

# **Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons**

**Attorney-General's Department  
Department of Immigration and Citizenship  
Australian Federal Police  
Department of Families, Housing, Community Services  
and Indigenous Affairs**

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Canberra ACT  
29 April 2009

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the *Attorney-General's Department*, the *Department of Immigration and Citizenship*, the *Australian Federal Police* and the *Department of Families, Housing, Community Services and Indigenous Affairs* in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name and title.

Ian McPhee  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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# Abbreviations

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AFP	Australian Federal Police
AGD	Attorney-General's Department
BVF	Bridging F Visa
CJSV	Criminal Justice Stay Visa
DIAC	Department of Immigration and Citizenship
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FTE	Full Time Equivalent (staff)
GST	Goods and Services Tax
IDC	Interdepartmental Committee
MOU	Memorandum of Understanding
OfW	Office for Women
OWG	Operational Working Group
SMO CT	Senior Migration Officer Compliance Trafficking
TSETT	Transnational Sexual Exploitation and Trafficking Teams





# **Summary and Recommendations**



# Summary

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## Introduction

1. **People trafficking** is generally defined as the movement of people across or within borders, through coercive or deceptive means, for the purpose of exploiting them. People trafficking is sometimes confused with **people smuggling** which is usually limited to illegally transporting people to another country for a fee, after which the relationship with the smuggler ends.

2. Globally, over 21 400 victims of trafficking were identified in 2006, although it is considered that many victims are not identified. People trafficking takes place for a variety of reasons including sexual servitude, domestic labour, forced marriage and 'sweatshop' labour.<sup>1</sup> Women, men, and children are victims. While there is limited hard information on the number of persons trafficked and the target industries into which they are trafficked into Australia,<sup>2</sup> evidence suggests that the trafficking of women into prostitution is the major, and certainly the most visible, form of trafficking taking place.

3. Some women who are trafficked into Australia are aware that they will be working in the sex industry, but have been deceived about the conditions and pay associated with that work. Others will be deceived about the nature of the work entirely.

4. Victims known to have been trafficked into Australia for sexual exploitation come predominantly from South East Asia, with the majority coming from Thailand. Traffickers facilitate the victim's entry into Australia by providing funds, airfares and visas.<sup>3</sup>

5. Victims may be controlled through violence and physical confinement, or through more subtle means such as threats to turn them over to the authorities, threats of violence to their family, and social, cultural and physical

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<sup>1</sup> It is estimated that, globally, around 79 per cent of victims are trafficked for the purposes of sexual exploitation, with 18 per cent trafficked for forced labour purposes (for example, labour in industries such as manufacturing, agriculture, hospitality and construction). Seventy nine per cent of identified victims were female (66 per cent adult, 13 per cent children). See United Nations Office on Drugs and Crime (UNODC), February 2009, *Global Report on Trafficking in Persons*, pp. 6,10-11.

<sup>2</sup> The number of people trafficked into Australia has been estimated to be well below 100 a year, although a number of other estimates are on the public record.

<sup>3</sup> Victims may or may not hold legitimate visas. Typically, student or holiday visas are obtained.

isolation that results in dependence. As a result, victims may not voluntarily report their experiences to law enforcement agencies. In these circumstances, agencies need to adopt active approaches to identify trafficking victims.

6. People trafficking is a crime under Australian law. The *Criminal Code Act 1995* was amended in 1999 to include slavery and sexual servitude, and in 2005, trafficking offences were included.<sup>4</sup>

## The Action Plan

7. By 2003, trafficking in persons was considered by both the Australian Parliament and the international community to be a growing form of transnational organised crime that needed to be addressed.<sup>5</sup>

8. In October 2003, the then Government announced a \$20.5 million package of measures to combat people trafficking. The announcement foreshadowed the development of the *Australian Government's Action Plan to Eradicate Trafficking in Persons*. The Action Plan was subsequently developed and published in June 2004.

9. An Interdepartmental Committee, chaired by the Attorney-General's Department (AGD), was given responsibility for coordinating the Action Plan, with the main implementers being the Department of Immigration and Citizenship (DIAC), the Australian Federal Police (AFP) and the Office for Women (OfW).

10. The measures outlined in the Action Plan were expected to significantly enhance the detection, investigation and prosecution of traffickers; improve the range of support available to victims; and help prevent trafficking of persons. In May 2007, the Australian Government allocated a further \$38.3 million over four years to continue and build on the 2003 measures, bringing total funding to some \$59 million.

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<sup>4</sup> In this report, 'people trafficking' crime types are to be distinguished from 'people-trafficking-related offences', which may include offences against the *Migration Act 1958* and other offences under the Criminal Code, such as money laundering and perverting the course of justice.

<sup>5</sup> Australia is a signatory to both the *United Nations Convention against Transnational Organised Crime* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. The 2003 US Department of State's annual *Trafficking in Persons Report* stated that 'human trafficking not only continues but appears to be on the rise worldwide', p. 5.

## The Audit

11. In response to a recommendation of the Parliamentary Joint Committee on the Australian Crime Commission, the Auditor-General agreed to carry out a performance audit of the management of the *Australian Government's Action Plan to Eradicate Trafficking in Persons*.<sup>6</sup>

### Audit objective and scope

12. The objective of the audit was to assess the arrangements for overseeing the Action Plan and whether the Plan's new measures have been administered effectively to deliver the intended results. To achieve this, the ANAO examined:

- the whole-of-government arrangements in place to monitor contributions to the achievement of outcomes; and
- whether the new measures have been effectively managed, monitored and assessed for performance.

13. The audit focused on the actions of DIAC, the AFP, AGD and OfW as the four key agencies responsible for coordinating and implementing the main new anti-trafficking measures set out in the Action Plan. It did not focus on contributions by other Australian Government agencies or state/territory police forces. The audit also did not examine the Community Awareness Strategy which is designed to educate the sex industry and its clients.

## Conclusion

14. The *Australian Government's Action Plan to Eradicate Trafficking in Persons*, in part, seeks to enforce Australia's anti-trafficking laws by bringing together police, immigration and victim support services under the lead of the Attorney-General's Department. In implementing the Action Plan, participating agencies have taken steps overseas to interrupt the flow of trafficking victims, whilst in Australia they have established processes to identify potential victims and persons engaged in trafficking; refer victims to investigating authorities; and support victims who are assisting law enforcement agencies. To date, 34 defendants have been charged with people

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<sup>6</sup> Government Response to the Report of the Parliamentary Joint Committee on the Australian Crime Commission "Inquiry into the trafficking of women for sexual servitude", tabled 9 November 2006, p. 3.

trafficking offences—of the cases finalised, nine defendants have had people trafficking offences proven.

15. The ANAO concluded that the whole-of-government oversight arrangements are broadly effective in sharing information and making decisions. However, the necessary performance information framework, including baseline measures to monitor contributions to the achievement of outcomes, has not been established. Each agency has implemented their respective new measures, although management effectiveness varies from agency to agency.

16. The People Trafficking Interdepartmental Committee (IDC), which is chaired by the Attorney-General's Department, is the principal mechanism for providing whole-of-government oversight of the Action Plan. While the IDC and its sub-committee are largely effective in sharing information and making decisions, consideration and resolution of some key issues, such as handling of cases involving particularly vulnerable victims, including mentally impaired victims and potential child trafficking cases, has not occurred. More systematic monitoring and reporting of issues that could affect the overall outcomes of the anti-trafficking measures, such as the effects of: the Trafficking Visa Framework; the allocation of investigative effort; and the support services for victims, would enable the IDC to better fulfil its whole-of-government oversighting role.

