

The Role of Non-Governmental Organisations in Australia's Anti-Trafficking in Persons Framework

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This article examines the role of non-governmental organisations (NGOs) in preventing trafficking in persons and in assisting victims of this crime. The article explores the role of NGOs envisaged by international law and in best practice guidelines, analyses if and how these obligations are carried out by NGOs in Australia in practice, and, based on this assessment, develops recommendations to improve the role and support of NGOs and the services they deliver in order to prevent and suppress trafficking in persons more effectively.

INTRODUCTION

*The United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime,*¹ the leading international instrument in this field, advocates a 'comprehensive international approach' to effectively address trafficking in persons at a global and national level. As significant contemporary actors in both international and domestic affairs,²

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1. *Protocol to prevent, suppress and punish trafficking in persons, Especially women and children, Supplementing the United Nations Convention Against Transnational Organized Crime*, opened for signature 15 December 2000, 2237 UNTS 319, Annex II (entered into force 31 May 2004) [hereinafter *Trafficking in Persons Protocol*] Preamble.

2. Manpreet Kaur Sidhu, 'The Outside Dimension to the United States' Position in the Anti-(Human) Trafficking Movement: the Role of Non-governmental Influence' (2007) 3(1) *International Public Policy Review* 20, 23.

non-governmental organisations (NGOs)³ are ostensibly key players in this response, which is emphasised in multiple provisions of the *Trafficking in Persons Protocol* and in the Australian Government's effort to combat trafficking in persons.

This article examines the conceptual and practical role of NGOs in preventing and suppressing trafficking in persons and, in particular, in assisting victims of this crime. The article explores the role of NGOs envisaged by international law and best practice guidelines, analyses if and how these obligations are carried out by NGOs in Australia, and, based on this assessment, develops recommendations to improve the role and support of NGOs and the services they deliver in order to prevent and suppress trafficking in persons more effectively. This research is significant for three key reasons. First, anti-trafficking NGOs in Australia receive significant funding from the public and private sectors to conduct their work. In October 2008, the Australian Government allocated \$1 million to support the anti-trafficking work of four NGOs, followed by a further \$1.4 million allocated to the same four organisations in 2010.⁴ Providing a general account of how relevant NGOs' work in relation to Australia's anti-trafficking efforts goes some way towards ascertaining the utility of this funding. Second, exploring the extent, strengths, and weaknesses of measures carried out by NGOs serves to identify – and ultimately fill – any gaps in the national anti-trafficking framework. Third, it is important to determine how and to what degree cooperation between the Australian Government and NGOs is occurring in order to establish whether Australia meets its international obligation to work with NGOs under the *Trafficking in Persons Protocol*.

The analysis in this article is divided into three main parts. Part I outlines and explores the extent of the obligations on States Parties to cooperate with NGOs under the *Trafficking in Persons Protocol*. This is done by examining relevant provisions in the Protocol and their interpretation in a range of legislative guides,

3 The term 'non-governmental organisation' (NGO) is broadly applied, yet there are particular features that define an NGO. From an extensive reflection of the various definitions accorded to NGOs, Peter Willets states that an NGO is 'any non-profit making, nonviolent, organised group of people who are not seeking government office'. This is in contrast to an IGO (such as the UN, European Union or International Monetary Fund), whose membership comprises of sovereign states and is established by agreement between those states. Some organisations, such as the International Committee of the Red Cross (ICRC), fall within a grey area between IGO and NGO. The definition of NGO used in this article also excludes other elements of civil society and non-state actors, such as unions, political parties, corporations, crime syndicates and terrorist groups. See further: Peter Willets, *The Conscience of the World: The Influence of Non-Governmental Organisations in the UN System* (Brookings Institution, 1996) 5–6; Daniel C Thomas, 'International NGOs, State Sovereignty and Democratic Values' (2001) 2 *Chicago Journal of International Law* 389, 390.

4 These four NGOs include Project Respect, Scarlet Alliance, Anti-Slavery Australia; Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response 1 July 2010–30 June 2011* (Commonwealth of Australia, 2011) 44.

model laws, ‘toolkits’, and other best practice guidelines developed by the UN, the United Nations Office on Drugs and Crime (UNODC), the United Nations Global Initiative to Fight Trafficking (UN.GIFT), and other international organisations working in this field.

Part II analyses how the role of NGOs envisaged in international law and best practice guidelines is carried out in practice in Australia. This involves the identification of key organisations operating in Australia to prevent and suppress trafficking in persons and assist victims of trafficking. This is followed by an examination of their respective roles, the support they obtain, the services they deliver, and of the effectiveness of current arrangements and operations. This analysis is not intended to be a close examination of the cost-effectiveness of NGOs’ operation; rather, the analysis provides an overview of the practical role carried out by NGOs in Australia and assesses how these arrangements measure up to international expectations.

Part III summarises the main observations and develops recommendations to strengthen the role of NGOs in Australia’s anti-trafficking efforts, increase the level of support they obtain, and improve the services they deliver.

This article focuses exclusively on the work of Australian NGOs in Australia. While it is recognised that some NGOs conduct activities overseas to prevent trafficking in persons to Australia, the emphasis here is on the work that can be accounted for and analysed in the domestic context of Australia’s role as a destination for trafficking.

THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS IN INTERNATIONAL LAW

The *Trafficking in Persons Protocol* is the principal international treaty on trafficking in persons, calling on States Parties to undertake measures to prevent, suppress, and prosecute trafficking in persons, and to protect victims and potential victims of trafficking. The Protocol was adopted in 2000 and entered into force in 2004. Australia ratified the Protocol in 2005.

Article 3(a) of the Protocol defines ‘trafficking in persons’ as:

the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Relevant to this analysis are three particular provisions that make reference to States Parties' cooperating with NGOs. These are Article 6(3) relating to victim support, Article 9(1)–(5) relating to prevention of trafficking in persons, and Article 10(2) of the *Trafficking in Persons Protocol* which relates to cooperation with law enforcement agencies. Two other obligations that solely fall on States Parties to carry out, but in which NGOs may also be useful partners, are not further discussed here: Article 6(2), providing victims of trafficking with information on relevant court and administrative proceedings, and Article 10(1) on identifying victims of trafficking.

A. ARTICLE 6(3): SUPPORT TO VICTIMS OF TRAFFICKING IN PERSONS

Article 6(3) of the Trafficking in Persons Protocol addresses the provision of recovery services for victims of trafficking in persons. The Article states that:

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including in appropriate cases, in cooperation with non-governmental organisations [...] and in particular, the provision of:

- (a) appropriate housing;
- (b) counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) medical, psychological and material assistance; and
- (d) employment, educational and training opportunities.

While the particular measures suggested in Article 6(3)(a)–(d) are self-explanatory, the obligation imposed on States Parties to provide victim support and cooperate with NGOs may require further explanation. Importantly, it is mandated that provision of support and assistance should extend to all victims of trafficking in persons and should not be conditional upon the capacity or willingness of a victims to participate in criminal proceedings against their traffickers.⁵

Article 6(3) states that NGOs should be involved in measures to support victims of trafficking 'where appropriate'. The 'appropriate' circumstances would ostensibly be those where NGOs possess the relevant expertise and skills in meeting the needs of trafficked persons and where they have the exposure to and trust of trafficked persons, so that they are indispensable in providing victim assistance of a high standard. 'Cooperation' in the context of implementing measures may

⁵ UN ECOSOC, *Recommended Principles and Guidelines on Human Rights and Human, Report of the United Nations High Commission for Human Rights to the Economic and Social Council, UN Doc E/2002/68/Add.1 (20 May 2002) Guideline 6*; UNODC, *Model Law Against Trafficking in Persons (United Nations, 2009) 44*.

entail joint initiatives, NGOs receiving referrals from government agencies, and may also extend to government funding for NGO activities.⁶

It is noticeable that non-mandatory language has been used in constructing the obligation in Article 6(3).⁷ States Parties are merely encouraged to ‘consider implementing’ victim recovery measures. This stands in sharp contrast to the imperative in Article 5 of the Protocol that States Parties ‘shall adopt’ measures to criminalise trafficking. The apparent reluctance of States Parties to tie themselves down to specific obligations to assist victims of trafficking is a reflection of the considerations that went into the Protocol’s drafting. First, both sending and receiving countries of trafficked persons had an interest in keeping obligations relatively discretionary. For sending countries, which are often developing nations, there was a hesitance to use strong language because the obligation refers to all states in which victims are found, regardless of the level of socio-economic development.⁸ Meanwhile, receiving countries were concerned about incurring high costs to protect foreign nationals and creating a back-door avenue for humanitarian protection that could compromise border security.⁹

6 Ann D Jordan, Annotated Guide to the Complete UN Trafficking Protocol (Global Rights, 2002) 27.

7 Marta Iniguez De Heredia, ‘People Trafficking: Conceptual Issues with the United Nations Trafficking Protocol 2000’ (2008) 9(3) *Human Rights Review* 299, 306; Melissa Ditmore & Marjan Wijers, ‘The Negotiations on the UN Protocol on Trafficking in Persons’ (2003) 4 *Nemesis* 79, 85; Anne T Gallagher, *The International Law of Trafficking in Persons* (Cambridge University Press, 2010) 336; UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (UN, 2004) 283.

8 Melissa Ditmore & Marjan Wijers, ‘The Negotiations on the UN Protocol on Trafficking in Persons’ (2003) 4 *Nemesis* 79; Jordan (2002b), p 35; UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: consolidated information received from States for the second reporting cycle*, UN Doc CTOC/COP/2006/6/Rev.1 (9 Sep 2008) 7; UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (UN, 2004) 88.

9 Ditmore & Wijers, n.8 supra at 85; Anne T Gallagher, ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis’ (2001) 23(4) *Human Rights Quarterly* 975, 976.

