



Submission to the US Department of State:
2018 Trafficking in Persons Report-
Australia

Good Shepherd Australia New Zealand

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Good Shepherd
Australia New Zealand



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About our organisation

Good Shepherd Australia New Zealand

This submission has been prepared by Good Shepherd Australia New Zealand (GSANZ), a community services organisation that has been delivering on its mission to disrupt the intergenerational cycle of disadvantage, with a focus on women and girls, since 1864 in Australia and 1886 in New Zealand. We achieve this by challenging disadvantage and gender inequality through services, research, advocacy, and social policy development.

Our specific expertise is in:

- **Safety and resilience** - supporting women to be resilient provides a buffer between an individual and adversity, allowing them to achieve improved outcomes in spite of difficulties.
- **Financial security** - supporting women to ensure they have access to sufficient economic resources to meet their material needs so that they can live with dignity.
- **Educational pathways** - assisting women and girls to overcome the obstacles in their life that hinder them from achieving their educational/vocational capacity.
- **Outcomes and evaluations** - developing evidence-based program designs across all Good Shepherd Australia New Zealand programs and services.
- **Research, social policy and advocacy** - needs-based research into emerging issues, identifying effective change interventions for program design, policy analysis and systemic advocacy.

GSANZ is part of a global network of services and advocates established by the Congregation of Our Lady of Charity of the Good Shepherd, which has had special consultative status with the United Nations Economic and Social Council (ECOSOC) since 1996.

GSANZ is part of the Good Shepherd Asia-Pacific Anti-Trafficking Network which includes units representing 19 countries across the region dedicated to ending trafficking and exploitation; GSANZ is also represented as a key stakeholder on state wide networks to address forced marriage in New South Wales and Victoria.



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Introduction

GSANZ welcomes the opportunity to submit to the US Department of State on the 2018 Trafficking in Persons (TIP) Report on Australia.

As part of an international network of services run by the Congregation of Our Lady of Charity of the Good Shepherd, an NGO with consultative status with the ECOSOC, GSANZ sees Australia's social policies and services within a global context. We also acknowledge the often gendered nature of exploitation and the disproportionate impact that trafficking and slavery has on women and girls. Our work is informed by the Sustainable Development Goals (SDGs), with a particular focus on *Goal 5 Gender Equality* and *Goal 10 Reduced Inequalities*. We are pleased to note that Goal 5 includes specific reference to forced marriage in one of its targets.

This submission is informed by our practice experience and sector networks built in the course of delivering family violence refuge and outreach support, youth crisis accommodation, and community supports in areas of high migrant and refugee populations. It reflects our shared experiences with colleagues in the field who report achievements and challenges in the course of their everyday work. This submission also reflects GSANZ's involvement in the Asia-Pacific Anti-Trafficking Network.

GSANZ is a member of the Australian Catholic Religious Against Trafficking in Humans (ACRATH), which is represented on the Australian Government Roundtable on Human Trafficking and Slavery.

Whilst we recognise that the US Department of State TIP Office does not formally recognise early and forced marriage as a form of trafficking or slavery, we would like to highlight that Australia's policy and legislative framework has positioned the issue squarely as a practice of slavery. We also acknowledge that the US Department of State TIP Office is most interested in reporting on trafficking conducted for the specific purpose of exploitation. GSANZ's position is that early and forced marriage is a severe form of exploitation and, in cases where children are taken out of Australia for the purposes of being forced into marriage, this may also satisfy the definition of child trafficking.

Based on work with women and girls, as well as research, policy analysis and cross-sector collaborations undertaken by our Women's Research, Advocacy and Policy (WRAP) Centre, we wish to highlight achievements and areas of concern in the Australian Government's response to trafficking and slavery.

While we are deeply concerned about all forms of trafficking involving exploitation, including labour trafficking associated with unlawful industrial conduct against migrants, our expertise relates specifically to women and girls experiencing or at risk of experiencing trafficking for the purposes of forced marriage. We have also begun to develop expertise in relation to slavery that occurs in supply chains and actively participated in the Australian Governments Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into establishing a Modern Slavery Act in 2017. Therefore, this submission is presented in two parts.

- **Part One:** Focus on Forced Marriage
- **Part Two:** Focus on a Modern Slavery Act for Australia

Part One- Focus on: Forced Marriage

▪ Question 1- How have trafficking methods changed in the past 12 months?