17. The Action Plan identified four key indicators for measuring success. However, no measurement or reporting of these indicators has occurred to date. The establishment of the necessary supporting performance information framework, including baseline measures, would enable much improved systematic reporting to Parliament and other stakeholders of the success on the anti-trafficking measures. This would go some way to addressing the concerns expressed by the Parliamentary Joint Committee on the Australian Crime Commission as to the effectiveness of the coordination and accountability arrangements for the overall government effort.<sup>7</sup>

18. A key baseline measure of the effectiveness of the measures outlined in the Action Plan is the trend in the number of victims trafficked into Australia. Arriving at such estimates is challenging but is considered achievable.

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<sup>7</sup> Parliamentary Joint Committee on the Australian Crime Commission, *Supplementary report to the Inquiry into the trafficking of women for sexual servitude*, August 2005, p. 11.

Developing a method to produce reasonable estimates of the approximate number of victims trafficked into Australia should be a priority. It would provide Parliament with some assurance that the Action Plan is achieving its intended results, and provide an indication of progress towards eradicating the trafficking in persons.

**19.** DIAC administers a People Trafficking Visa Framework that enables suspected victims to remain lawfully in Australia while they assist law enforcement agencies in criminal justice proceedings against their alleged traffickers. Further, DIAC's sex industry compliance teams locate the majority of trafficking cases investigated by the AFP. DIAC also has staff posted overseas, as a preventative measure, to help interrupt the flow of trafficked victims to Australia. While generally effectively administered, improved management information relating to DIAC's activities would provide greater assurance that the expected results are being achieved. The inconsistent application of the law in the granting of trafficking visas, where alleged victims already hold substantive visas<sup>8</sup> (for example, a Working Holiday Maker visa or student visa) at the time they are located, requires resolution. Better guidance on the granting of trafficking visas is required to ensure that consistent and equitable decisions are being made.

**20.** The AFP's Transnational Sexual Exploitation and Trafficking Teams (TSETT) investigate alleged trafficking cases, usually on the basis of a referral from external agencies. Since the introduction of the Action Plan in 2003–04, 131 cases have been investigated. However, a substantial proportion of AFP's people trafficking resources has been directed to non-trafficking crime types. Greater transparency and accountability on the use of Action Plan funds, and the related impact on efforts to combat people trafficking, would have made this apparent. The ANAO considers that the administration of TSETT has been hampered by a lack of planning and meaningful management information, and insufficient guidance for staff on the handling of trafficking cases.

**21.** The Office for Women (OfW) manages the outsourced program of support services for victims of trafficking. The victim support program is demand-driven. As at August 2008, 107 victims have been assisted under the various phases of support, which is a substantial shortfall in catered demand of up to 90 victims per year. While victims are receiving support services, there

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<sup>8</sup> A substantive visa includes all permanent visas, protection visas and temporary visas (with the exception of the criminal justice visa or enforcement visa). Bridging visas are not substantive visas.

has been a wide range of weaknesses in the administration of the program. For example, the specification of services in the contract and associated documents has been poor, and contract administration, in particular contract monitoring arrangements, had substantial shortcomings that limited OfW's ability to be assured that eligible victims were receiving appropriate services and that claims for payments were adequately supported. OfW responded positively to a number of suggestions made during the audit, and made a number of changes which, if implemented successfully, should improve its contract management.

22. Overall, measures introduced in the Action Plan to combat trafficking in persons, including associated funding, have provided a focus for the individual agencies concerned. Greater discipline in seeking to measure the effectiveness of strategies employed would enable the agencies to refine their individual approaches, and better inform government and the Parliament as to the success of the overall anti-trafficking strategy. Accordingly, the ANAO has made six recommendations aimed at strengthening whole-of-government arrangements and the management of particular measures by individual agencies.

## Key findings by chapter

### **Oversight of the anti-trafficking measures set out in the Action Plan (Chapter 2)**

23. The People Trafficking IDC is chaired by the AGD, with key IDC agencies being the AFP, OfW and DIAC. The IDC and its working groups, such as the recently created Operational Working Group (OWG), share information and make decisions. Meetings are held regularly and are well attended. Formal minutes of the IDC are kept and provided to members.

24. Some key issues, such as handling of cases involving particularly vulnerable victims, including mentally impaired victims and potential child trafficking cases, either had not been considered by the IDC or its working groups, or if they had, arrangements were inadequate to ensure that they remained on the agenda and were subject to periodic review until an appropriate resolution was identified. The IDC does not currently monitor some issues that could affect the overall outcomes of the anti-trafficking measures such as effects of: the Trafficking Visa Framework; the allocation of investigative effort; and the support services for victims.



25. The Action Plan identified four key indicators for measuring success which articulated the broad outcomes intended for the anti-trafficking program. However, from a management perspective, the indicators lack sufficient definition or preciseness to stand alone. To date, the necessary supporting framework that establishes a range of lower level outcome/output indicators, together with associated targets, benchmarks or activity levels has not been established at the whole-of-government level. No method to produce reasonable estimates of the approximate number of victims of trafficking, or a range that could be revised in light of better information over time, has been developed. Arriving at such estimates is challenging, but achievable, and is important for assessing the success of the anti-trafficking measures.

26. In the absence of a performance reporting framework for the anti-trafficking strategy, there has been no consolidated reporting of the strategy's success in meeting its intended outcomes. To date, performance reporting has been ad-hoc and piecemeal. The focus of such reporting has been agency-specific and outputs-oriented, rather than addressing the intended outcomes of the anti-trafficking strategy as a whole.

27. The Action Plan has not been formally updated since it was published in June 2004. There would be merit in updating the Plan in light of experience to date.

### **Administration of the People Trafficking Visa Framework (Chapter 3)**

28. The People Trafficking Visa Framework, implemented in January 2004, enables victims to remain lawfully in Australia to assist law enforcement agencies in criminal justice proceedings against their alleged traffickers.

29. DIAC has developed a range of guidance material to assist staff in administering the Trafficking Visa Framework. However, the absence of adequate guidance in a number of important areas has resulted in inconsistent application of the law in the granting of trafficking visas where alleged victims already held substantive visas—one DIAC office would routinely cancel a lawful non-citizen's substantive visa when granting a certain temporary trafficking visa, whereas another office would not. This has resulted in inconsistent outcomes for alleged victims. Those who had their substantive visa cancelled may have their future immigration options—that is, to apply for other types of visas—jeopardised; and those who had work rights, lost those rights.

30. Some trafficking visas have conditions to which holders must comply, for example, holders must not engage in work. However, DIAC's guidance does not address whether, and how, compliance with these conditions should be monitored.

31. DIAC is often the first agency to encounter potentially trafficked women through its compliance team raids of brothels and other work places. The ANAO observed two DIAC teams conducting sex industry compliance operations. The teams implemented DIAC's compliance procedures and the DIAC officers were sensitive to the circumstances of the women subjected to 'screening' for trafficking indicators. However, DIAC does not collect and analyse performance information on its referrals of potential victims to the AFP. Periodic review of relevant performance information would provide assurance that agreed standards for referrals from DIAC to the AFP are being met.