During the negotiations, provisions relating to support and assistance to victims of trafficking in persons, along with other human rights concerns, were subordinated by the emphasis on the law enforcement provisions in the *Trafficking in Persons Protocol*.¹⁰ This has been attributed to a coalescence of factors, including the fact that the Protocol was made adjunct to a principal, parent *Convention against Transnational Organised Crime*,¹¹ that it was developed under the auspices of the UN Crime Commission (rather than one of the human rights bodies),¹² that many delegates came from a criminal justice or law enforcement background,¹³ and the fact that most States Parties showed a preference to develop measures with tangible outcomes, such as prosecutions and convictions of traffickers.¹⁴ While it is acknowledged that fighting the criminal aspects is an integral element of any strategy to combat trafficking in persons, critics such as Ryszard Piotrowicz have argued that in relation to victim protection and support the *Trafficking in Persons Protocol* only contains rather ‘nebulous, aspirational obligations that leave much to individual states’ discretion’.¹⁵

There was also a perception that NGOs ‘dropped the ball’ during the Protocol negotiations by failing to successfully lobby for stronger assistance provisions to be accorded to victims of trafficking in persons. Although the level of NGO participation in the negotiations was unprecedented – for what was effectively considered a law enforcement treaty¹⁶ – deep and time-consuming divisions between NGOs over the definition of trafficking born out of opposite views on sex trafficking seemed to exhaust the time and energies of delegates to discuss more substantive human rights assurances for victims.¹⁷

These three factors have the combined effect that States Parties to the Protocol are not under any substantial burden to provide assistance to victims of trafficking. One of the consequences of the weak obligations placed on States Parties in this respect is that NGOs are likely to step up as the ‘conscience of governments’ in

10 Kara Abramson, ‘Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol’ (2003) 44(2) *Harvard International Law Journal* 473, 479; Gallagher, n.9 supra at 976; Ann D Jordan, ‘Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings’ (2002) 10(1) *Gender and Development* 28, 33; Marie Segrave & Sanja Milivojevic, ‘Sex Trafficking: A New Agenda’ (2005) 24(2) *Social Alternatives* 11, 12; Gabrielle Simm, ‘Negotiating the United Nations Trafficking Protocol: Feminist Debates’ (2004) 23 *Australian Yearbook of International Law* 135, 153–154.

11 Ryszard Piotrowicz, ‘The UNHCR’s Guidelines on Trafficking in Persons’ (2008) 20(2) *International Journal of Refugee Law* 242, 244.

12 Jordan, n.6 supra at ii.

13 Ditmore & Wijers, n.8 supra at 85.

14 Segrave & Milivojevic, ‘n.10 supra at 12.

15 Piotrowicz, ‘n.11 supra at 244.

16 Gallagher, n.9 supra at 1001.

17 Ditmore & Wijers, n.8 supra at 80; Gallagher, n.9 supra at 1002; Jordan, n.10 supra at 32; Segrave & Milivojevic, n.10 supra at 12.

instances where governments fail to instigate victim assistance measures.¹⁸ As a result, two distinct functions of NGOs emerge: the ‘co-operator role’ in which they work in partnership with the government authorities, as envisaged by Article 6(3), and the ‘operator role’ in which NGOs work in situations where government initiatives are insufficient or lacking.

B. ARTICLE 9(1)-(5): PREVENTION OF TRAFFICKING IN PERSONS

Article 9(1)-(5) of the Trafficking in Persons Protocol broadly encourages the establishment of measures to prevent and combat trafficking and to prevent re-victimisation:

- (1) State Parties shall establish comprehensive policies, programs and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons [...] from re-victimisation.
- (2) State Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
- (3) Policies, programs and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organisations.
- (4) State Parties shall take or strengthen measures [...] to alleviate the factors that make persons [...] vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
- (5) State Parties shall adopt or strengthen legislative or other measures, such as education, social or cultural measures [...] to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

As with Article 6(3), this provision is couched in fairly broad terms. The obligation to establish ‘measures to prevent and combat trafficking in persons and protect victims of trafficking [...] from re-victimisation’ has been designed to give States Parties flexibility in the application of a very wide range of activities.¹⁹ These measures have been given more precise meaning in supplementary UN materials, to include measures such as highlighting products and services produced by exploitative and forced labour, regulating private recruitment agencies and labour

18 Jordan, n.10 supra at 35; Simm, n.10 supra at 154; Marina Tzvetkova, ‘NGO Responses to Trafficking in Women’ (2002) 10(1) *Gender and Development* 60, 61.

19 UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations, 2004) 297.

standards, and developing guidelines to assist in the rapid identification of victims of trafficking in persons.²⁰

There are similarities between Articles 9 and 6(3) in what the execution of these obligations means for the role of NGOs. Both provisions encourage cooperation between government and non-government entities ‘as appropriate’. This phrase acknowledges that NGOs should be involved in the response to trafficking in persons where they have the skills, expertise, trust, and contacts to be effective partners. ‘Cooperation’ between NGOs and government agencies in the context of ‘establishing’ policies to prevent and combat trafficking and re-victimisation should include consultation in the adoption and formulation of policies, joint initiatives to carry out the policies so established, and government funding for NGO-led measures. As observed earlier, the weak, non-mandatory language adopted in this provision may have the effect that NGOs will be expected to play an operator role in the context of measures to prevent and combat trafficking and re-victimisation, in addition to their cooperating function.

C ARTICLE 10(2): TRAINING AND COOPERATING WITH LAW ENFORCEMENT AND GOVERNMENT OFFICIALS

Article 10(2) of the *Trafficking in Persons Protocol* requires that training for law enforcement, immigration, and ‘other relevant officials’ in trafficking in persons should encourage cooperation with NGOs:

State Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organisations.

UNODC’s *International Framework for Action to Implement the Trafficking in Persons Protocol* notes that ‘other relevant officials’ in Article 10(2) includes judicial authorities, prosecutors, and labour inspectors.²¹ Insofar as training content

20 See further, UN ECOSOC, *Recommended Principles and Guidelines on Human Rights and Human, Report of the United Nations High Commission for Human Rights to the Economic and Social Council*, UN Doc E/2002/68/Add.1 (20 May 2002) Guideline 7; Anne Gallagher, *Recommended Principles and Guidelines on Human Rights and Trafficking In Persons: Commentary* (UN OHCHR, 2010) 102; UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 41; UNODC, *Model Law Against Trafficking in Persons* (UN, 2009) 67.

21 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 27.

is concerned, Article 10(2) initially states that it is training in the prevention of trafficking that should encourage NGO cooperation, but the Article then goes on to include ‘protecting the rights of victims’ and ‘prosecuting traffickers’ as further areas of attention. The Article may thus be interpreted as requiring that all aspects of training pertaining to trafficking in persons should encourage cooperation with NGOs. In this context, cooperation should also include information exchange and formal partnerships between NGOs and law enforcement agencies. Cooperation could be encouraged through the content of the training but may also extend to actively involving NGOs in the training itself.

THE ROLE OF NON-GOVERNMENT ORGANISATIONS IN AUSTRALIA

A. KEY ACTORS

This analysis focuses on eight NGOs that actively conduct anti-trafficking work in Australia. These are:

- The Australian Red Cross;²²
- The Salvation Army: bearing an evangelical, Christian-based mandate to provide community assistance services that cover a broad range of social issues;²³
- Anti-Slavery Australia (formerly Anti-Slavery Project): a specialist legal centre focusing on slavery, trafficking, and extreme labour exploitation that is part of the Faculty of Law at the University of Technology, Sydney;²⁴
- Child Wise: the Australian branch of ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) International that specialises in preventing child sexual abuse and exploitation;²⁵

22 Australian Government, *Anti-Human Trafficking Community Resource* (AFP, 2011) 8.

23 The Salvation Army, *Our Services* (2012) <<http://salvos.org.au/about-us/our-services>>; The Salvation Army, *Our Mission* (2012) <<http://salvos.org.au/about-us/overview/our-mission.php>>; Australian Government, *Anti-Human Trafficking Community Resource* (AFP, 2011) 39.

24 Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response 1 June 2010–30 June 2011* (Commonwealth of Australia, 2011) 45-46; *Anti-Human Trafficking Community Resource* n.22 supra 1-2.

25 Child Wise, *Child Wise Annual Report 2009/2010, Protecting Children's Future* (Child Wise, 2010) 1.

- The Josephite Counter-Trafficking Project (JCTP): a congregational project of the Sisters of St Joseph of the Sacred Heart which was established in 2005 to promote the spiritual, physical and emotional development of people who have been trafficked into Australia;²⁶
- Australian Catholic Religious Against Trafficking in Humans (ACRATH): an organisation incorporated into Catholic Religious Australia that undertakes lobbying and information campaigns on trafficking issues;²⁷
- Scarlet Alliance: the peak body representing sex workers in Australia with a focus on defending the self-determination and human rights of migrant sex workers in Australia;²⁸ and
- Project Respect: a community-based organisation that seeks to empower and support women in the sex industry, which includes work with women trafficked into Australia.²⁹

Other NGOs may conceivably come into contact with victims of trafficking in Australia and thus take part in anti-trafficking activities. This may include, for instance, as sexual assault refugees,³⁰ sex-worker advocacy organisations,³¹ and immigration advice and advocacy services.³² Such organisations are not further included into this analysis as they do not explicitly include trafficking as an organisational priority.

26 Sisters of Saint Joseph of the Sacred Heart, *What We Are Doing: Josephite Counter-Trafficking Project* (2009) <<http://www.sosj.org.au/what-we-are-doing/index.cfm?loadref=78>>; Margaret Ng, *Direct Services and Support of Trafficking in Australia* (2011) JCTP <http://www.sosj.org.au/_uploads/_cknw/files/TRAFFICKING%20IN%20AUSTRALIA.pdf> 4–5.

27 ACRATH, *About Us* (2011) <<http://acrath.org.au/about>>; *Anti-Human Trafficking Community Resource* n.22 supra at 4-5.

28 Scarlett Alliance, ‘Briefing Paper October 2010 – Trafficking Prevention in Australia’ (2010) <http://www.scarletalliance.org.au/library/migration_briefing2010b>; *Anti-Human Trafficking Community Resource* n.22 supra at 40.

29 *Trafficking in Persons*, n.24 supra at 49; *Anti-Human Trafficking Community Resource* n.22 supra 35-36.

30 For example, Canberra Emergency Accommodation Service, NSW Women’s Refuge Resource Centre, Victorian Centre Against Sexual Assault, and Women’s Domestic Violence Crisis Service of Victoria.

31 For example, Sex Worker Outreach Projects (SWOP) in NSW, ACT and Northern Territory, South Queensland Crimson Coalition, United Sex Workers North Queensland, South Australian Sex Industry Network (SIN), Tasmanian Scarlet Alliance CASH Project, Resourcing Health and Education in the Sex Industry (RhED), and Western Australian Magenta.

