work experience combined with training programs enhances understanding of workplace culture, improves language proficiency and increases self-confidence in the workplace, particularly for women with low educational qualifications.²⁷⁶
- Service providers often spend time developing links with local employers and assist employers to develop diversity management strategies for their workplaces.²⁷⁷
- English language training should be integrated with work readiness programs and focus on language used in work and study environments specific to the skills of the participants.²⁷⁸
- Language training should also include tuition on cultural aspects of communication in the workplace.²⁷⁹
- Providing free or subsidised child care and transport is an important way of enabling migrant women to participate in employment and also in workplace and language training programs.²⁸⁰
- Throughout the development of programs for migrant women, it is important to conduct consultations with the communities that will participate in the programs to gain an understanding of the community, their culture, their needs and aspirations.²⁸¹

8.11 OUTREACH

Outreach is necessary to access the most socially isolated migrant women.²⁸² The use of bilingual community workers is essential to the success of outreach programs.²⁸³ Generalist services can make themselves accessible to migrant women by taking steps to show that migrant women are welcome. Such services could make their services more accessible and welcoming to migrant workers by the adoption of measures such as using diverse faces on publications, having caseworkers who have experience working with interpreters and having interpreters easily

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf.

²⁸⁰ Nguyen, M, NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf; Heron, OECD, *Migrant Women and the Labour Market: Diversity and challenges*, paper delivered to OECD and European Commission Seminar, Brussels, September 2005, citing <http://www.ifau.se/upload/pdf/se/2001/wp01-14.pdf>.

²⁸¹ Nguyen, M, *Moving Towards Cultural Competency*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Nguyen.pdf>.

²⁸² Alexandra Heron, OECD, *Migrant Women and the Labour Market: Diversity and challenges*, paper delivered to OECD and European Commission Seminar, Brussels, September 2005, citing <http://www.ifau.se/upload/pdf/se/2001/wp01-14.pdf>.

²⁸³ Ibid.

available.²⁸⁴ Organisations such as Service Stars Community Jobs Alliance and the Northern Territory Working Women's Centre have expressed interest in employing people from diverse communities to act as liaisons and help those in the community access information and services. Such measures could improve the accessibility of services for migrant women, making services appear to be a safe and welcoming space for working women from diverse cultures.

RECOMMENDATIONS

Recommendation 20

That Good Shepherd Australia New Zealand promote research to evaluate the role of the Fair Work Ombudsman in enforcing the rights of migrant workers in the workplace and obtain gender disaggregated data about Fair Work actions involving migrant workers.

Recommendation 21

That Good Shepherd Australia New Zealand promote the undertaking of a comprehensive audit of access to legal services for vulnerable migrant workers in Australia.

Recommendation 22

That Good Shepherd invest in the production and distribution of multilingual information on the legal rights of vulnerable workers. This investment should occur in conjunction with community awareness campaigns to raise awareness of the rights of migrant women at work.

Recommendation 23

That Good Shepherd Australia New Zealand promote the implementation of the recommendations of the *Making it Fair* Report.

Recommendation 24

That Good Shepherd Australia New Zealand advocate for the Australian Government to undertake a comprehensive audit of the access to legal services for Indigenous women with particular attention paid to the employment and discrimination law

²⁸⁴ NT Working Women's Centre, *Culturally and Linguistically Diverse Women at Work*, 2008, Darwin. Available at: http://www.ntwwc.com.au/uploads/File/CALD%20Women%20and%20Work_MN2010.pdf. Broadbent et al, *Reaching Out: Enhancing the accessibility of an employment rights advisory service for migrant women*, paper delivered to 3rd National Conference, Women and Industrial Relations, August 12-13 2010, Darwin NT. Available at: <http://www.ntwwc.com.au/uploads/File/OWOL%20conference%20papers/Broadbent,%20Strachan,%20Bailey,%20Ressia.pdf>.

9. CONCLUSION

The purpose of this research was to identify gaps in knowledge about and services and legal protections for, the labour rights of women and girls in transit in Australia. Because of the short time frame and the limited scope of the project for the research project, it was not possible to identify and interview representatives of all relevant service providers in Australia. None the less, review of literature and interviews undertaken identify a number of gaps in knowledge about the labour rights of women and girls in transit in Australia, and point to gaps in service provision and in legal protections. This information may guide resource allocation and the development of new services, programs and research and advocacy strategies. To assist in this process a series of twenty four recommendations are offered.

9.1 GAPS IN KNOWLEDGE

Many of the issues addressed in this report involve clandestine and illegal activities and these are notoriously difficult to research. Gaps in knowledge are unsurprising. The lack of knowledge in other areas may be more related to the marginal social status of the groups affected and the challenges of conducting research appropriately with CALD groups. In a number of areas we need to know more in order to provide effective services and advocacy.