32. The establishment of a Senior Migration Officer Compliance Trafficking (SMO CT) position in Thailand was one of the key initiatives of the 2004 Action Plan. A 2006 review of the Action Plan, which was used to support an increase in SMO CT funding, concluded that the position has been effective in lessening the impact of people trafficking in Australia. The basis on which this conclusion was made is not clear. DIAC advised that it now has put in place a range of reporting measures for its SMO CT positions.

## **Transnational Sexual Exploitation and Trafficking Teams (Chapter 4)**

33. As part of the 2003 initiative to combat people trafficking, the AFP received additional funds to establish member mobile strike teams—the Transnational Sexual Exploitation and Trafficking Teams (TSETT).

34. TSETT investigations are generally triggered by a 'referral', that is, an allegation that a trafficking offence has been committed where the circumstances warrant an investigation by the AFP. Since the announcement of the anti-trafficking measures, the AFP has received a total of 131 referrals. Most referrals (83 per cent) have been from external sources, with DIAC making 61 per cent of the external referrals.

35. Over the period 2003–04 to 2007–08, DIAC made 256 trafficking 'referrals' to the AFP. However, most DIAC 'referrals' have been treated by the AFP as 'information reports' (which are recorded but not subject to an

investigation) generally because of the quality of the information provided. The AFP has not formally provided feedback to DIAC on this process.

36. Due to its illicit nature, the number of people trafficked is difficult to quantify. Consequently, in seeking funds to implement the Action Plan, the AFP was unable to accurately estimate the impact that TSETT would have on trafficking in persons. However, the ensuing Action Plan noted that TSETT would make a substantial impact on combating sexual servitude in Australia.

37. Notwithstanding the fact that the Action Plan has been underway for five years, and the considerable Parliamentary interest in this area, baseline data has not been established or used by TSETT, nor have performance indicators been established for its activities.

38. The AFP did not develop a strategic implementation plan for TSETT until 2008, five years after receiving initial funding, when additional funding for the expansion of the initiative was received. Furthermore, the first operational plan for TSETT was prepared in 2007 setting out annual objectives, strategies and performance indicators for TSETT. However, these are broadly defined and generic in nature and have application to a broad range of crime types. Consequently, internal performance reporting has focused on activity based reporting such as the number of investigations undertaken and number of prosecutions achieved, rather than the impact of the strategies on the objectives.

39. In addition to trafficking offences, TSETT staff also investigate other offences such as child sex crime offences. Investigating child sex crime offences has absorbed a substantial proportion of TSETT's investigative resources. For example, for the period 2003–04 to 2007–08, 55 per cent of hours attributed to TSETT crime types were used for the investigation of people trafficking/slavery crimes—the balance has been directed towards the investigation of child sex crime matters.

40. While Child Sex Tourism was incorporated into TSETT in 2003 and was explicitly noted as a component of TSETT at the time of the provision of additional resources for TSETT in the 2007–08 Budget, it is not clear whether the Government envisaged that such a large component of TSETT resources would ultimately be used for this purpose. It is also not clear that information on the use of TSETT resources has been provided to the People Trafficking IDC or to government.

41. The AFP has developed a range of agency-wide guidance that is applicable to all crime types. However, there is no formal TSETT-specific guidance or standard operating procedures to support TSETT officers. For example, there is no formal guidance on how to make a decision on whether to sponsor an alleged victim for a trafficking visa. There is also limited recording of reasons for decisions to withdraw support from some victims.

## **Support for Victims of People Trafficking Program (Chapter 5)**

42. The Office for Women (OfW) is responsible for the Support for Victims of Trafficking in Persons Program (the Program) which is intended to provide support to victims of people trafficking who are both willing and able to assist with the criminal investigation and prosecution of people trafficking offences within Australia. The Program assists victims of trafficking in three Phases.

43. The Program is demand-driven—victim support workload is driven by case referrals from the Australian Federal Police (AFP). The Program was funded to cater for up to 90 victims a year. Uptake of available support has fallen substantially short of the planned numbers. There was no evidence that victims referred to the Service Provider were not receiving services. In this, OfW are meeting the basic aims of the program.

44. Delivery of the Program has been outsourced. During the audit, the service delivery contract was re-tendered and a new service provider was engaged. At the same time, OfW made many changes aimed at improving the contract and its contract management arrangements. Realisation of these improvements are contingent on the introduction of revised monitoring and reporting arrangements.

45. The contract documentation prepared by OfW provided a basic outline of services and requirements. However, there were a number of weaknesses with the contract and associated documents in terms of specifying: eligibility for the Program; 'Phase 3' services; and service quality. In response to the initial audit findings, OfW advised that they have made improvements to the contract documentation. The ANAO found that whilst many improvements have been made, some problems remain, particularly in terms of clearly specifying eligibility for services.

46. OfW does not have a documented process for managing the contract. The ANAO observed weaknesses in risk management, guidance for staff, management of relationship with the service provider, and the reporting framework. In response to the audit, OfW advised that it had made changes to:

processes to ensure compliance with reporting requirements; complaints handling; expenditure reporting; and validation of expenditure claims. Data quality and ensuring the eligibility of clients remain areas for improvement.

47. Unlike other agencies responsible for implementing anti-trafficking measures under the Action Plan, OfW has sought to measure its performance as part of its particular Department's Outcomes/Outputs framework, and report results in the Department's Annual Report.<sup>9</sup> OfW recognised weaknesses in previous performance reporting indicators and introduced new measures for 2009–10 that align with the Department's objectives. These new measures are an improvement, however, the quality standards are not easily measured in a quantifiable way.

## Agency summary responses

48. Summary responses to the proposed audit report and its recommendations were provided by the Attorney-General's Department, the Department of Immigration and Citizenship, the Australian Federal Police and the Department of Families, Housing, Community Services and Indigenous Affairs. These responses are set out below.

### Attorney-General's Department

49. Trafficking in persons is a complex form of transnational crime. Effective cooperation between government and civil society, and between government agencies is essential to combating this crime. Australia's whole-of-government response to trafficking in persons has provided support to victims of trafficking for sexual exploitation and for other forms of exploitative labour. It has also seen the successful prosecution and conviction of a number of people traffickers. AGD welcomes the ANAO's performance audit of the Action Plan to Eradicate Trafficking in Persons; and considers that the audit's findings will contribute to more effective and transparent implementation of the anti-trafficking strategy. AGD has accepted the ANAO's recommendations regarding monitoring, data and performance indicators, while noting the UNODC's observations that "accurate statistics on the magnitude of the human trafficking problem at any level are elusive and unreliable" (*Trafficking in Persons: Global Patterns 2006*).

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<sup>9</sup> OfW is part of the Department of Families, Housing, Community Services and Indigenous Affairs.

50. The IDC, which was established to develop Australia's anti people trafficking strategy, has a continuing responsibility to monitor and report on its implementation and to report to Government on its effectiveness. AGD agrees there is benefit in formalising procedures for referring emerging policy issues for IDC consideration. While individualised case management remains the most appropriate way to provide assistance to victims, AGD agrees it is appropriate to consider whether there is a need to develop standard procedures for particularly vulnerable victims of trafficking. AGD notes that while there has been extensive and regular reporting under the broad outcome statements contained in the Action Plan, there would be benefit in developing more precise performance indicators and producing a single, consolidated annual report. AGD will work with the IDC to this end.