32 For example, the Refugee and Immigration Legal Centre and Asylum Seeker Resource Project.

B PROVISION OF VICTIM ASSISTANCE: OUTLINE

(1) *Cooperative measures with the Australian Government*

The most significant and most visible means by which the Australian Government and NGOs cooperate to provide victim assistance is through the Australian Red Cross which has been commissioned to deliver on-the-ground case management services for the Australian Government's Support for Victims of People Trafficking Program. This Program is administered through the Office for Women, a federal government department. Obtained through a tender process in March 2009, the Australian Red Cross provides a 24 hour a day, 7 days a week 'national response' across Australia to assist victims of trafficking referred to them by the Australian Federal Police (AFP). Support consists of an individualised case management, accommodation assistance, counselling and mental health support, medical treatment, income support, legal advice, skills development training, and social support. The Australian Red Cross also provides referrals to other relevant support services, legal advice, and training services.³³ Prior to March 2009, support to victims of trafficking in persons was provided by BSIL Southern Edge Training. Since the inception of the Government's Support for Victims of People Trafficking Program in January 2004 until 30 June 2011, 184 persons, including 165 women and 16 men, have received assistance under this program.³⁴

Project Respect also receives funding to provide victim support services, including shelter, peer support activities, case management, and education, on behalf of the Victorian Government.³⁵ It is not clear whether these services are provided independently by Project Respect or provided in cooperation with government agencies. Other NGOs may receive referrals from government departments and law enforcement agencies, especially if a client of the Support for Victims of People Trafficking Program requires specialised assistance.³⁶

(2) *Housing*

There are two shelter operations currently run by Australian NGOs providing emergency accommodation to victims of trafficking. Samaritan Accommodation is a dedicated safe-house in Sydney that is jointly operated by the Salvation Army and JCTP.³⁷ It provides apartment-style housing for up to twelve months with a capacity for ten single migrant women over 18 years of age who have experienced

33 *Trafficking in Persons*, n.24 supra at 30-31; Australian Red Cross, *Support for trafficked people* (2012) <<http://www.redcross.org.au/support-for-trafficked-people.aspx>>.

34 *Trafficking in Persons* n.24 supra at 33-34.

35 Correspondence between Kelly Hinton, Project Respect and Rose Hunt, 25 May 2011.

36 Australian Red Cross, *Support for trafficked people* (2012) <<http://www.redcross.org.au/support-for-trafficked-people.aspx>>; cf Margaret Ng, *Direct Services and Support of Trafficking in Australia* (2011) JCTP <http://www.sosj.org.au/_uploads/_cknw/files/TRAFFICKING%20IN%20AUSTRALIA.pdf> 4-5.

37 Sisters of Saint Joseph of the Sacred Heart, *What We Are Doing: Samaritan Accommodation* (2009) <<http://www.sosj.org.au/what-we-are-doing/index.cfm?loadref=131>>.

trafficking in persons.³⁸ The total number of victims who have been assisted this way is not available, though in August 2010 it was reported that 47 individuals have received housing assistance since the facility opened in January 2008.³⁹ An organisation named Starfish Ministries is currently seeking funding to set up a second accommodation centre for trafficked women in Sydney and provide accommodation for up to two years.⁴⁰ Project Respect runs an accommodation service in Melbourne for women who have been trafficked in Victoria and is able to accommodate four women at any one time, who stay for an average of four months.⁴¹ The staff at Samaritan Accommodation and Project Respect also provide specialised, comprehensive and culturally appropriate case work assistance to shelter residents.⁴² Other community crisis shelters for men and women may also provide emergency accommodation for victims of trafficking, however, none reported or advertised as such.

(3) *Counselling and information about legal rights*

Project Respect, Samaritan Accommodation, JCTP, and ACRATH all purport to provide counselling services, information, and referrals about other assistance providers to victims of trafficking.⁴³ JCTP's counselling, mentoring, and 'accompaniment' services are specifically provided by 'Asian women, or other women who have had long experience in Asia or in working in cross-cultural situations [...] to women of Asian origin who have been trafficked

38 Jade Lindley & Kristen Davis, *Pacific Trafficking in Persons Forum, 2–4 September 2009, Wellington* (2009) Australian Institute of Criminology, <http://www.aic.gov.au/events/aic%20upcoming%20events/2009/~/_media/conferences/2009-peopletrafficking/ptp_outcome_report.pdf> 59; Newtown Neighbourhood Centre Inc, *Supported Accommodation* (1 Feb 2010) <http://www.newtowncentre.org/_pdfs/supported_accom.pdf> 4; Lauren Martin, 'A Safe Haven' (May 2008) *Pipeline* 28, 29.

39 Jenny Stanger, 'Trafficking in Persons 101 & Samaritan Accommodation' (Presentation at the NSW Council of Social Services 75th *Annual Conference*, Sydney, 5 August 2010).

40 Starfish Ministries Australia, *Transition Centre for Trafficked Women* (undated) <<http://www.starfishministries.org.au/index.php?page=transition-centre-for-trafficked-women>>.

41 Project Respect, *Our Work* (2008) <http://projectrespect.org.au/our_work>; Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 202.

42 Lindley and Davis n.38 supra at 59; Project Respect, *Our Work* (2008) <http://projectrespect.org.au/our_work>; Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 202.

43 Anti-Slavery Australia, *Fact Sheet #12: What is the Community Response to Human Trafficking?* (2011) <<http://www.antislavery.org.au/resources/fact-sheets/212-fact-sheet-12-what-is-the-community-response-to-human-trafficking.html>>; n. 38 supra at 59; Sisters of Saint Joseph of the Sacred Heart, *What We Are Doing: Samaritan Accommodation* (2009) <<http://www.sosj.org.au/what-we-are-doing/index.cfm?loadref=131>>; ACRATH, *What we do* (1 Mar 2011) <<http://acrath.org.au/about/what-we-do/>>.

into Australia.⁴⁴ It is not clear how many individuals these services are provided for or, in the instance of ACRATH, where the services are provided.

Anti-Slavery Australia is currently the only specialist legal service, also including qualified solicitors and migrant agents, that provides trafficked persons with advice about their rights under Australian immigration, criminal, civil, and labour law and assists victims with legal representation.⁴⁵ It has been reported that in 2010-11, Anti Slavery Australia assisted more than 70 individuals.⁴⁶ ‘Salvos Legal’, a full-service law firm established in 2010 as part of The Salvation Army, also provides advice to victims in criminal, immigration, civil, and family law matters on a pro bono basis.⁴⁷

(4) Medical, psychological, and material assistance

From the available open-source information, it appears that no NGO in Australia provides psychological or medical assistance specifically for victims of trafficking in persons. Some victims of trafficking may be able to access a network of NGOs that provide health services to workers in the sex industry throughout Australia, however, these are not specifically targeted at trafficked persons.⁴⁸

Project Respect and The Salvation Army provide some material assistance to victims of trafficking, though the nature and extent of such assistance are not further specified.⁴⁹ Such assistance may conceivably be offered by NGOs in the course of providing other victim support services such as housing or casework assistance; this is, however, not explicitly stated by these organisations.

(5) Employment and training opportunities

Some NGOs are currently seeking to develop and implement alternative skills and vocational programs for individuals recovering from trafficking situations. Project Respect has received seed funding to establish a ‘noodle bar’ staffed by former trafficked women in Melbourne. ACRATH is seeking to support micro-financing projects for trafficked persons in Australia.⁵⁰ JCTP offers English language, computer training, and beauty therapy courses.⁵¹

44 Sisters of Saint Joseph of the Sacred Heart, *What We Are Doing: Josephite Counter-Trafficking Project* (2009) <<http://www.sosj.org.au/what-we-are-doing/index.cfm?loadref=78>>.

45 Anti-Slavery Australia, *About Us* (2011) <<http://www.antislavery.org.au/what-we-do/about-us.html>>.

46 *Trafficking in Persons*, n.24 *supra* at 46.

47 Salvos Legal, *About Us* (2012) <<http://salvos.org.au/salvoslegal/about-us/>>.

48 Fiona David, *Trafficking of Women for Sexual Purposes* (Australian Institute of Criminology, 2008) 19.

49 Project Respect, n.42 *supra* at 16; *Anti-Human Trafficking Community Resource* n.22 *supra* at 39

50 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 205.

51 Margaret Ng, *Direct Services and Support of Trafficking in Australia* (2011) JCTP <http://www.sosj.org.au/_uploads/_cknw/files/TRAFFICKING%20IN%20AUSTRALIA.pdf> 5.

C PROVISION OF VICTIM ASSISTANCE: ASSESSMENT

(1) *Strengths of NGO assistance*

The Australian Red Cross provides a non-governmental façade to a government-funded operation and, in doing so, makes the Australian Government's Support for Victims of People Trafficking Program more approachable for and empathetic towards victims of trafficking. Given the apprehensiveness, fear, or lack of trust that victims of trafficking often have in government agencies, an appearance of independence is a more appropriate means of delivering services and offering assistance and to victims. It also ensures that the assistance measures are complemented by a depth of expertise in issues of trafficking which NGOs obtain through their ongoing involvement with victims of trafficking.⁵² This is imperative insofar as stigmatisation, stereotyping, and lack of knowledge about trafficking can impact significantly on how victim recovery services are provided.⁵³ Although the Australian Red Cross has only offered these services on behalf of the Government since 2009 (services were previously provided by a private contractor), the organisation has a long history of providing appropriate and sensitive care to the most vulnerable members of the community⁵⁴ and is part of a global network of national Red Cross organisations that have extensive experience in addressing trafficking in persons.⁵⁵

NGOs also have the ability to provide a nuanced approach to assisting victims of trafficking individually and independently. For example, Project Respect's close relationship with sex workers means it uses its understanding of the complexities of sex work to provide 'friendly, non-judgmental' counselling.⁵⁶ The degree of cultural sensitivity and language competence provided by some frontline NGOs can also build trust and rapport with victims of trafficking and bring an added dimension to accommodate the particularities of their cases; one example are the counselling services provided for Asian victims of trafficking in Australia by Asian JCTP staff in their first language.⁵⁷

52 David, n.48 supra at 70.

53 Ibid, at 66.

54 Australian Red Cross, *About Us* (2012) <http://www.redcross.org.au/aboutus_default.htm>.

55 See, for example, Claudia Aradau, *Good Practices in Response to Trafficking in Human Beings: Cooperation Between Civil Society and Law Enforcement in Europe* (Danish Red Cross, 2005) <[http://www.ungift.org/docs/ungift/pdf/knowledge/1088_drk_human_manual_web%20\(2\).pdf](http://www.ungift.org/docs/ungift/pdf/knowledge/1088_drk_human_manual_web%20(2).pdf)>.

56 Project Respect, Support for Women (2008) <http://projectrespect.org.au/our_work/support>.

57 David, n.48 supra at 65; Sisters of Saint Joseph, n.43 supra; Marianna Leishman, 'Trafficking in Persons and Sexual Slavery: Australia's Response' (2007) 27 *Australian Feminist Law Journal* 193, 203.