The conceptualisation of early and forced marriage as trafficking and slavery is unique to Australia. In recent research conducted by Churchill Fellow, Laura Vidal,¹ it was found that most jurisdictions globally categorise early and forced marriage as gender based violence, or an event-specific form of family violence. GSANZ also recognises that many women and girls in a forced marriage often experience multiple slavery or slavery-like conditions, including forced labour and servitude.

The standard presentation of early and forced marriage in Australia is typically women and girls being forced into marriage overseas often with the expectation that they will return to Australia and sponsor their spouse. Whilst this may only be a small proportion of reported trafficking globally, in **2015-2016, forced marriage accounted for 40% of reports to the Australian Federal Police Human Trafficking Team.**² This increase in reporting can be attributed to expanded knowledge about the offence introduced in 2013 and concerted efforts by NGOs and civil society to identify and respond to individuals at risk. It also demonstrates a change in previous patterns of reported exploitation, whereby sexual exploitation dominated known incidences of trafficking and slavery in Australia.

It is believed that what is currently known about the issue of early and forced marriage is significantly underrepresented. We made a representation to the US State Department TIP Office in 2017 noting the lack of cases coming to the notice of official bodies or being documented and collated systematically from civil society organisations.³ This remains the same in 2018, with no change or steps taken to develop a coordinated or central data collection point about known cases of trafficking and slavery in Australia.

From our work in the field and with our partners it has been identified that the primary group at risk of early and forced marriage are females between the ages of 15-21 years of age. This practice observation is supported by the Australian Federal Police who report:

'The forced marriage referrals received to date have primarily involved Australian citizens under the age of 18, with relatives alleged to have organised, or to be organising, a marriage for them overseas without their full and free consent'.⁴

There has been widespread acknowledgement that current approaches to addressing early and forced marriage are inadequate, however, there has been little tangible action taken to remedy the gaps. GSANZ believes that the Australian Government must take steps to recognise the fundamental differences between criminality and the needs of the victim to ensure that individuals at risk can access safety and support. Most importantly, we call for

¹ Vidal, L (2017), *Developing Innovative and Best Practice Solutions to Address Forced Marriage in Australia*, Winston Churchill Memorial Trust of Australia, p. 22-24, Accessible at: https://www.churchilltrust.com.au/media/fellows/Vidal_L_2016_Solutions_to_addressing_forced_marriage_in_Australia.pdf.

² Australian Government (2016), *Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery*, p.20.

³ Good Shepherd Australia New Zealand (2017), *Trafficking in Persons Report Submission*

⁴ Australian Government (2016), *Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery*, p.23.

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the Australian Government to de-link support for all individuals impacted by human trafficking and slavery from participation in the criminal justice system. Falling short of that, steps must be taken to put in place special measures for individuals impacted by early and forced marriage, noting that offenders are typically family members and victims are minors.

- **Question 2. What were the government's major accomplishments in addressing human trafficking?**
- **Question 31. Did the government fund any anti-trafficking information, education, or awareness campaigns?**

The Australian Government continues to implement the National Action Plan to Combat Trafficking and Slavery 2015-2019 (NAP). Consistent with previous no major new approaches appear to have been undertaken.

The Australian Government reports⁵ that it conducted a series of activities focused on information, education and awareness. The activities are measured against a series of key outcomes selected by the Australian Government, which align with objectives set out in Australia's NAP. These activities were delivered in partnership with various arms of government and other non-government representatives.

The Australian Government provided additional funding to the following three NGOs to continue to raise awareness:

- Anti-Slavery Australia - My Blue Sky website
- ACRATH - School Education Kit
- Australian Muslim Women's Centre for Human Rights - community awareness-raising.

In addition, some funding has been provided to Anti-Slavery Australia to convene an inaugural forced marriage conference, and (unrelated to forced marriage funding) to The Salvation Army to address exploitation in Australia's agricultural sector.

GSANZ is concerned that the NAP remains largely unfunded, and many of the objectives set out in the NAP are not measurable. Furthermore, non-government organisations who are funded to deliver awareness raising, education or awareness campaigns are provided discretionary funds. Reporting against the use of funds is not transparent, and detailed information about the outcomes and impacts of these activities remain unknown. The overall reporting mechanism—the Interdepartmental Committee Report on Human Trafficking and Slavery, published in July each year contains inconsistent frameworks for government outcomes.

The NAP will be renewed in 2019 and it is imperative that a new action plan is developed in a way that ensures outcomes can be measured. It is also essential that activities listed in the plan have an allocated budgetary measure. Without these two elements, the plan remains a principled document with little effectiveness. In addition, in order for Australia to understand the effectiveness of current measures implemented by the Government,

⁵ Australian Government (2016), *Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery*.