## **Department of Immigration and Citizenship**

51. The Department of Immigration and Citizenship (DIAC) welcomes the findings of the audit report. Enhanced guidelines have been provided to DIAC's Service Delivery Network on the granting of visas under the People Trafficking Visa Framework where a person holds a substantive visa. DIAC notes that access to the *Support for Victims of Trafficking Program* is currently tied to a person holding a Bridging F Visa. The Government is currently considering a range of enhancements to the Anti-trafficking strategy.

52. The report suggests improving management information on its people trafficking referrals to the Australian Federal Police by periodically reviewing relevant performance information. This is being considered as part of DIAC's ongoing quality assurance processes.

## **Australian Federal Police**

53. The AFP has welcomed the opportunity to contribute to the ANAO performance audit of the management of the Action Plan and broadly agrees with the recommendations of this report. While individual agency activity has been occurring with respect to this crime type this audit has identified further measures to increase the effectiveness of the coordination and made recommendations to improve transparency and accountability from a whole of government perspective.

54. The recommended AFP initiatives highlighted within this audit report have been adopted and the AFP has either implemented or is in the process of implementing strategies to address the issues raised. The remedial strategies will provide greater levels of transparency and accountability with respect to

funding arrangements and will provide regular activity reporting towards the identified deliverables and benchmarks within a whole of government context.

## **Department of Families, Housing, Community Services and Indigenous Affairs**

55. The Office for Women acknowledges that while the Support for Victims of People Trafficking Program, as reflected in the Report, has met its requirements in providing services to eligible victims of people trafficking, the audit process has unveiled further administrative improvements that can be made. The Office for Women introduced a number of these improvements during the audit process and is currently implementing further improvements through a new contract with the successful tenderer for case management services under the Program.

# Recommendations

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Set out below are the ANAO's recommendations aimed at strengthening whole-of-government arrangements in relation to the anti-people trafficking measures and the management of particular measures by individual agencies. Report references and abbreviated agency responses are included. More detailed responses are in the body of the report.

**Recommendation No.1**  
**Para 2.15** The ANAO recommends that, in order to improve whole-of-government monitoring of the measures to combat trafficking, the AGD ensures that the Trafficking IDC or its sub-committee:

- has appropriate processes to identify and initiate responses to cases involving particularly vulnerable victims, including mentally impaired victims and children; and
- systematically monitors issues that could affect overall outcomes including: the Trafficking Visa Framework; the allocation of investigative effort; and the support services for victims.

**AGD response:** *Agreed*



**Recommendation  
No.2  
Para 2.29**

The ANAO recommends that the IDC, led by AGD, in consultation with relevant agencies, strengthen the arrangements for reviewing progress and measuring results of the anti-trafficking strategy by:

- developing an appropriate whole-of-government performance framework, including a method to establish reasonable estimates of the approximate number of victims of trafficking, to support the broad outcomes articulated by the Australian Government in 2004;
- identifying appropriate targets, benchmarks or activity levels against key performance indicators, where possible, to enable future results to be interpreted against expectations;
- reporting on outcomes annually; and
- ensuring that the performance information provided by key contributing agencies is aligned to the whole-of-government performance framework.

**AGD response:** *Agreed*

**Recommendation  
No.3  
Para 3.23**

The ANAO recommends that DIAC strengthen its administration of the People Trafficking Visa Framework by:

- enhancing its guidance on the granting of trafficking visas to those who have substantive visas, and subsequently monitoring decisions across State Offices for consistency; and
- improving management information on its people trafficking referrals to the Australian Federal Police by periodically reviewing relevant performance information.

**DIAC response:** *Agreed*

**Recommendation No.4** The ANAO recommends that the AFP improve the transparency and accountability of TSETT by:

**Para 4.26**

- using baseline data, such as estimates of the number of victims of trafficking, to measure TSETT's impact in combating people trafficking; and
- developing key performance indicators and associated targets, benchmarks or activity levels against which its activities can be assessed and reported.

**AFP response:** *Agreed*

**Recommendation No.5** The ANAO recommends that the AFP improve the transparency and accountability of TSETT funding by

**Para 4.43**

regularly reporting to the People Trafficking Interdepartmental Committee on decisions about the use of resources intended for anti-trafficking activities and of their expected impact on the anti-trafficking package as a whole.

**AFP response:** *Agreed*

**Recommendation No.6** The ANAO recommends that the AFP strengthen the management framework for its anti-trafficking initiatives by developing TSETT-specific guidance

**Para 4.50**

and/or standard operating procedures for its officers.

**AFP response:** *Agreed*

# **Audit Findings and Conclusions**



# 1. Introduction

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*This chapter provides an overview of people trafficking into Australia and the Australian Government's Action Plan to combat that trafficking. It also outlines the audit approach.*

## Background

**1.1 People trafficking** is generally defined as the movement of people across or within borders, through coercive or deceptive means, for the purpose of exploiting them.<sup>10</sup> People trafficking is sometimes confused with **people smuggling** which is usually limited to illegally transporting people to another country for a fee, after which the relationship with the smuggler ends.

**1.2** Globally, over 21 400 victims of trafficking were identified in 2006, although it is considered that many victims are not identified. People trafficking takes place for a variety of reasons including sexual servitude, domestic labour, forced marriage and 'sweatshop' labour.<sup>11</sup> Women, men, and children are victims. While there is limited hard information on the number of persons trafficked and the target industries into which they are trafficked into Australia, evidence suggests that the trafficking of women into prostitution is the major, and certainly the most visible, form of trafficking taking place.

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<sup>10</sup> The more precise definition used by the United Nations is: 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of slavery, servitude or the removal of organs' (United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, November 2000).

<sup>11</sup> It is estimated that, globally, around 79 per cent of victims are trafficked for the purposes of sexual exploitation, with 18 per cent trafficked for forced labour purposes (for example, labour in industries such as manufacturing, agriculture, hospitality and construction). Seventy nine per cent of identified victims were female (66 per cent adult, 13 per cent children). See United Nations Office on Drugs and Crime (UNODC), February 2009, *Global Report on Trafficking in Persons*, pp. 6,10-11.

**1.3** Some women who are trafficked into Australia are aware that they will be working in the sex industry, but have been deceived about the conditions associated with that work. Others will be deceived about the nature of the work entirely:<sup>12</sup>

Women who are trafficked into Australia might be aware that they will be working in the sex industry upon their arrival. What they do not know, however, is that they might be held in captivity, be subject to physical and sexual violence and intimidation, be forced to engage in unsafe sexual practices, be unable to refuse clients or certain services, and be obliged to pay off huge debts to their traffickers. These women are victims of trafficking, even if they consented to work in the sex industry.<sup>13</sup>

**1.4** Victims known to have been trafficked into Australia for sexual exploitation come predominantly from South East Asia, with the majority coming from Thailand. Traffickers facilitate the womens' entry into Australia by providing funds, airfares and visas.<sup>14</sup>

**1.5** On arrival, victims frequently realise they have been deceived. Even if victims are aware of the likely involvement in prostitution, they realise that the conditions are different to that expected. Reports of victims being required to service 700–1000 clients, to pay off 'debts' of \$30 000–\$50 000, are typical.