Furthermore, the instinctive ideological positioning of many NGOs – a common thread amongst the NGOs studied in this article is a humanitarian imperative to their work – means they are also in a position to provide a human rights based or ‘victim oriented’ approach to assisting victims of trafficking in persons.⁵⁸ This is in contrast to the victimisation and criminalisation focus that tends to pervade efforts by government and law enforcement agencies.⁵⁹ The victim oriented approach involves moving away from viewing trafficked persons as objects, potential witnesses or helpless victims, and instead treating them as autonomous individuals bearing human rights and civil liberties.⁶⁰ It is widely recognised that treatment of victims emanating from this approach – such as helping them retake control of their lives,⁶¹ respecting their decisions and choices,⁶² and providing victim recovery services that fit with the immediate needs and rights of individuals rather than the needs of a criminal investigation⁶³ – are positive benchmarks for victim support programs. Recognising and prioritising the needs of victims contributes to the success of and propensity for criminal investigations as it increases the willingness of victims to engage with the criminal justice system.⁶⁴ It may also ultimately prove less costly than dealing with the needs of victims at a later stage, especially where child victims are concerned.⁶⁵

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- 58 Elizabeth Broderick, ‘Trafficking: the Need for a Human Rights Based Approach’ (Speech delivered at the *Innaugural Anti-Trafficking Forum*, University of Technology Sydney, 24 July 2008) <http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20080724_trafficking.html>; Elizabeth Broderick, ‘Slavery in 21st Century Australia: a Human Rights Challenge’ (Speech given at the seminar *Modern Day Slavery in Australia: The Queen v Wei Tang*, 16 October, 2008) <http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20081014_slavery.html>; Segrave & Milivojevic, n.10 supra at 12; Steele, n.58 supra at 20; Lindley and Davis n.38 supra at 59.
- 59 Shivaun Scanlan, ‘The Identification of Trafficked Persons in the Face of Conflicting Agendas’ (Paper presented at the conference *Assistance to Victims of Trafficking: We Can Do Better*, OSCE, Vienna, 10-11 September 2007) <<http://www.osce.org/what/trafficking/60585>> 2; Steele, n.58 supra at 20; Jennifer Burn & Frances Simmons, *The Anti-Slavery Project Submission to the National Consultation on Human Rights* (Anti-Slavery Project, University of Technology Sydney, 2009) 28.
- 60 Jordan, n.10 supra at 30; Marianna Leishman, ‘Trafficking in Persons and Sexual Slavery: Australia’s Response’ (2007) 27 *Australian Feminist Law Journal* 193, 198.
- 61 Ibid., at 30; Marie Segrave et al, *Sex Trafficking: International Context and Response* (Willan Publishing, 2009) 95.
- 62 David, n.48 supra at 30–31; Marie Segrave, ‘Surely Something is Better than Nothing? The Australian Response to the Trafficking of Women into Sexual Servitude in Australia’ (2004) 16(1) *Current Issues in Criminal Justice* 85, 87.
- 63 Lindley and Davis n.38 supra at 59; Segrave et al, n.61 supra at 95-96.
- 64 UN Conference of the Parties to the United Nations Convention against Transnational Organised Crime, *Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: consolidated information received from States for the second reporting cycle*, UN Doc CTOC/COP/2006/6/Rev.1 (9 Sep 2008) 7; Marianna Leishman, ‘Trafficking in Persons and Sexual Slavery: Australia’s Response’ (2007) 27 *Australian Feminist Law Journal* 193, 203; UNODC, *Model Law Against Trafficking in Persons* (UN, 2009) 44.
- 65 UNODC, *Legislative Guides n.19 supra at 283*.

Links and referrals between government services and NGO-provided services are encouraging a multi-faceted response to providing victim assistance. This is important because the individual needs of victims of trafficking are highly variable and complex on account of the degree to which control, physical violence, and psychological abuse have been exerted upon them.⁶⁶ It is indeed unrealistic for one service provider alone to try and meet the needs of the very diverse types of victims and adequately respond to great range of experiences they encountered. Furthermore, through building strong links with the Australian Government's victim support response, the community-run services will be better able to provide services currently not offered by government services.⁶⁷

It is evident that in Australia, NGOs are filling particular gaps left by the Australian Government's Support for Victims of People Trafficking Program. Importantly, NGOs provide assistance to individuals who are unable or unwilling to access the official government support scheme.⁶⁸ Persons who are suspected to be victims of trafficking can access the Assessment Stream of the government's support program for 45 days.⁶⁹ To receive assistance past that period, victims must be willing or able to cooperate with the AFP in prosecution of their traffickers. If they agree to do so, victims will be able to obtain assistance under the Justice Support Stream of the program, for 'until the investigation and prosecution of a people trafficking matter is finalised'.⁷⁰ There are numerous reasons why victims choose to not to cooperate with law enforcement agencies and not participate in the prosecution of their traffickers, born out of fear of retaliation, trauma, a desire to go home or get on with their lives, wanting to avoid intrusive questions, or an inability and unwillingness to describe – and thus relive – their experiences.⁷¹ Other victims may be willing to assist police, but may not be able to provide

66 Nancie Palmer, 'The Essential Role of Social Work in Addressing Victims and Survivors of Trafficking' (2010) 17(1) ILSA Journal of International and Comparative Law 43, 48.

67 David, n.48 supra at 66.

68 Ibid., at 31; Anti-Slavery Australia, 'Fact Sheet #15: Where can trafficked and exploited people get help' (2011) <<http://www.antislavery.org.au/resources/fact-sheets/209-fact-sheet-15-where-can-trafficked-and-exploited-people-get-help.html>>.

69 *Trafficking in Persons* n.24 supra at 31.

70 Ibid., at 31.

71 Elizabeth Broderick, 'Slavery in 21st Century Australia: a Human Rights Challenge' (Speech given at the seminar *Modern Day Slavery in Australia: The Queen v Wei Tang*, 16 October. 2008) <http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20081014_slavery.html>; Jordan, n.10 supra at 30; Tzvetkova, n.18 supra at 64; David, n.61 at 31; Jennifer Burn & Frances Simmons, *The Anti-Slavery Project Submission to the National Consultation on Human Rights* (Anti-Slavery Project, University of Technology Sydney, 2009) 26; JCTP, *Summary of History and Involvement in Counter-Trafficking: Providing Support to Survivors of Trafficking* (2011, copy held by authors) 1, Anne Gallagher, *Recommended Principles and Guidelines on Human Rights and Trafficking in Persons: Commentary* (UN OHCHR, 2010) 156.

relevant or sufficient evidence.⁷² Official statistics published by the Australian Government in 2010 state that to this day, 80 percent of suspected victims were willing and able to assist in an investigation or prosecution,⁷³ though it is difficult to gauge just how representative this figure truly is. Moreover, even if these figures can be believed, they still leave 20 percent, or one in five, identified victim with very limited assistance from government sources beyond the 45-day Assessment Stream period. This is where the significance of independent NGO-provided victim assistance program is most evident.⁷⁴ Figures provided by The Salvation Army also support this observation: In June 2009, Samaritan Accommodation had provided shelter services for 37 individuals, out of which only 11 were concurrently supported by the Government's Support for Victims of People Trafficking Program.⁷⁵ In response to these concerns, an Extended Assessment Stream providing support for a further 45 days in individual cases has been introduced.⁷⁶

Access to government-provided victim assistance is usually the result of a referral by the AFP to the Australian Red Cross, the provider of the Support Program.⁷⁷ This set up crucially ignores those individuals who do not want to make themselves known to the police – because of a mistrust of authorities or for fear that they will be seen as criminals for having entered the country illegally and subsequently repatriated.⁷⁸ This referral process is in sharp contrast to 'no questions asked' services, such as those provided by Project Respect, Samaritan Accommodation, and JCTP, which provide potential victims with a range of options for responding to their situation without the involvement of the police or other government entities.⁷⁹ The role of NGOs thus ensures that victims of trafficking in persons in Australia can obtain support and protection regardless of whether they choose to

72 Technically, those individuals who want to assist police investigations but are unable to may be eligible for the Extended Intensive Support Stream for a further 45 days. However, as of 30 June 2010, only 5 individuals out of the 155 total clients that had accessed the SVPTP since its inception in 2004 had received this level of assistance: Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons* n.24 supra at 13. More current data on this point was not available.

73 Ibid. at 25.

74 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 10.

75 Fiona David, 'Building the Infrastructure of Anti-Trafficking: Information, Funding, Responses' (2010) 9(2) *Criminology and Public Policy* 235, 238.

76 *Trafficking in Persons* n.24 supra at 31.

77 Australian Red Cross, *Support for trafficked people* (2012) <<http://www.redcross.org.au/support-for-trafficked-people.aspx>>.

78 David, n.48 supra at 63; Fiona David, *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice* (Australian Institute of Criminology, 2009) 2.

79 David, n.48 supra at 65.

work with the police and irrespective of their traffickers being charged.⁸⁰ NGO programs are complementing the Support for Victims of People Trafficking Program where the Government's services are insufficient. For example, the NGO-run safe-houses also take on individuals in the official Program as affordable and safe accommodation is frequently difficult to find for Program case workers at short notice.⁸¹ Furthermore, the Support Program only offers three hours of legal advice to each client,⁸² which may be insufficient to cover the complex workplace, immigration, civil, and criminal matters that are intersecting in situations of trafficking.⁸³ In this context, an important role of NGOs is the provision of independent legal advice to victims of trafficking before they contact law enforcement or other government agencies. Anne Gallagher, for instance, remarked that individuals who have been trafficked are 'unlikely to have a full understanding of the rights to which they are entitled and will rarely be in a strong position to pursue those rights without help. The provision of legal assistance to trafficked persons can best be viewed as a prerequisite to other important rights.'⁸⁴ Advice and counselling prior to contact with the authorities may thus go some way to ensure that police interviews and questioning by immigration authorities are less traumatic⁸⁵ and that victims receive a genuine opportunity to consider their legal options before engaging with government officials.⁸⁶

(2) *Weaknesses in the assistance provided by NGOs*

The majority of anti-trafficking NGOs operating in Australia are either faith-based organisations (such as The Salvation Army, JCTP, and ACRATH) or sex-worker support groups (Project Respect and Scarlet Alliance). It is debatable whether these orientations of NGOs working in this field is a benefit or detriment to broad-based efforts to prevent and suppress trafficking in persons and offer victims of trafficking in persons comprehensive and unreserved assistance and protection. There may be concern that the ideology or mission of an NGO can skew the delivery of victim support measures.