Further research is recommended in the following areas:

- The nature and extent of links between migrant work and precarious employment in Australia (*Recommendation 1*)
- The nature and extent of forced marriage in Australia and available protections (*Recommendation 5*)
- Links between forced marriage, sponsored partner migration and labour exploitation (*Recommendation 10*)
- Domestic trafficking, especially of Indigenous women and girls (*Recommendation 11*)
- Whether or not CDEP participants are employees within the meaning of the *Fair Work Act 2009* (Cth) (*Recommendation 17*)
- The legal entitlements of CDEP workers, including paid parental leave and superannuation (*Recommendation 18*)
- Impacts of the Northern Territory Emergency Response on the labour rights of Indigenous women, in particular the effects of income management (*Recommendation 19*)
- The role and effectiveness of the Fair Work Ombudsman in enforcing the rights of migrant workers (*Recommendation 20*)
- The development of gender disaggregated data about Fair Work actions involving migrant workers (*Recommendation 20*)

9.2 GAPS IN SERVICES

A broad range of government and non-government bodies provide services of various kinds to women and girls in transit in Australia. While this research project was unable to provide a comprehensive mapping of services, there are clearly gaps in the groups served, the kinds of services provided and the comprehensiveness of their reach.

Gaps in services exist in the following areas:

- The development of multilingual web-based materials (*Recommendations 3 & 22*);
- Availability of safe and appropriate accommodation (*Recommendations 12 & 15*);
- Provision of vocational training (*Recommendations 12 & 15*);
- Access to English language training (*Recommendations 12 & 15*);
- Access to culturally appropriate psychological support services (*Recommendations 12 & 15*);
- Access to medical and dental care (*Recommendations 12 & 15*).

A key need is for the development of a professional and accountable service model to address such gaps in protection and services for women trafficked to Australia (*Recommendation 12*).

9.3 NEEDS ASSESSMENT

In some areas there were clear indications of unmet service needs, while in others further assessment is required in order to guide the development of new services or programs.

Needs assessment is recommended in the following areas:

- Access to legal services for vulnerable migrant workers and community awareness about the rights of migrant workers under Australia's workplace relations laws (*Recommendations 2 & 21*);
- Indigenous women's access to legal services especially in relation to employment and discrimination law (*Recommendation 24*).

9.4 CAPACITY BUILDING & PARTNERSHIP

Good Shepherd Australia New Zealand has a strong history of working with others. A number of the organisations interviewed expressed interest in collaborating further with Good Shepherd Australia New Zealand in the area of labour rights of women and girls in transit. By partnering with others Good Shepherd Australia New Zealand can add capacity to existing efforts rather than duplicating them and can extend its own capacity through access to the knowledge, skills and networks of others.

The following opportunities for capacity building and partnership were identified:

- Assist existing advocacy and support bodies such as Asian Women at Work in the development of materials and community awareness campaigns (*Recommendation 3 & 22*);
- Lend skill and expertise in applications for funding to the work of existing advocacy and support bodies (*Recommendation 3*);
- Work with Anti Slavery Australia and a community reference group to develop multilingual guidelines and awareness raising material on forced marriage, domestic violence and violence against women for NGOs (*Recommendation 7*);
- Partner with Anti Slavery Australia to develop teaching materials for use in schools which recognise the gender dimension of the human rights abuses of human trafficking, slavery, extreme labour exploitation, and forced and servile marriage as forms of violence against women and provide information about the rights and protections available in law (*Recommendation 8*);
- Partner with Anti Slavery Australia to develop training and materials for community workers and multilingual workers about the links between domestic violence, trafficking and forced marriage (*Recommendation 9*).

9.5 OPPORTUNITIES FOR ADVOCACY

Good Shepherd Australia New Zealand is committed to advocacy in favour of life enhancing change for disadvantaged, marginalised or oppressed women and girls. This research identified the following areas for advocacy in relation to the labour rights of women and girls in transit in Australia:

- better protection of the rights of the child through consistency in the treatment of child protection issues across the whole of Australia via the current inquiry into whether Australia should have a Federal Children’s Commissioner (*Recommendation 4*);
- the establishment of a community consultation group to advise the Australian Government on forced marriage (*Recommendation 6*);
- the introduction of a federal compensation scheme for victims of crime (*Recommendation 14*);
- the responsibilities of education providers to ensure that international students are assisted to find suitable accommodation and are informed about protections under Australian law including in relation to work (*Recommendation 16*);
- implementation of the recommendations of the *Making it Fair* Report (*Recommendation 23*);
- the undertaking of a comprehensive audit of access to legal services for Indigenous women, especially in relation to employment and discrimination law (*Recommendation 24*).

Anti Slavery Australia and Jumbunna Indigenous House of Learning appreciate this opportunity to work with Good Shepherd Australia New Zealand on these issues of shared concern. It is hoped that these research findings assist in the development of deeper knowledge, more comprehensive services, and effective protections for women and girls in transit in Australia.