**1.6** Victims may be controlled through violence and physical confinement, or through more subtle means such as threats to turn them over to the authorities, threats of violence to their family (in Australia or their country of origin), and social, cultural and physical isolation that results in dependence.<sup>15</sup> As a result, victims may not voluntarily report their experiences to law enforcement agencies.<sup>16</sup> In these circumstances, agencies need to adopt active approaches to identify trafficking victims.

**1.7** Due to its illicit nature, the number of people trafficked is difficult to quantify. For example, in 2004 the number of people trafficked into Australia

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<sup>12</sup> Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, June 2004, p. viii.

<sup>13</sup> *Australian Government's Action Plan to Eradicate Trafficking in Persons*, June 2004, p. 2.

<sup>14</sup> Victims may or may not hold legitimate visas. Typically, student, Working Holiday Maker, or visitor visas are obtained.

<sup>15</sup> Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice*, No.347, December 2007, *Law enforcement responses to trafficking in persons: challenges and emerging good practice*, p. 2.

<sup>16</sup> *ibid.*, p. 2.

was estimated to be well below 100,<sup>17</sup> although a number of other estimates are on the public record.<sup>18</sup>

**1.8** People trafficking is a crime under Australian law. The *Criminal Code Act 1995* was amended in 1999 to include slavery and sexual servitude, and in 2005, trafficking offences were included (see Table 1.1).

**Table 1.1**

**People trafficking crimes**

Crime	<i>Criminal Code Act 1995</i>
<b>Slavery</b>	<b>Division 270</b> makes it an offence to possess a slave or exercise over a slave any powers attaching to the right of ownership, engage in slave trading or enter into any commercial transaction involving a slave.
<b>Sexual Servitude and Deceptive Recruiting</b>	<b>Division 270</b> makes it an offence for a person to cause another person to enter into or remain in sexual servitude or conduct any business that involves the sexual servitude of others. There are also offences relating to the deceptive recruitment of a person to perform sexual services.
<b>Trafficking in Persons and Debt Bondage</b>	<b>Division 271</b> makes it an offence to traffic persons, whether internationally or domestically. There are also offences relating to debt bondage of persons, forced labour and the trade in human organs.

Source: AFP Website.

Note: In this report, 'people trafficking' crime types are to be distinguished from 'people-trafficking-related offences', which may include offences against the *Migration Act 1958* and other offences under the Criminal Code, such as money laundering and perverting the course of justice.

## Overview of the Action Plan

**1.9** By 2003, trafficking in persons was considered by both the Australian Parliament and the international community<sup>19</sup> to be a growing form of transnational organised crime that needed to be addressed.

<sup>17</sup> *Australian Government's Action Plan to Eradicate Trafficking in Persons*, June 2004, p. 2. AGD advised the ANAO that this figure was an extrapolation based on the number of victims that had come to the notice of government agencies. The ANAO notes that the uncertainty of this figure is evident in advice to government at the time that under the current arrangements the figure could be less than 100 per year.

<sup>18</sup> The Parliamentary Library reported a wide range of estimates, including a 1995 estimate from the AFP that up to 500 trafficked women were working illegally in Sydney at any given time. The Brief also noted that, in 1999, in the second reading speech for the Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999, Senator Ian Macdonald remarked that: 'intelligence from Australian and overseas sources confirms that the problem is a significant one for Australia'. He noted that the AFP had received information relating to 14 cases over the previous eighteen months, and that the National Crime Authority (NCA) was aware of 25 women being trafficked into Australia between 1992 and 1996. See: Current Issues Brief No.28 2002–03: *Trafficking and the Sex Industry: from Impunity to Protection*.

<sup>19</sup> For example the 2003 US Department of State annual *Trafficking in Persons Report* stated that 'human trafficking not only continues but appears to be on the rise worldwide', p. 5.

**1.10** In October 2003, the then Government announced a \$20.5 million package of measures to combat people trafficking. The announcement foreshadowed the development of an *Australian Government Action Plan to Eradicate Trafficking in Persons*. The Action Plan was subsequently developed and published in June 2004.

**1.11** An Interdepartmental Committee, chaired by the Attorney-General's Department (AGD) was given responsibility for coordinating the Action Plan, with the main implementers being the Department of Immigration and Citizenship (DIAC), the Australian Federal Police (AFP) and the Office for Women (OfW).<sup>20</sup>

**1.12** The measures outlined in the Action Plan were expected to significantly enhance the detection, investigation and prosecution of traffickers, improve the range of support available to victims and help prevent trafficking of persons. In brief, the key measures included:

- a new Senior Migration Officer Compliance Trafficking in Thailand—responsible for implementing DIAC's initiatives to combat trafficking in persons across the Asian region, including working closely with local authorities and the AFP to identify trafficking organisers;
- new visa arrangements for potentially trafficked persons;
- the establishment of the AFP's Transnational Sexual Exploitation and Trafficking Teams—an intelligence-driven mobile strike force of 23 Full Time Equivalent (FTE) staff to actively target and investigate trafficking syndicates; and
- victim support, including accommodation, living expenses and a range of other services, provided through a contracted case manager and managed by the OfW.

**1.13** In May 2007, the Australian Government allocated a further \$38.3 million over four years to continue and build on the 2003 measures,<sup>21</sup> bringing total funding to some \$59 million (see Table 1.2).

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<sup>20</sup> A range of other agencies are also involved, including the Australian Crime Commission, the Australian Institute of Criminology, the Australian Agency for International Development, the Commonwealth Director of Public Prosecutions and the Department of Foreign Affairs and Trade.

<sup>21</sup> Additional funding included seven more AFP FTE staff, two DIAC Senior Migration Officer Compliance Trafficking staff as well as additional funding for OfW, the Attorney General's Department, the Commonwealth Director of Public Prosecutions and the Australian Institute of Criminology.



**Table 1.2****Australian Government funding for the anti-trafficking measures (\$m)**

Agency	2003–04	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11	TOTAL
AGD	0.2	0.2	0.1	0.1	0.7	0.5	0.6	0.6	<b>3</b>
DIAC	0.5	0.5	0.5	0.5	1.4	1.2	1.2	1.2	<b>7</b>
AFP	3.0	2.9	2.9	3.0	4.5	3.9	3.9	4.0	<b>28.1</b>
OfW	1.0	1.3	1.7	1.7	1.0	1.0	1.0	1.1	<b>9.8</b>
OTHER	0.1	0.1	0.1	0.1	1.5	2.5	3.3	3.3	<b>11</b>
<b>TOTAL</b>	<b>4.8</b>	<b>5.0</b>	<b>5.3</b>	<b>5.4</b>	<b>9.1</b>	<b>9.1</b>	<b>10.0</b>	<b>10.2</b>	<b>58.9</b>

Source: ANAO analysis.

Notes: Numbers have been rounded.

'Other' includes AusAID (2003–04 to 2006–07) and Commonwealth Director of Public Prosecutions and the Australian Institute of Criminology (2007–08 to 2010–11).

OfW figures include funding initially given to the Departments of Prime Minister and Cabinet, Health and Ageing and Family and Community Services.