The involvement of NGOs and advocacy groups who work relentlessly to support sex workers and improve their status and rights has to be welcomed, especially in a country where, to this day, the vast majority of trafficking in persons cases has

80 Elizabeth Broderick, 'Slavery in 21st Century Australia: a Human Rights Challenge' (Speech given at the seminar *Modern Day Slavery in Australia: The Queen v Wei Tang*, 16 October. 2008) <http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20081014_slavery.html>; UNODC, *Model Law Against Trafficking in Persons* (UN, 2009) 46.

81 *Trafficking in Persons* n.24 supra at 15.

82 Broderick, 'n.80 supra. More recent information on this point was not available at the time of writing.

83 *Ibid.*; David, n.48 supra at 38.

84 Gallagher, n.7 supra at 315.

85 Jennifer Burn & Frances Simmons, *The Anti-Slavery Project Submission to the National Consultation on Human Rights* (Anti-Slavery Project, University of Technology Sydney, 2009) 26–27.

86 Gallagher, n.7 supra at 317.

been uncovered in the commercial sex industry, including both legal and illegal brothels.⁸⁷ NGOs such as the Scarlett Alliance and Project Respect have a proven capacity to recognise exploitative practices in this industry, and assist victims, especially women, who may have experience sexual violence or threats by their traffickers or their clients.

Faith-based organisations, on the other hand, often tend to reframe trafficking in persons as a contravention of divine intent or sexual impropriety.⁸⁸ Moreover, a preoccupation with salvation and ‘rescuing’ individuals is patronising and their desire to do ‘God’s work’ can come across as seeking to convert victims.⁸⁹ By way of example, JCTP claims to assist in the ‘spiritual’ development of trafficked persons,⁹⁰ and Samaritan Accommodation provides ‘pastoral’ support.⁹¹ This type of vocabulary, and perhaps this type of care, may be ill-suited, and in some instances unwanted or inappropriate for those victims who do not come from a Christian background.

Meanwhile, the prevalence of sex-worker organisations may have an impact on limiting the purview of victim assistance and support to (mostly female) victims of sex trafficking.⁹² Among sex-worker organisations there are also diametrically opposed views on sex work and on the causes and manifestation of trafficking in persons in Australia which may have implications for the delivery of their services. For example, Scarlet Alliance advocates for sex work to be recognised as a legitimate occupation wherein individuals should not face discrimination for their choice of livelihood.⁹³ Project Respect, on the other hand, believes that while women working in the sex industry have a right to safety, respect, and support, prostitution is ultimately harmful insofar as it ‘results from and strengthens gender inequality’.⁹⁴ The practical consequence of this view is that

87 See further, Andreas Schloenhardt et al, ‘Human Trafficking and Sexual Servitude in Australia’ (2009) 32(1) *University of New South Wales Law Journal* 27, 31.

88 Sanja Miliwojevic, ‘Trafficking Reconsidered: A Gaze into a Crystal Ball and Ways Forward’, in Marie Segrave (ed), *Australian and New Zealand Critical Criminology Conference Proceedings 2009* (Monash University, 2009) 177; Yvonne C Zimmerman, ‘From Bush to Obama: Rethinking Sex and Religion in the United States’ Initiative to Combat Trafficking in Persons’ (2010) 26(1) *Journal of Feminist Studies in Religion* 79, 80.

89 Shivaun Scanlan, ‘The Identification of Trafficked Persons in the Face of Conflicting Agendas’ (Paper presented at the conference *Assistance to Victims of Trafficking: We Can Do Better*, OSCE, Vienna, 10-11 September 2007) <<http://www.osce.org/what/trafficking/60585>> 9.

90 JCTP, *Summary of History and Involvement in Counter-Trafficking: Providing Support to Survivors of Trafficking* (2011, copy held by authors) 1.

91 Sisters of Saint Joseph of the Sacred Heart, *What We Are Doing: Samaritan Accommodation* (2009) <<http://www.sosj.org.au/what-we-are-doing/index.cfm?loadref=131>>.

92 Sanja Miliwojevic, ‘Trafficking Reconsidered: A Gaze into a Crystal Ball and Ways Forward’, in Marie Segrave (ed), *Australian and New Zealand Critical Criminology Conference Proceedings 2009* (Monash University, 2009) 177.

93 Scarlett Alliance, n.28 supra at 2.

94 David, n.48 supra at 20.

when determining just who is a ‘victim of trafficking’, Project Respect includes individuals subject to a debt bond, whereas Scarlet Alliance do not coalesce debt bondage and trafficking.⁹⁵

(3) *Gaps in the assistance provided by NGOs*

There are a several gaps in the assistance provided by NGOs to victims of trafficking in Australia. For example, there is little in the way of support services available for, let alone directed at, male victims of trafficking. Although Samaritan Accommodation seems to offer ‘limited assistance to non-residential clients (including men)’⁹⁶ and JCTP extend their support services to men,⁹⁷ there is no mention anywhere else of any counselling, medical, psychological, material, housing, or training services aimed at male victims. Indeed, the vast majority of services offered outside the Government’s Support Program explicitly only cater to ‘trafficked women’, though in some instances the term ‘trafficked persons’ is used. The focus on female victims may be explained by a demographical imbalance among identified victims in Australia who, to this day, have been predominantly female. Between 2004 and 30 June 2011 only about 10 percent, or 19 of the 184 persons referred to the Government Program were male.⁹⁸ These figures may, in turn, be explained by the emphasis government agencies and NGOs alike have placed on victims of trafficking for sexual purpose, including prostitution. Other forms of trafficking, such as labour trafficking, in which men might have a greater representation among victims, have not been equally explored. A comprehensive response to trafficking in persons should, however, cater for men and women alike and it may be necessary to extend available support services to address the specific situations and needs of male victims. It is also noteworthy there little or no reference is made by NGOs to the provision of medical assistance or material assistance which may be of concern for victims who are not able to access the Support for Victims of People Trafficking Program.

A further gap stems from the fact that the majority of services offered to victims of trafficking are located in Australia’s two main urban centres, Sydney and Melbourne. While early cases of trafficking in the late 1990s and early 2000s were all detected in these two cities, there is growing evidence of trafficking in persons in other parts of Australia, including regional and some remote areas.⁹⁹ It is for this reason that international guidelines recommend that support and assistance be offered appropriately across the country.¹⁰⁰

95 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 31.

96 Lindley and Davis n.38 supra at 59.

97 JCTP, *Summary of History and Involvement in Counter-Trafficking: Providing Support to Survivors of Trafficking* (2011, copy held by authors) 2.

98 *Trafficking in Persons* n.24 supra at 33; see further, Schloenhardt et al, n.87 supra at 31.

99 Ibid.

100 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 30.

Contributing to this deficiency is the fact that there is no truly national, dedicated victim support service for victims of trafficking in persons. All of the NGOs examined here, with the exception of Project Respect, offer their anti-trafficking services ancillary to other work done by them, which is not related to trafficking. Project Respect, on the other hand, only operates in the state of Victoria. Moreover, the NGOs do offer assistance, support, and/or protection to victims of trafficking in person generally tend to focus their attention on a particular aspect or a particular type of service. But a genuine integration of these services is considered one of the most critical factors in assistance programs and the services will not produce the desired results if they operate in isolation.¹⁰¹

While the Australian Government's Anti-People Trafficking Inter-departmental Committee claims to be undertaking work to 'collaborat[e] with State agencies and NGOs to develop improved referral linkages and pathways',¹⁰² the partnership between the Australian Red Cross and the Australian Government in providing the Support for Victims of People Trafficking Program (secured by tender) is presently the only formal referral mechanism. Other referrals or cooperation appears to proceed on an informal basis.¹⁰³ It may be desirable to formalise other relationships between government agencies and NGOs, and also among NGOs, to provide appropriate and rapid assistance and support. While a referral list is provided in the *Guidelines for NGOs Working with Trafficked People*, a genuinely multidisciplinary referral framework is still lacking.¹⁰⁴

D PREVENTION OF TRAFFICKING IN PERSONS: OUTLINE OF NGO EFFORTS

(1) Cooperative measures with the Australian Government

Australian NGOs have been most actively cooperating with the Australian Government in establishing measures to prevent trafficking in persons through lobbying the Government over trafficking matters and conducting joint research projects. Project Respect, JCTP, Anti-Slavery Australia, and ACRATH all claim to advocate for policy reform on this issue and a number of government initiatives

101 UN Conference of the Parties to the United Nations Convention against Transnational Organised Crime, *Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: consolidated information received from States for the second reporting cycle*, UN Doc CTOC/COP/2006/6/Rev.1 (9 Sep 2008) 7.

102 *Trafficking in Persons* n.24 supra at 53.

103 Correspondence between Kelly Hinton, Project Respect and Rose Hunt, 25 May 2011; Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 203.

104 A referral guide is provided in the Australian Government, *2010 Guidelines for NGOs Working with Trafficked People* (Commonwealth of Australia, 2nd ed 2010) 30–45 yet a genuinely multidisciplinary referral framework is lacking.

have been established to facilitate such consultation.¹⁰⁵ In 2008, the *National Roundtable on People Trafficking* was established to provide opportunities to advance relationships between the Government and NGOs and establish a consultative mechanism to address trafficking issues.¹⁰⁶ Now in its fourth year, notable output has included the production of the *Guidelines for NGOs Working with Trafficked People* in 2008,¹⁰⁷ and, in revised form, in 2010,¹⁰⁸ and the formation of a working group focusing on matters relating to labour trafficking.¹⁰⁹ Other initiatives include several forums convened by the Australian Institute of Criminology (AIC) to address labour trafficking (in June 2009) and trafficking in the Pacific region (in September 2009).¹¹⁰ Current joint research initiatives include a joint AIC-Scarlett Alliance national research project that was completed in 2011.¹¹¹

(2) *Research, reporting, and monitoring*

NGOs have also conducted a number of independent research projects relating to trafficking in persons. For example, Project Respect's research in 2009-10 included evaluations of its outreach programs, the new visa regime for trafficked persons introduced in 2009, and research into the understanding of trafficking amongst community organisations.¹¹² Child Wise conducted a national survey involving nearly 18,000 participants from the Australian community to form the basis of a report on community attitudes towards sex trafficking of children published in 2009.¹¹³ JCTP conducted a survey in 2007 on the social needs of trafficked women.¹¹⁴ Anti-Slavery Australia is engaged in research into patterns and practices of slavery and trafficking in persons in Australia and the Asia-Pacific region, into compensation and material justice for victims of trafficking,

105 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 203; Project Respect, 'Community and Advocacy', http://projectrespect.org.au/our_work/advocacy; Sisters of Saint Joseph of the Sacred Heart, 'What We Are Doing: Josephite Counter-Trafficking Project', www.sosj.org.au/what-we-are-doing/index.cfm?loadref=78; ACRATH, *What we do* (1 Mar 2011) <<http://acrath.org.au/about/what-we-do/>>; Anti-Slavery Australia, *About Us* (2011) <<http://www.antislavery.org.au/what-we-do/about-us.html>>.