GSANZ recommends that a consistent approach to data collection and outcomes and impact measurement and reporting be adopted.

- **Question 3. What were the greatest deficiencies in the government’s anti-trafficking efforts**
- **Question 15. What victim services are provided (legal, medical, food, shelter, interpretation, mental health care, employment, training, etc.)?**
- **Question 16. What was the overall quality of victim care?**
- **Question 25. Does the government operate a hotline for potential victims?**

Services currently funded and available to individuals impacted by human trafficking and slavery are contingent on an individual’s capacity and willingness to engage with federal law enforcement. The service is provided through a single national service provider who is reliant on local partnerships to ensure that adequate and available services can be accessed.

There are a number of gaps and challenges to the current victim support system. GSANZ recognise that many of these challenges impact on all individuals impacted by human trafficking and slavery—particularly the cooperation requirement between law enforcement and access to support services. GSANZ’s research⁶ does however find that the gaps and challenges that individuals impacted by early and forced marriage experience are profound. The support program was originally conceived for an entirely different purpose—for adult victims of either sexual exploitation or forced labour. As illustrated above, individuals impacted by early and forced marriage are typically minors whereby the primary perpetrator is a family member.

Recently completed research by Churchill Fellow, Laura Vidal highlights the following clear challenges:

(1) Link between support and participation in a criminal justice process

Of greatest concern is the relationship between participation in the criminal justice system and availability of support. Under Australia’s current policy, victims who disclose a risk of forced marriage or who experience a forced marriage must engage with law enforcement to access a government support program. What we know from experience is that a very small percentage of young people at risk report to the police, or are willing to engage in a criminal prosecution typically against their parents. In many cases it may not be in the best interests of the young person’s wellbeing or emotional and psychological development to be party to the prosecution of their own family members. Not engaging with the police renders them largely ineligible for support and protection.

⁶ McGuire, M. *The Right to Refuse: Understanding Forced marriage in Australia*, Good Shepherd Youth & Family Service, 2014.



Services independent of the police are not currently available. There is mixed understanding and application of the issue across child protection services nationwide, and varying responses from local law enforcement agencies. The current framework places the Australian Federal Police Human Trafficking Team as gatekeepers to welfare supports. This challenges the very notion of a human rights framework or victim centred approach, critical for ongoing wellbeing and the development of young people. An integrative framework is needed—one that focuses on the individual and provides resources for them to reach their full potential from the moment they seek help.

(2) Available and appropriate accommodation

Current practice presents challenges regarding appropriate accommodation and support. There is very limited availability of targeted accommodation services available to individuals who need to leave home due to the risk of forced marriage, or who have experienced a forced marriage. Many of the accommodation options that are available to individuals are not appropriate and often puts them at significant risk because they have no other alternative than to return home where risk and threat to safety increases rapidly.

(3) Centralised and coordinated approach

Australia lacks an operational framework and funding to coordinate federal and state agencies responsible for responding to cases. Despite efforts to raise awareness many local and state responders remain unaware of the national framework and do not have clearly defined roles and responsibilities in responding to the issue. This places undue burden on individuals to navigate complex systems with limited or no support and in some situations puts them at significant risk.⁷

GSANZ recommends that Australia seek to:

- De-link participation in a criminal justice process from access to necessary support services.
- Fund appropriate and tailored accommodation services for individuals who can no longer remain at home due to physical and psychological abuse and/or threats to their safety.
- Develop and implement a centralised and coordinated point of contact, including a dedicated hotline. A centralised point of contact is necessary to ensure holistic support to individuals at risk, and leadership for government agencies, NGOs and civil-society a-like.

⁷ Vidal, L (2017), *Developing Innovative and Best Practice Solutions to Address Forced Marriage in Australia*, Winston Churchill Memorial Trust of Australia, p. 29-30, Accessible at: https://www.churchilltrust.com.au/media/fellows/Vidal_L_2016_Solutions_to_addressing_forced_marriage_in_Australia.pdf.

▪ **Question 22. Does the government effectively assist its nationals exploited abroad?**

At present, there are significant barriers to Australian Government representatives assisting nationals exploited abroad. Particularly within the context of early and forced marriage, Australians who are taken to Non-Hague Convention countries face significant barriers to repatriation due to Australian officials having no jurisdictional powers to intervene. In early and forced marriage matters, it is not uncommon for individuals to be taken to Non-Hague Convention nations.