## Parliamentary Joint Committee on the Australian Crime Commission

**1.14** In June 2004, the Parliamentary Joint Committee on the Australian Crime Commission completed its *Inquiry into the trafficking of women for sexual servitude*.<sup>22</sup> During the inquiry, the Government introduced the Action Plan.

**1.15** Given the timing of the Action Plan's release, the Committee was unable to offer any assessment of the effectiveness of the Action Plan's new measures. However, in 2005 the Committee reassessed the situation and released a supplementary report. The supplementary report noted, among other things, that:

An issue of some concern to the Committee at the time of its first report was the effectiveness of the coordination and accountability arrangements for the overall government effort. It seemed to the Committee that, notwithstanding the existence of the inter-departmental committee, no one individual—be it government minister or official—was really responsible for the final outcome or effectiveness of the National Action Plan.

For this reason, the Committee recommended the creation of more formalised arrangements, including the appointment of a Chairperson and Charter.<sup>23</sup>

<sup>22</sup> Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, June 2004.

**1.16** Although the then Government had yet to respond to the first report's recommendation, the Committee reiterated this concern in its supplementary report:

the concern remains that in any situation such as this, where multiple agencies share responsibility, no-one has either the authority to ensure that actions are taken, nor is it necessarily clear who was responsible for an action, or a failure.<sup>24</sup>

**1.17** The supplementary report went on to recommend that *the ANAO consider undertaking an evaluation of the results of the National Action Plan, after three years of operation.*<sup>25</sup>

**1.18** The Government formally responded to the first report in November 2006, rejecting the recommendation for more formal coordination arrangements. It considered that *the Committee's objectives of coordinated oversight of anti-trafficking measures can be achieved using the existing [Inter-departmental Committee], without the need for further formalisation of structures.*<sup>26</sup>

**1.19** In June 2007, the Auditor-General agreed to carry out a performance audit of the management of the Action Plan to Eradicate Trafficking in Persons, and in February 2008 the ANAO commenced the audit.

## The Audit

### Audit objective and scope

**1.20** The objective of the audit was to assess the arrangements for overseeing the Action Plan and whether the Plan's new measures have been administered effectively to deliver the intended results. To achieve this, the ANAO examined:

- the whole-of-government arrangements in place to monitor contributions to the achievement of outcomes; and

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<sup>23</sup> Parliamentary Joint Committee on the Australian Crime Commission, *Supplementary report to the Inquiry into the trafficking of women for sexual servitude*, August 2005, p. 11.

<sup>24</sup> *ibid.*, p. 12.

<sup>25</sup> *ibid.*, Recommendation 3.

<sup>26</sup> *Government Response to the Report of the Parliamentary Joint Committee on the Australian Crime Commission "Inquiry into the trafficking of women for sexual servitude" released in June 2004*, (tabled 9 November 2006), p. 3.

- whether the new measures have been effectively managed, monitored and assessed for performance.

**1.21** The audit focused on the actions of DIAC, the AFP, AGD and OfW as the four key agencies responsible for coordinating and implementing the main new anti-trafficking measures set out in the Action Plan. It did not focus on contributions by other Australian Government agencies or state/territory police forces. The audit also did not examine the Community Awareness Strategy, which is designed to educate the community, and in particular the sex industry and its clients, about matters related to trafficking, the reporting of suspicious activity, and the availability of support for victims.<sup>27</sup>

## Audit approach

**1.22** This audit was conducted throughout 2008. The audit team undertook fieldwork in Canberra at DIAC, the AFP, AGD and OfW. The team also visited selected auditee offices in Sydney, Melbourne and Brisbane, and undertook fieldwork in the Australian Embassy in Bangkok where DIAC's first Senior Migration Officer Compliance Trafficking was appointed in 2004. In addition, the ANAO accompanied DIAC sex industry compliance teams on two operations in Sydney and Melbourne.

**1.23** The ANAO interviewed relevant officers in Canberra, Melbourne, Brisbane and Bangkok and reviewed related files and documentation. The ANAO also consulted with community stakeholders to gain their perspective on the implementation of the Action Plan.

**1.24** The audit was conducted in accordance with the ANAO's auditing standards at an approximate cost of \$453 000.

## Report Structure

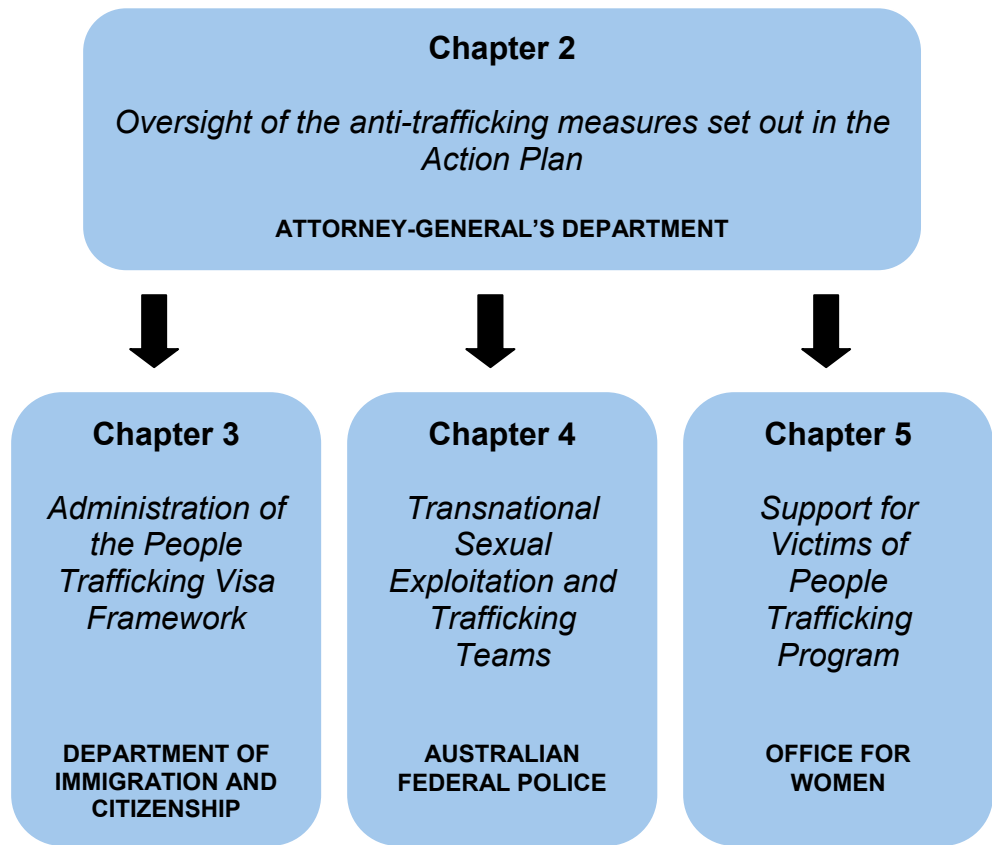
**1.25** The audit findings are reported in the following chapters, as illustrated in Figure 1.1.

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<sup>27</sup> *Australian Government's Action Plan to Eradicate Trafficking in Persons*, June 2004, pp. 14-15. AGD advised that when implemented, the strategy was 'extremely targeted and aimed to create awareness of trafficking-related issues amongst people working in the sex industry and those who are likely to come into contact with victims of trafficking.'