106 *Trafficking in Persons* n.24 supra at 38; Frances Simmons, 'Strengthening Australia's Response to Trafficking in Persons: Report to the Australian Women's Coalition' (30 March 2010) <<http://www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf>> 24.

107 Working Group of the National Roundtable on People Trafficking to assist Non-Government Organisations working with trafficked people, *Guidelines for NGOs Working with Trafficked People* (Commonwealth of Australia, 2009).

108 Australian Government, *2010 Guidelines for NGOs Working with Trafficked People* (Commonwealth of Australia, 2nd ed 2010).

109 *Trafficking in Persons* n.24 supra at 38.

110 *Ibid.*, at 51-52.

111 Scarlett Alliance, n.28 supra.

112 Project Respect, *Annual Report 2009/2010* (2010) <http://projectrespect.org.au/sites/projectrespect.org.au/files/PR_AnnReport10_Final_sml.pdf> 4.

113 Child Wise, *Child Wise Annual Report 2009/2010, Protecting Children's Future* (Child Wise, 2010) 9.

114 JCTP, *Summary of History and Involvement in Counter-Trafficking: Providing Support to Survivors of Trafficking* (2011, copy held by authors) 2.

the rights of vulnerable workers, ethical consumerism, the intersection between criminal and civil penalties for trafficking offences and evaluating international and domestic monitoring of trafficking.¹¹⁵

(3) Awareness campaigns

Australian NGOs have produced a plethora of awareness, information, and mass media campaigns targeted at a variety of audiences. Child Wise and the Salvation Army, for instance, set up media campaigns aimed at raising awareness of the issue of trafficking in persons in public consciousness in 2009.¹¹⁶ ACRATH and Anti-Slavery Australia have produced a range of community educational materials for similar ends.¹¹⁷ Scarlet Alliance and Project Respect have sought to undertake peer education programs to educate migrant sex workers and other individuals who may be in contact with trafficked persons on identifying and referring trafficking situations.¹¹⁸

(4) Outreach and victim identification programs

A number of NGOs conduct outreach programs to brothels throughout Australia. Some programs are not specifically designed for trafficked persons, but could nonetheless be useful programs to assist in the detection of incidences of trafficking.¹¹⁹ The Scarlet Alliance's program is the only outreach program offering services to brothels throughout Australia.¹²⁰ Project Respect conducts a program in Victorian brothels where the NGO spends time with women in the sex industry and provides them with information and referral services.¹²¹ In 2009-10, Project Respect staff made a total of 319 visits to nine brothels.¹²² The Salvation Army also conducts an outreach program whereby it visits 20-30 brothels across Melbourne regularly.¹²³ Meanwhile, Anti-Slavery Australia conducts an outreach program (ostensibly in Sydney due to the location of the organisation), but further details of what the program entails were not available.¹²⁴

115 Anti-Slavery Australia, *Current Priorities* (2011) <<http://www.antislavery.org.au/what-we-do/current-priorities.html>>; Scarlet Alliance, n.28 supra.

116 Lindley and Davis n.38 supra at 9.

117 *Trafficking in Persons* n.24 supra at 45-48.

118 Ibid., at 49-51; Scarlet Alliance, n.28 supra; Scarlet Alliance, 'Migration Pilot Projects Annual Report 2009-2010', http://www.scarletalliance.org.au/projects/migration/News_Item.2010-12-09.4018.

119 Tzvetkova, n.18 supra at 64.

120 Scarlet Alliance, n.28 supra.

121 Project Respect, *Our Work* (2008) <http://projectrespect.org.au/our_work>; David, n.48 supra at 19-20.

122 Project Respect, *Annual Report 2009/2010* (2010) <http://projectrespect.org.au/sites/projectrespect.org.au/files/PR_AnnReport10_Final_sml.pdf> 6.

123 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 203.

124 Anti-Slavery Australia, *About Us* (2011) <<http://www.antislavery.org.au/what-we-do/about-us.html>>; Anti-Slavery Australia, *Current Priorities* (2011) <<http://www.antislavery.org.au/what-we-do/current-priorities.html>>.

E ASSESSMENT OF NGOS'

(1) *Strength*

The advisory and policy formulation role of NGOs has been relatively successful in the Australian context recent years. NGOs possess a depth of knowledge that is extremely useful for governments seeking to establish and improve anti-trafficking measures.¹²⁵ NGOs have also been quite successful in lobbying for law reform and policy change in Australia. For example, in the early 2000s, following the death of a trafficking victim in Sydney's Villawood Immigration Detention Centre, NGOs were instrumental in persuading the Australian Government to create a policy framework and enact anti-trafficking.¹²⁶ NGOs also successfully pressured the Government to reform the visas available to identified victims of trafficking, leading to significant changes to Australia's People Trafficking Visa Framework in 2009.¹²⁷

Due to the frequent and close working relationships relevant NGOs have with victims of trafficking and their independence from party politics, NGOs are in a unique position to freely advocate on behalf of victims of trafficking to government bodies.¹²⁸ They are also well placed to identify existing gaps in Australia's anti-trafficking framework, as they are often the ones who help those who fall through these very gaps.¹²⁹

Opportunities to engage in dialogue and establish links between NGOs and the Australian Government have also had strong results. The National Roundtable on People Trafficking has been commended for 'tapping into the rich [...] vein of knowledge that exists within NGOs who work with trafficked persons'¹³⁰ and the production of the *Guidelines for NGOs Working with Trafficked People* is testament to the effectiveness of collaborative processes.¹³¹ Joint research initiatives between NGOs and government entities are able to encourage a holistic understanding of trafficking in persons by drawing on both official and on-the-ground knowledge of trafficking in persons in Australia. Together, these initiatives provide evidence of formal cooperation between government and

125 Ann D Jordan, *Annotated Guide to the Complete UN Trafficking Protocol* (Global Rights, 2002) 17; Jordan, n.10 supra at 33.

126 Catherine Branson, 'Presidents Speech' (Speech given at the *Launch of NGO Guidelines for Working with Trafficked People*, Commonwealth Parliamentary Offices, Sydney, 3 March 2009); Lindley and Davis n.38 supra at 5.; Fiona David, 'Building the Infrastructure of Anti-Trafficking: Information, Funding, Responses' (2010) 9(2) *Criminology and Public Policy* 235, 238.

127 Frances Simmons, 'Strengthening Australia's Response to Trafficking in Persons: Report to the Australian Women's Coalition' (30 March 2010) <<http://www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf>> 24.

128 Correspondence between Kelly Hinton, Project Respect, and Rose Hunt, 25 May 2011.

129 Branson, n.126 supra.

130 Broderick, n.58 supra.

131 Branson, n.126 supra.

NGOs and of national anti-trafficking initiatives that actively involve NGOs as required by the *Trafficking in Persons Protocol*.¹³²

Outreach work conducted by NGOs in brothels is an important component of efforts to identify situations of trafficking in the sex industry. Women who have been trafficked for the purpose of commercial sexual exploitation are often isolated, afraid to seek help or unaware of the assistance and protection available to victims of trafficking.¹³³ Through their outreach work, NGOs can provide information to sex workers about trafficking and other exploitative practices and, in turn, gain inside information about workplace practices in this industry as well as information about allegations of trafficking which government agencies may not be able to obtain.¹³⁴ The trust and access developed through strengthening relationships between NGOs and sex workers means outreach programs do not have the appearance of ‘brothel raids’ conducted by law enforcement agencies.

The work undertaken by Australian NGOs to raise awareness and educate the public about trafficking in persons generally meets the benchmarks of what constitutes effective information campaigns under international best practice guidelines.¹³⁵ NGO campaigns have been directed at the Australian public at large, at persons likely come into contact with trafficked persons, and at individuals vulnerable to trafficking. For example, material produced by NGOs and placed in brothels and distributed amongst sex worker communities provides information about how to obtain legal employment, migration information, and alerts to the risks of trafficking in persons.¹³⁶

The (limited) research undertaken by NGOs in Australia about the causes, circumstances, and conditions of trafficking in persons addresses many of the legal, social, cultural and economic push and pull factors of irregular migration, the routes, changes in patterns and modi operandi of traffickers, the social, cultural and legal responses that enable effective protection, rehabilitation, and integration of victims, and explores emerging issues such as labour exploitation.¹³⁷ Child Wise has also undertaken surveys to document the impact of awareness campaigns public attitudes towards trafficking in persons in Australia.¹³⁸

132 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 28, 46.

133 Tzvetkova, n.18 supra at 64.

134 Correspondence between Kelly Hinton, Project Respect and Rose Hunt, 25 May 2011.

135 See further, Andreas Schloenhardt et al, ‘Be Careful What You Pay For: Awareness Raising on Trafficking in Persons’ (2012) 11(2) *Washington University Global Studies Law Review* (forthcoming).

136 Cf UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 42.

137 Ibid. at 6, 41.

138 Ibid. at 42.

(2) *Weaknesses*

There is some concern that some of the research conducted by NGOs in Australia has been influenced by the agenda of the organisation.¹³⁹ The 2009 Anti-People Trafficking Inter-Departmental Committee's report, for instance, noted that:

Data is often collected for specific programs and/or institutions and focuses on the needs of the individual agencies. Some NGOs may record suspected victims on first contact, regardless of whether they later meet the specified criteria for receiving assistance, whilst others record only those who do.¹⁴⁰

One example that is frequently discussed in this context is the claim made by Project Respect that up to 1000 women are trafficked into Australia each year:

Project Respect estimates that there are typically up to 1000 women in Australia under contract at any one time. This refers to women still paying off a 'debt' and does not include women who have finished their 'debt' but remain in Australia. [...] Project Respect has made estimates based on a range of other information, including statistics from the Refugee Review Tribunal, Department of Immigration removal statistics, sex industry estimates, observations in brothels etc.¹⁴¹

Over the last ten years Project Respect has made numerous presentations and submissions to government agencies in which this figure has been repeated time and again, and this figure has been frequently cited in many media reports. It is prudent to raise questions about this figure (which has been rejected as 'not substantiated' by government agencies since 2003) and the methodology used to generate it, while noting that NGOs may have a vested interest in overstating the level of trafficking in persons in order to engender support (and funding) for their cause and their organisation.¹⁴²

139 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 31; Vanessa E Munro, 'Stopping Traffic?: A Comparative Study of Responses to the Trafficking of Women for Prostitution' (2006) 46(2) *British Journal of Criminology* 318, 324–325.