LIST OF ABBREVIATIONS

ABS - Australian Bureau of Statistics

ACTU - Australian Council of Trade Unions

ACRATH - Australian Catholic Religious Against Trafficking in Humans

AFP - Australian Federal Police

ANTaR - Australians for Native Title and Reconciliation

ARA - Australian Refugee Association

ATSIC - Aboriginal and Torres Strait Islander Commission

AWAW - Asian Women At Work

CALD - Cultural and Linguistic Diversity

CDEP - Community Development Employment Projects

DAA - Department of Aboriginal Affairs (Cth)

ECOSOC - Economic and Social Council (United Nations)

EEWR - Education, Employment & Workplace Relations

FWA - Fair Work Act (2009) (Cth)

FWO - Fair Work Ombudsman

GSANZ - Good Shepherd Australia New Zealand

ILO - International Labour Organization

JCTP - Josephite Counter-Trafficking Project

NES - National Employment Standards

NTER - Northern Territory Emergency Response

NTWWC - Northern Territory Working Women's Centre

OHS - Occupational Health and Safety

QWWS - Queensland Working Women's Service

SDA - Sex Discrimination Act 1984 (Cth)

UN - United Nations

UTS - University of Technology Sydney

KEY ORGANISATIONS INTERVIEWED

Asian Women at Work

Asian Women at Work is an organisation dedicated to empowering Asian women workers who experience injustice and exploitation. Asian Women at Work does this by working holistically and trying to educate migrant women about their rights at work. This can involve the provision of Life at Work information sessions delivered during English classes at educational institutions.

www.awatw.org.au Email coordinator@awatw.org.au Tel 02 9793 9708

Brotherhood of St Laurence

The Brotherhood of St Laurence, through research and advocacy, aims to help people experiencing disadvantage and empower them to build a better future. The research and advocacy sections of the Brotherhood inform each other, which provides for an innovative approach. Dina Bowman, a sociologist at the Brotherhood, observed the resurgence of casual employment and unregulated work in Australia and the problems it can cause for many women in precarious work situations.

www.bsl.org.au Email info@bsl.org.au Tel 03 9483 1183

Immigrant Women's Speakout

Immigrant Women's Speakout is a community organisation working to represent the ideas and issues of immigrant and refugee women in New South Wales. Immigrant Women's Speakout aids immigrant women on a number of issues and has identified labour rights as one of the biggest areas in need of culturally appropriate information translated into appropriate community languages.

www.speakout.org.au Email women@speakout.org.au Tel 02 9635 8176

Northern Territory Working Women's Centre

Working Women's Centres exist in the Northern Territory, South Australia and Queensland. They provide information, support, advice and advocacy services to women on work-related issues. There are no Working Women's Centres in the other states and territories due to lack of funding. The Centres aim to equip women with information skills. The Northern Territory Working Women's Centre provides a free and confidential service to women about work-related matters. Approximately 25-30 per cent of the Centre's clients are Indigenous and the Centre is currently seeking from the Fair Work Ombudsman the provision of an Aboriginal Liaison to travel to

Indigenous communities and offer advice and assistance to Indigenous women on workplace rights and protections.

www.ntwwc.com.au Email admin@ntwwc.com.au Tel 08 8981 0655

Queensland Working Women's Service

The Queensland Working Women's Service provides a free and confidential service to women about work-related matters. A majority of the work of the service involves the provision of over the phone advice to women. Queensland Working Women's Service works to ensure that the service is accessible to all working women in Queensland, including Indigenous women, migrant women and women from diverse cultural or language backgrounds. The service is targeted to assist women who do not have other support or union membership.

www.qwws.org.au Tel 07 3211 1440

Australians for Native Title and Reconciliation (ANTaR)

ANTaR is a national advocacy organisation dedicated specifically to the rights of Aboriginal and Torres Strait Islander people. ANTaR has identified that there are gaps in culturally appropriate service provision for Indigenous women in Australia.

www.antar.org.au Tel 02 9564 0594

Australian Council of Trade Unions (ACTU)

ACTU represents Australian workers and their families, including Indigenous workers throughout Australia. Conversations with ACTU raised the need of accessible legal advice on workplace rights for Indigenous Australians.

www.actu.org.au Email help@actu.org.au Tel 03 9664 7333

United Voice

United Voice, previously the Liquor Hospitality Miscellaneous Union (LHMU), is a union giving members skills and courage to create quality jobs. United Voice is active in the workplace, the community and in politics to achieve positive change. The Union works with some African communities in Victoria, providing information from first contact to equip members with knowledge. The Union has taken part in some social justice initiatives, working to provide young people in the African and Indigenous populations with apprenticeships. This initiative involves training and information on work rights to participants.

www.unitedvoice.org.au Tel 02 8204 3000

Service Stars Community Jobs Alliance

Service Stars Community Job Alliance was launched in 2008 and works with diverse communities in Victoria to provide jobs. The Alliance works mainly with migrant women from African communities and provides them with jobs. The Alliance works by approaching members of the community and building relationships with the community and with large scale employers. Service Stars aims to put people in suitable and decent work with employers and to help people who have never worked to enter the labour market, which in their experience then leads to improvements within the community.

Contact via United Voice

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APPENDIX 1

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