**Figure 1.1**

**Structure of the remainder of the report**



## 2. Oversight of the anti-trafficking measures set out in the Action Plan

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*This chapter examines the arrangements to oversight the management and delivery of the anti-trafficking measures set out in the Action Plan by Australian Government agencies. It also considers the arrangements for measuring and reporting on progress.*

### Introduction

**2.1** In the Action Plan, the Australian Government recognised that effective coordination between contributing agencies would be important to the success of its anti-trafficking measures. To assess how these coordination arrangements are working, the ANAO examined whether:

- communication and information sharing is taking place between agencies; and
- appropriate arrangements have been put in place to measure and report on the anti-trafficking measures' success at the whole-of-government level.

### Communication and information sharing arrangements

**2.2** Better practice suggests that the lead agency in an across-agency initiative should establish processes for the sharing and flow of information between agencies.<sup>28</sup> The key coordination mechanism in this regard is the People Trafficking Interdepartmental Committee and the Operational Working Group.

### Interdepartmental Committee (IDC)

**2.3** The People Trafficking IDC was established in March 2003 to develop a whole-of-government strategy to combat people trafficking. Following the announcement of the strategy in October 2003,<sup>29</sup> the IDC's mandate evolved to

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<sup>28</sup> ANAO *Better Practice Guide—Implementation of Programme and Policy Initiatives*, October 2006, Canberra, p. 48.

<sup>29</sup> A Joint Ministerial news release of 13 October 2003 outlined a \$20 million package of initiatives to combat people trafficking, and announced that a *Commonwealth Action Plan to Eradicate Trafficking in Persons* would be developed to coordinate the initiatives.

monitor(ing) the implementation of the Australian Government's measures to combat trafficking.<sup>30</sup> The IDC is chaired by the Attorney-General's Department (AGD).<sup>31</sup>

In undertaking this role, it [the IDC] provides a *co-ordinated oversight of the anti-trafficking measures* and acts as an *overall steering group which also discusses emerging issues, particularly those which cross portfolios*.<sup>32</sup>

**2.4** To facilitate across-agency coordination, membership of the IDC is appropriately broad-based and includes:

- agencies specifically funded under the Action Plan to deliver anti-trafficking measures, that is, the Australian Federal Police (AFP), the Office for Women (OfW), AGD and the Department of Immigration and Citizenship (DIAC); and
- a wider group of agencies that have an on-going interest in people trafficking issues, such as the Department of Foreign Affairs and Trade which coordinates Australia's international interests.<sup>33</sup>

**2.5** The IDC meets approximately four times a year to discuss and make decisions relating to a broad range of people trafficking issues from Australia's international position on people trafficking to the status of activities being implemented by individual agencies.

**2.6** Overall, the ANAO found that meetings are well attended and facilitate information sharing and decision-making on issues. Formal minutes are kept and provided to members.

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<sup>30</sup> *Government Response to the Report of the Parliamentary Joint Committee on the Australian Crime Commission "Inquiry into the trafficking of women for sexual servitude released in June 2004"*, November 2006, pp. 3-4.

<sup>31</sup> AGD is the lead agency with *primary responsibility for monitoring implementation* of the Australian Government's measures (Joint Committee on the Australian Crime Commission, Reference: Trafficking in women for sexual servitude, Committee Hansard, Thursday, 26 February 2004, ACC14).

<sup>32</sup> *Government Response to the Report of the Parliamentary Joint Committee on the Australian Crime Commission "Inquiry into the trafficking of women for sexual servitude released in June 2004"*, November 2006, pp. 3-4. The then Government did not accept Recommendation 2 of the Inquiry which, among other things, recommended that the existing IDC be formalised by the appointment of a Chairperson and charter and be provided with authority to issue recommendations to any relevant authority to address defects in the system.

<sup>33</sup> Members of the IDC include the Attorney-General's Department (Chair), Australian Crime Commission, Australian Institute of Criminology, AusAID, Commonwealth Director of Public Prosecutions, Department of Foreign Affairs and Trade, Department of Immigration and Citizenship, Office for Women, the Department of the Prime Minister and Cabinet and, as of March 2008, the Department of Employment, Education and Workplace Relations.

## *IDC Working Groups*

**2.7** At the time of audit fieldwork, the IDC was supported by an ad-hoc working group. The main role of the working group, which had been in existence for some years, was to develop communication and referral protocols to facilitate case management across the operational agencies. The ANAO was unable to form an opinion on the effectiveness of the working group as records of meetings, discussions and outcomes had not been kept. Sound practice would have been for the working group to maintain appropriate records to facilitate transparency and accountability in this area.

**2.8** Later in the audit, an Operational Working Group (OWG), consisting of the AFP, OfW, AGD, DIAC and the Commonwealth Director of Public Prosecutions was formed, to replace the previous ad-hoc working group. The OWG is chaired on a rotational basis and meets periodically to discuss people trafficking issues at the operational level, including individual cases. Its role includes identifying policy issues arising out of individual cases and bringing them before the IDC.<sup>34</sup> In response to the audit, AGD advised that the OWG keeps minutes.

## **Further issues need to be addressed**

**2.9** While the ANAO found that there are largely effective fora for sharing information and making decisions, it found a number of relevant issues which had not been addressed and/or effectively resolved by the IDC or OWG. These issues are outlined below.

### *1—mentally impaired victims*

**2.10** There have been cases of alleged victims of trafficking being mentally not fit to decide whether to continue to assist the AFP. The IDC/OWG had not considered the policy implications, nor developed a way forward on managing mentally impaired victims, to ensure that their rights and interests are adequately protected. This is particularly relevant where victims are not eligible for Australian-based guardianship support services due to their status

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<sup>34</sup> AGD advised that a National Roundtable on People Trafficking had also been established. The first meeting of the Roundtable was convened by the Minister for Home Affairs on 23 June 2008. The Roundtable comprises non-government organisations and industry body representatives and members of the IDC. It is intended to be a mechanism for the IDC's engagement with non-government organisations and a forum in which government and non-government members are able to share information and best practice, and raise and resolve issues. The scope of this audit did not include the Roundtable.

as non-citizens. The ANAO considers that the IDC/OWG would be the appropriate fora to discuss these issues and initiate responses to them. In response to the audit, the AGD advised that it would 'seek to develop protocols to assist agencies manage such victims' through the OWG, and if there were policy issues, through the IDC.

## ***2—child trafficking***

**2.11** The IDC/OWG had not developed a coordinated approach to allegations of child trafficking. This issue had been raised at the IDC in relation to an investigation into an allegation relating to child trafficking/child sex tourism in 2006.<sup>35</sup> It had not been decided how and when State law enforcement and child welfare agencies should be engaged; and how operational agencies should respond if a trafficked child is identified. At the time of audit fieldwork, this remained the case, although AGD subsequently advised that the Government and the IDC were now actively considering policy responses to issues of child trafficking.

## ***3—other issues that could be addressed by the IDC/OWG***

**2.12** The ANAO also identified a number of other issues that would lend themselves to consideration and resolution by the IDC and/or the OWG in fulfilling the role of monitoring the implementation of measures to combat trafficking, and discussing emerging issues that cross portfolios. These issues include monitoring the effects on the overall outcomes of the anti-trafficking measures of: the Trafficking Visa Framework;<sup>36</sup> the allocation of investigative effort on the identification of victims outside the sex industry and metropolitan centres;<sup>37</sup> and support services for victims<sup>38</sup>. Appendix 1 provides more detail on these issues and the ANAO's suggestions for how the IDC/OWG could address them.