140 *Trafficking in Persons* n.24 supra at 45.

141 Project Respect, 'How are Women Trafficked?' <http://projectrespect.org.au/our_work/trafficking/why_trafficking>; cf Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 29.

142 See further, Andreas Schloenhardt et al, 'Trafficking in Persons: Myths and Realities' (2009) 10(3) *Global Crime* 224, 232.

(3) *Gaps*

Research and awareness campaigns conducted by NGOs can be improved in a number of ways and in several few key areas, especially in relation to the collection of data relating to trafficking in persons Australia. UNODC has noted that ‘many countries still do not collect even basic data and many are not collecting data in a way that facilitates insight into the national situation’.¹⁴³ Given the over-reliance of official government publications on data relating to investigations and to victims placed in government support programs,¹⁴⁴ NGOs may be in a position to contribute to better and more complete data collection (and thus to better research) insofar as they have greater exposure to and contact with victims of trafficking and other persons in positions of vulnerability.

Another area in which NGO-led research may be strengthened is the independent monitoring of the operation and effectiveness of the Government’s Support for Victims of People Trafficking Program and its compliance with international best practice. While some information about the broad structure and purpose of the framework is available, relevant detail and independent evaluations are not.¹⁴⁵ To this date, most NGO-run awareness campaigns appear to have only targeted the commercial sex industry, while other forms of trafficking have not been equally addressed. Since 2010/11, however, NGOs and government agencies alike have shown more interest in labour trafficking; a topic which may require greater public attention.¹⁴⁶

F COOPERATION WITH LAW ENFORCEMENT

(1) *Outline*

Some NGOs provide training to law enforcement and other government agencies on a range of matters pertaining to trafficking in persons. For example, Anti-Slavery Australia has conducted skills-based practical training on slavery and trafficking issues as part of the Department of Immigration and Citizenship’s (DIAC) training program for onshore immigration compliance officers.¹⁴⁷ Scarlet Alliance and Project Respect have presented on different perspectives on trafficking as part of the Transnational Sexual Exploitation Investigation

143 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 6.

144 Cf Steele, n.58 supra at 20.

145 David, n.48 supra at 70; Frances Simmons, ‘Strengthening Australia’s Response to Trafficking in Persons: Report to the Australian Women’s Coalition’ (30 March 2010) <<http://www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf>> 25–26.

146 Frances Simmons, ‘Strengthening Australia’s Response to Trafficking in Persons: Report to the Australian Women’s Coalition’ (30 March 2010) <<http://www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf>> 27; Project Respect, ‘Recommendations to the Australian Government for Reform of Support for Victims of Trafficking in Australia’ (March 2009) <[http://projectrespect.org.au/system/files/PR-recomm-traff-200903+\(1\).pdf](http://projectrespect.org.au/system/files/PR-recomm-traff-200903+(1).pdf)> 2.

147 *Trafficking in Persons* n.24 supra at 36; Anti-Slavery Australia, *About Us* (2011) <<http://www.antislavery.org.au/what-we-do/about-us.html>>.

Program, the training program investigators working in the AFP's Human Trafficking Teams undertake.¹⁴⁸ In April 2011, the AFP together with various NGOs coordinated an information exchange forum which also involved work on operational scenarios in order to enhance collaborative efforts to detect, prevent, and disrupt trafficking in persons in Australia. This event also resulted in the production of a document entitled *Anti-Human Trafficking: Community Resource* which outlines the mandate and activities of relevant government and non-government entities working in this field.¹⁴⁹

(2) Assessment

It is fair to say that there are genuine attempts at strengthening information exchange and training initiatives between NGOs and the AFP and other law enforcement agencies in Australia. The role of NGOs is integral to helping law enforcement agencies carry out their role properly, as NGOs have valuable knowledge about trafficking obtained through their on-the-ground experience. Law enforcement officers need to be sensitised to their responsibilities in ensuring the safety and wellbeing of trafficked persons, especially when victims are first apprehended.¹⁵⁰ NGOs are well placed to assist through their experience in treating, counselling, and accommodating victims of trafficking.¹⁵¹

In this context, it is also worth noting that the indicators of trafficking are very diverse and multifaceted, and the question whether an individual has been a victim of trafficking in persons is frequently not clear-cut. For this reason, investigators need to understand the causes and circumstances of situations in which victims may appear uncooperative, hesitant or hostile toward police and other government agencies, and, perhaps 'untrustworthy' in the sense that they might hold fraudulent documents, be engaged in prostitution illegally or be suffer from substance abuse.¹⁵² Averting institutional bias towards treating such people as criminals rather than victims is especially relevant in light of the fact that, apart from trafficking in persons, the AFP traditionally deals mostly with 'victimless' crime.¹⁵³ Dealing with highly vulnerable, traumatised individuals in the context

148 Ibid., at 35.

149 *Anti-Human Trafficking Community Resource* n.22 supra.

150 *Recommended Guidelines and Principles for Human Rights and Trafficking in persons: Report of the United Nations High Commission for Human Rights to the Economic and Social Council*, UN ECSOR, subst. sess 2002, Addendum, UN Doc E/2002/68/Add.1 (2002), 47; Jordan, n.10 supra at 29; Frances Simmons, 'Strengthening Australia's Response to Trafficking in Persons: Report to the Australian Women's Coalition' (30 March 2010) <<http://www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf>> 15.

151 Fiona David, *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice* (Australian Institute of Criminology, 2009) 4.

152 Shivaun Scanlan, 'The Identification of Trafficked Persons in the Face of Conflicting Agendas' (Paper presented at the conference *Assistance to Victims of Trafficking: We Can Do Better*, OSCE, Vienna, 10-11 September 2007) <<http://www.osce.org/what/trafficking/60585>> 5.

153 David, n.48 supra at 68.

of trafficking in persons may thus be an unfamiliar challenge for officers new to this role.¹⁵⁴

The fact that in the 2009-2010 financial year, 13% of referrals of victims to the AFP came from NGOs demonstrates that NGOs are frequently in the frontline of victim identification, especially in cases that may otherwise not come to the attention of authorities.¹⁵⁵ To that end, NGOs can provide information on the identity of victims of trafficking and therefore potential witnesses. NGOs can also provide intelligence critical to the successful identification and prosecution of traffickers, as many victims of trafficking fear authorities and police, but may feel more comfortable volunteering crucial information about the persons involved in the crimes committed against them to an NGO.¹⁵⁶

In turn, NGOs stand to gain from information exchange with law enforcement agencies. Information provided by police about victims and their vulnerabilities can assist NGOs in tailoring awareness campaigns and provide specific advice to the victims they encounter.¹⁵⁷ Information sharing is also critical to build relationships of trust between NGOs and law enforcement personnel.¹⁵⁸

Moreover, strong cooperative measures are essential given the high degree of coordination and consultation between victim support agencies and law enforcement officials when victims of trafficking become potential witnesses.¹⁵⁹ Paul Holmes has noted that 'whilst victims are the primary source of high-grade evidence, they are also the most traumatised individuals'. NGOs may thus be able to assist law enforcement in interviewing victims of trafficking, especially by building trust between.¹⁶⁰

Formal referral and identification mechanisms, recommended in international best practice material to ensure effective cooperation between law enforcement agencies

154 Nancie Palmer, 'The Essential Role of Social Work in Addressing Victims and Survivors of Trafficking' (2010) 17(1) *ILSA Journal of International and Comparative Law* 43, 44.

155 *Trafficking in Persons* n.24 supra at 19 and 29.

156 Correspondence between Kelly Hinton, Project Respect and Rose Hunt, 25 May 2011; Fiona David, *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice* (Australian Institute of Criminology, 2009) 2.

157 Paul Holmes, 'Law Enforcement Cooperation with Non-governmental Organisations, with Reference to Protection of Victims and Victims as Witnesses' (Paper presented at the Conference on Prevention of and Fighting Against Trafficking in Human Beings, Brussels, 18-20 September 2002) 20.

158 David, n.48 supra at 70; Paul Holmes, 'Law Enforcement Cooperation with Non-governmental Organisations, with Reference to Protection of Victims and Victims as Witnesses' (Paper presented at the Conference on Prevention of and Fighting Against Trafficking in Human Beings, Brussels, 18-20 September 2002) 16.

159 Fiona David, *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice* (Australian Institute of Criminology, 2009) 3.

160 Paul Holmes, 'Law Enforcement Cooperation with Non-governmental Organisations, with Reference to Protection of Victims and Victims as Witnesses' (Paper presented at the Conference on Prevention of and Fighting Against Trafficking in Human Beings, Brussels, 18-20 September 2002) 16.

and NGOs,¹⁶¹ appear to be lacking in Australia at the present time. International best practice guidelines also seek to ensure that first responders, including law enforcement and consular officials, are trained to identify and protect victims of trafficking.¹⁶² In Australia, this will frequently be State or Territory police officers who exist in much greater numbers and have a much greater reach and presence across Australia than the comparatively small number of AFP agents. It may thus be desirable to include State and Territory police officers in the cooperation and training conducted in conjunction with NGOs, which appears to be occurring, albeit on a very limited scale.¹⁶³ To this end, it may also be beneficial to include representatives from State and Territory police forces in the National Roundtable on People Trafficking.¹⁶⁴

OBSERVATIONS, TRENDS, AND RECOMMENDATIONS

This analysis suggests that NGOs are, by and large, fulfilling the expected role accorded to them in international law and best practice guidelines. Their work, expertise, cultural sensitivity, rapport with victims, and independence make an important contribution to Australia's efforts to prevent and suppress trafficking in persons. Nonetheless, some outstanding and inherently interrelated issues prevail, and will be explored in the following sections. These observations also provide the basis for recommendations to improve the role of NGOs, the support they receive, and the services they deliver.

A. GOVERNMENT OUTSOURCING

It is clear that there are certain gaps in the Australian Government's anti-trafficking framework which are (intentionally and unintentionally) left for NGOs to fill. This is the case in situations in which there are no viable means by which official entities could effectively carry out particular measures, or in which the qualities and experience NGOs bring to anti-trafficking measures exceed those of government officials.

Welcome as the diverse and widespread involvement of NGOs in the official response to trafficking in persons in Australia may be, it does appear that the Australian Government is outsourcing some of its responsibilities – especially

161 *Recommended Guidelines and Principles for Human Rights and Trafficking in persons: Report of the United Nations High Commission for Human Rights to the Economic and Social Council*, UN ECSOR, subst. sess 2002, Addendum, UN Doc E/2002/68/Add.1 (2002), 44; UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 46.

162 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 29.