Implementation of Forced Marriage Protection Orders (FMPOs), similar to those in place in the United Kingdom, would provide Australia with a domestic civil tool to engage with family members or other influential people in connection with the individual at risk overseas. FMPOs have proven to be a critical tool in prevention and repatriation in the United Kingdom.

Compared with the current system of 'Airport Watch List Orders' in Australia which are limited to people under the age of 18 years old, FMPOs are fully enforceable, apply across all states and territories and apply to people over the age of 18 years. If applied in Australia these orders would ensure a unique set of conditions specific to early and forced marriage and also enhanced legal tools available to authorities to assist in repatriation efforts.

Part Two- Focus on: A Modern Slavery Act for Australia

▪ **Question 32. What efforts did the government make to ensure that its policies, regulations, and agreements relating to migration, labor, trade, and investment did not facilitate forced labor?**

2017 was an encouraging year for Australia in taking steps to ensure that migration, labor, trade and investment does not facilitate forced labor. The Joint Standing Committee on Foreign Affairs, Defence and Trade convened an Inquiry into establishing a Modern Slavery Act (MSA) in Australia. The Committee should be congratulated for the rigorous way in which it carried out the Inquiry. GSANZ provided a submission⁸ to this Inquiry and is encouraged to see that many of the recommendations provided in the submission were supported by the

⁸ Good Shepherd Australia New Zealand (2017), Submission 111, *Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade: Inquiry into establishing a Modern Slavery Act*, accessible at: https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Submissions.

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Committee. The final report⁹ shows great depth in understanding the complexity of slavery in supply chains, and recommendations that if adopted will create a clear benchmark for eradicating slavery, one that will create robust policies and regulations relating to migration, labor, trade and investment.

Research suggests that several countries with the highest numbers of people in modern slavery are known to provide low-cost labour that produces consumer goods for markets in Australia. Further, it is well recognised that, of those forced into modern slavery, many are women¹⁰.

Whilst GSANZ supports the implementation of all of the Committee's recommendations, it is imperative for Australia to ensure that an Independent Anti-Slavery Commissioner be established as a first step to addressing implementation of the MSA. An Independent Anti-Slavery Commissioner will ensure consistency and accountability throughout the legislative reform process, and importantly begin to build the necessary relationships required with business and civil society in order for the implementation of the MSA to be successful.

GSANZ recommends that further consideration be given to the place of early and forced marriage in the broader landscape of modern slavery. There is an inconsistent approach between the Inquiry's key findings and recommendations and the Commonwealth Criminal Code (1995) (Cth). We note that forced marriage has not been directly dealt with by the United Kingdom's MSA to which Australia has referred heavily. We contend however, that this human rights abuse, so often precipitated by or intimately linked with human trafficking and slavery-like practices, should be contextualised with and included in any legislative framework that deals with modern slavery more broadly. This ought not to preclude options for dealing with early and forced marriage within family law and family violence systems rather give it a formalised framework to operate within.

⁹ Joint Standing Committee on Foreign Affairs and Trade (2017), *Hidden in Plain Sight*, Final Report, Inquiry into Establishing a Modern Slavery Act in Australia, accessible at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report.

¹⁰ The Global Slavery Index, 2016, *Global Findings*, accessible at: www.globalsslaveryindex.org/findings.

Summary of Recommendations

GSANZ recommends that the Australian Government:

1. Ensures that when the National Action Plan Human Trafficking and Slavery (2015-2019) (NAP) is renewed it includes measurable impacts and outcomes, and clearly allocated financial resources.
2. Adopt a consistent approach to data collection and consequent outcomes and impact measurement framework.
3. Introduce a suite of measures that improve access to services for individuals impacted by early and forced marriage, including but not limited to:
 - a. De-linking participation in a criminal justice process from access to necessary support services.
 - b. Funding appropriate and tailored accommodation services for individuals who can no longer remain at home due to physical and psychological abuse and/or threats to their safety.
 - c. Developing and implementing a centralised and coordinated point of contact, including a dedicated hotline. A centralised point of contact is necessary to ensure holistic support to individuals at risk, and leadership for government agencies, NGOs and civil-society a-like.
4. Design, establish and implement Forced Marriage Protection Orders (FMPOs) to enhance opportunities for individuals impacted by early and forced marriage to be repatriated back to Australia.
5. Establish an Anti-Slavery Commissioner to ensure consistency and accountability throughout the legislative reform process.
6. Give consideration to the place of early and forced marriage in the broader landscape of modern slavery, addressing the inconsistency between the Inquiry to establish a Modern Slavery Act for Australia and the Commonwealth Criminal Code Act 1995 (Cth).