163 *Trafficking in Persons* n.24 supra at 18-19.

164 Jennifer Burn & Frances Simmons, *The Anti-Slavery Project Submission to the National Consultation on Human Rights* (Anti-Slavery Project, University of Technology Sydney, 2009) 30.

when millions of dollars have been provided to NGOs in recent years to carry out particular programs. While this is in keeping with requirements under the Trafficking in Persons Protocol which, as mentioned earlier, accord both operator and co-operator roles to NGOs, this practice raises some important concerns.

(1) Lack of clear delineation of responsibility

There is minimal active delineation of if and where NGOs are best placed to carry out the roles ascribed to them. Many of their operator roles appear to be taken up in a rather ad hoc manner. Although some progress has been made to have better coordination between government agencies and NGOs, and among NGOs, it is difficult to ascertain who is responsible for what. Reasons for handing certain responsibilities to particular organisations are also not clearly articulated. This situation deviates from international best practice guidelines which advocate that burden-sharing be formalised to maximise effectiveness and allow respective parties to focus on their core role.¹⁶⁵

While this article provides a preliminary analysis of where the strengths and weaknesses in NGOs carrying out particular functions are, a more in-depth examination would be necessary to examine the mandate and capabilities of relevant government and non-government entities in depth and, based on that analysis, develop more comprehensive recommendations to appropriately assign responsibilities than can be done within the limitations of this article. To this end, it is recommended that the Anti-People Trafficking Inter-Departmental Committee and participants in the National Roundtable explore and determine which anti-trafficking measures which NGOs is best placed to carry out. This process would ensure that the best possible combination of strengths from government, law enforcement, non-governmental and the private sector are drawn upon to deliver the most robust anti-trafficking framework. It will also ensure that the gaps are identified on a systematic and ongoing basis – for example, picking up on a lack of victim support services outside Sydney and Melbourne, and, likewise, rationalise resources.

(2) Funding, support, and legitimacy accorded to NGOs

Where an inquiry into the allocation of responsibilities results in an endorsement of an NGO carrying out certain anti-trafficking functions, the Australian Government has a duty to ensure that the functions are properly supported and implemented.¹⁶⁶ Anti-trafficking functions that have been outsourced to NGOs

165 *Recommended Guidelines and Principles for Human Rights and Trafficking in Persons: Report of the United Nations High Commission for Human Rights to the Economic and Social Council*, UN ECSOR, subst. sess 2002, Addendum, UN Doc E/2002/68/Add.1 (2002), 44; David, n.48 supra at 37.

166 'UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations, 2004) 313.

must have adequate levels of funding attached to them. Indeed, a lack of adequate funding is seen as a serious organisational challenge by some NGOs.¹⁶⁷

Where an NGO is carrying out a role in lieu of government agencies, the safety of NGO personnel and victims alike needs to be assured. In this context, Holmes stated that ‘it is difficult to overstate the sensitivity and potential risks that arise to the safety of trafficked victims and the NGO support personnel once a victim chooses to become a witness against [a] trafficker.’¹⁶⁸ Law enforcement agencies involved in proceedings against traffickers should therefore undertake all necessary steps to ensure the safety of organisations and individuals that provide support services to victims throughout the course of the investigation, prosecution, and beyond.

The Australian Government must also ensure that the NGOs it is dealing with operate legitimately and transparently. It is important to note that NGOs, too, have limitations in their experience and knowledge. Importantly, they are often run by volunteers with little or no formal training to carry out certain functions. In contrast to official agencies, NGOs’ legitimacy does not derive from a democratic mandate and they should not be seen as ‘magic bullets’ by virtue of their independent, non-government status.¹⁶⁹ Instead, qualities such as reputation, credibility, support, expertise, and participation in networks (of fellow NGOs and victim support services) should be looked to as indicators of an NGO’s competency.¹⁷⁰

B ACCOUNTABILITY OF NGOs

Where NGOs receive public funds, it is imperative that NGOs take measures to fully account for how these funds are spent and are fully transparent about their ideological position (if any) in the context of trafficking in persons. This goes some way to ensuring maximum effectiveness and efficiency are derived from funds devoted to anti-trafficking measures.

167 For example, Project Respect claim to be ‘severely underfunded’ and only receive project funding, thus finding it difficult to plan their work into the future: Correspondence between Kelly Hinton, Project Respect and Rose Hunt, 25 May 2011; Project Respect, *Annual Report 2009/2010* (2010) <http://projectrespect.org.au/sites/projectrespect.org.au/files/PR_AnnReport10_Final_sml.pdf> 4.

168 Paul Holmes, ‘Law Enforcement Cooperation with Non-governmental Organisations, with Reference to Protection of Victims and Victims as Witnesses’ (Paper presented at the Conference on Prevention of and Fighting Against Trafficking in Human Beings, Brussels, 18-20 September 2002) 23.

169 Alnoor Ebrahim, ‘Accountability in Practice: Mechanisms for NGOs’ (2003) 21(5) *World Development* 813, 813.

170 Hugo Slim, ‘By What Authority? The Legitimacy and Accountability of Non-governmental Organisations’ (Paper presented at the *International Council on Human Rights Policy International Meeting on Global Trends and Human Rights*, Geneva, 10-12 January 2002) <<http://www.gdrc.org/ngo/accountability/by-what-authority.html>>.

There are obvious gaps in the services NGOs currently provide, but from the available, open-source material it is not clear whether this is primarily due to lack of funding, or whether inefficiency and lack of demand from victims explain the absence of certain support mechanisms.¹⁷¹ The absence of more, and more up-to-date information on these questions is concerning. NGOs should ensure they make sufficient information available so that they can be accountable for funding they receive from government sources. This requires more than a balance sheet recording of where funds go; instead, notes Hugo Slim, ‘NGOs must be able to show evidence of a well rounded performance that resonates with the values of human rights, not simply a result.’¹⁷²

A further concern in this context is that the religious, ideological or other agenda of NGOs has the propensity to have an impact on the delivery of their role in anti-trafficking measures. This ideological positioning is not always made evident in the context of trafficking in persons. In order to be held accountable for their efforts, NGOs may have to become more transparent about the precise nature of their work and activism and how this is influenced by their agenda.¹⁷³

C REFERRALS AND FORMAL MECHANISMS FOR COOPERATION

There is, at present, only limited evidence of formal referral and cooperation arrangements between NGOs and government agencies. Given the number and diversity of organisations involved, it would be beneficial to bring greater clarity to the ‘who is who’ in Australia’s anti-trafficking framework. A lack of clear articulation and delineation of responsibilities ‘can lead to duplication in efforts, inefficient use of resources, incoherent or contradictory interventions and [...] a less effective response’.¹⁷⁴

Formal referrals are the first step in allowing victims to fully access the services needed to help them recover from their experiences, they ensure trafficked persons do not need to tell their stories twice, and can harmonise cooperative efforts

171 For example, the absence of victim support services aimed at men may be due to the low incidences of men being trafficked into Australia.

172 Hugo Slim, ‘By What Authority? The Legitimacy and Accountability of Non-governmental Organisations’ (Paper presented at the *International Council on Human Rights Policy International Meeting on Global Trends and Human Rights*, Geneva, 10-12 January 2002) <<http://www.gdrc.org/ngo/accountability/by-what-authority.html>>.

173 Hugo Slim, ‘By What Authority? The Legitimacy and Accountability of Non-governmental Organisations’ (Paper presented at the *International Council on Human Rights Policy International Meeting on Global Trends and Human Rights*, Geneva, 10-12 January 2002) <<http://www.gdrc.org/ngo/accountability/by-what-authority.html>>.

174 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 12.

surrounding criminal investigations and prosecutions.¹⁷⁵ Formal referrals have been effectively used in similar contexts for many years – for example, a number of State police services have memoranda of understanding in place with providers of sexual assault and domestic violence services – which suggests they could have utility in the provision of victim recovery services, too.¹⁷⁶ At a minimum, they should include:

[A] list of partners, clearly defined purpose of cooperation, principles of cooperation, target group, detailed definition of the distribution of responsibilities, details of the cooperation procedure between the partners, procedure of mutual communication of information... funding of the NGO cooperation partner... [and] incorporate a holistic and multidisciplinary approach, [including] balance among the objectives of all stakeholders.¹⁷⁷

The 2011 publication of the *Anti-Human Trafficking Community Resource* goes some way to outline the mandate of a great range of government and non-government actors in this field and to ensure more ‘strategic planning, division of responsibilities and sustainability of results’ in the future.¹⁷⁸

CONCLUSION

This article examines the role of NGOs in Australia in the context of trafficking in persons. It has been shown that NGOs generally meet the expectations placed upon them by the *Trafficking in Persons Protocol*. In Australia, a range of NGOs are greatly involved in providing case work, housing, counselling, legal assistance, and training to victims of trafficking in persons. They do so independently and cooperatively. Their knowledge of trafficking in persons, their human rights perspective, approachability, independence, and unconditional assistance provide a much needed bridge between isolated individuals and the means to recover from the exploitation and trauma involved in trafficking in persons. NGOs also play a significant role in establishing policies to prevent and combat trafficking through advising on policy, researching, and reporting on trafficking in Australia

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- 175 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 202; Project Respect, ‘Recommendations to the Australian Government for Reform of Support for Victims of Trafficking in Australia’ (March 2009) <[http://projectrespect.org.au/system/files/PR-recomm-traff-200903+\(1\).pdf](http://projectrespect.org.au/system/files/PR-recomm-traff-200903+(1).pdf)>; UNODC, *Model Law Against Trafficking in Persons* (United Nations, 2009) 68.
- 176 Fiona David, *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice* (Australian Institute of Criminology, 2009) 4-5.
- 177 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 46-47.
- 178 UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UN, 2009) 12; see also Fiona David, *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice* (Australian Institute of Criminology, 2009) 4-5; UNODC, *Model Law Against Trafficking in Persons* (United Nations, 2009) 68.

and conducting awareness campaigns and outreach programs – work that is characterised by a depth of first hand, culturally appropriate experience. NGOs also work with law enforcement agencies through training and information exchange, which creates and strengthens valuable relationships, knowledge, and capacity between government and non-governmental actors.

This analysis has shown that there are areas in which NGOs, law enforcement and other government agencies can improve their efforts to further enhance the function of NGOs, the support they obtain and the services they deliver. Nevertheless, this examination of the work carried out by NGOs in Australia reveals that their work involves extensive and diverse measures to prevent and combat trafficking in persons and to assist and protect victims of this heinous crime. In doing so, NGOs play an integral role in Australia's anti-trafficking response. It is hoped that this article provides a basis to further enhance this important role in the future.