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<sup>35</sup> This allegation was initially thought to be a potential child trafficking offence, however, it was later considered to be a child sex tourism matter.

<sup>36</sup> The Trafficking Visa Framework was created so that unlawful citizens (victims) would not be subject to the mandatory detention provisions of the *Migration Act 1958*. The Framework is linked to victim support. Chapter 3 examines the administration of the Framework.

<sup>37</sup> Chapter 4 examines the AFP's Transnational Sexual Exploitation and Trafficking Teams.

<sup>38</sup> Chapter 5 examines OfW's administration of the Support for Victims of People Trafficking Program.



## Conclusion—Communication and information sharing arrangements

**2.13** Overall, the ANAO considers that the IDC is a largely effective forum for sharing information and making decisions. AGD is the chair of the IDC, and is the lead agency with primary responsibility for developing that coordinated approach and for monitoring implementation. Meetings are held regularly and are well attended.

**2.14** However, some key issues either had not been considered by the IDC/OWG, or if they had, arrangements were inadequate to ensure that they remained on the agenda and were subject to periodic review until an appropriate resolution was identified. Addressing these issues would strengthen the IDC/OWG to better fulfil the role of monitoring the implementation of measures to combat trafficking, and discussing emerging issues that cross portfolios.

## Recommendation No.1

**2.15** The ANAO recommends that, in order to improve whole-of-government monitoring of the measures to combat trafficking, the AGD ensures that the Trafficking IDC or its sub-committee:

- has appropriate processes to identify and initiate responses to cases involving particularly vulnerable victims, including mentally impaired victims and children; and
- systematically monitors issues that could affect overall outcomes including: the Trafficking Visa Framework; the allocation of investigative effort; and the support services for victims.

**AGD response:** *Agreed*

**2.16** Appendix 5 details AGD's complete response to the recommendations.

## Measuring and reporting on progress against the anti-trafficking measures

**2.17** Better practice suggests that the lead agency of a whole-of-government initiative should ensure that program implementation is meeting

the government's objectives, performance is monitored, and the commitments by other agencies (as well as their own) are being met.<sup>39</sup>

## The extent of people trafficking at the time of the Action Plan

**2.18** As discussed in Chapter 1, the number of people trafficked is difficult to quantify, due to its illicit nature. However, arriving at a reasonable estimate is not impossible.<sup>40</sup> In 2003, at the time the Action Plan was being considered by the Australian Government, the extent of people trafficking was unknown, although a number of estimates were on the public record.<sup>41</sup> The Action Plan itself stated that *the number of people trafficked into Australia is estimated to be well below 100*.<sup>42</sup>

**2.19** At the time of the audit, AGD was still not in a position to provide an estimate on the number of trafficking victims,<sup>43</sup> but advised that research currently being conducted by the Australian Institute of Criminology may yield useful data on the extent of people trafficking in Australia. While appreciating the challenge, the ANAO considers that developing a method to produce reasonable estimates of the approximate number of victims is

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<sup>39</sup> ANAO *Better Practice Guide—Implementation of Programme and Policy Initiatives*, October 2006, p. 15.

<sup>40</sup> Judy Putt, Australian Institute of Criminology, June 2007, 'Human trafficking to Australia: a research challenge', *Trends and Issues in crime and criminal justice*, No.338.

<sup>41</sup> The Parliamentary Library Current Issues Brief No.28 2002–03: *Trafficking and the Sex Industry: from Impunity to Protection* reported a wide range of estimates, including a 1995 estimate from the AFP that up to 500 trafficked women were working illegally in Sydney at any given time. The Brief also noted that, in 1999, in the second reading speech for the Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999, Senator Ian Macdonald remarked that: 'intelligence from Australian and overseas sources confirms that the problem is a significant one for Australia'. He noted that the AFP had received information relating to 14 cases over the previous eighteen months, and that the National Crime Authority was aware of 25 women being trafficked into Australia between 1992 and 1996.

<sup>42</sup> AGD advised the ANAO that this figure was an extrapolation based on the number of victims that had come to the notice of government agencies. The ANAO notes that the uncertainty of this figure is evident in advice to government at the time that under the current arrangements the figure could be less than 100 per year. In discussing the uncertainty of estimates of trafficking, the Australian Institute of Criminology noted that '[t]he problem with estimates is that they are often without cited sources, or the sources do not reveal their methodology' and that '[t]hese vaguely defined numbers are repeated, thereby reinforcing themselves.' Judy Putt, Australian Institute of Criminology, June 2007, 'Human trafficking to Australia: a research challenge', *Trends and Issues in crime and criminal justice*, No.338, p. 3, quoting Government Accountability Office (GAO) 2006, *Human trafficking: better data, strategy, and reporting needed to enhance US antitrafficking efforts abroad* and Jahic G & Finckenauer J 2005, 'Representations and misrepresentations of human trafficking', *Trends in organized crime* 8 (1): 24–40.

<sup>43</sup> The AFP advised that it considers that the current trend in trafficking of people into Australia has not risen past more than 100 per year but did not provide evidence to substantiate this estimate.

important in providing baseline data for assessing the success of the anti-trafficking measures.<sup>44</sup>

## **Measuring and reporting progress at the whole-of-government level**

**2.20** The Action Plan identified four key indicators for measuring success:

- increased support for victims of trafficking;
- increased willingness on the part of victims of trafficking and other potential witnesses to come forward to Australian authorities;
- prosecution and conviction of people involved in criminal activities associated with people trafficking; and
- improved capacity to take up future challenges associated with people trafficking.

**2.21** While there have been a number of changes to the anti-trafficking strategy since the launch of the Action Plan, AGD considers that the four indicators continue to be relevant and useful objectives for the anti-trafficking strategy as a whole.

**2.22** While these indicators articulate the broad outcomes intended for the anti-trafficking strategy, from a management perspective, they lack sufficient definition or preciseness to stand alone as effective indicators of success. For example, 'increased support for victims of trafficking' might involve increasing case manager support under the victim support package, or it might involve increasing access to counselling or legal support, or both. Also, without baseline data, it is not possible to determine the extent of any 'increase' or 'improvement' in performance.

**2.23** To assess effectively performance against the four broad indicators would require the establishment of a supporting performance information framework. However, to date, the necessary supporting framework has not been established at the whole-of-government level.

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<sup>44</sup> The need for reliable data on trafficking was recently emphasised by Antonio Maria Costa, Executive Director, United Nations Office on Drugs and Crime (UNODC): 'I plead with social scientists in academia, and especially in governments, to work more intensively with UNODC to generate the logical categories and the statistical information needed for evidence-based, anti-slavery policy. The crisis we face of fragmented knowledge and disjointed responses intensifies a crime that shames us all.' See: UNODC, February 2009, *Global Report on Trafficking in Persons*, p. 7.

**2.24** Such a framework would involve the establishment of a range of indicators critical to gauging the success of the Action Plan, together with associated targets, benchmarks or activity levels. There is always a balance to be struck between the number of indicators and the cost of collecting and reporting performance information. The ANAO identified a number of potential indicators for consideration in this regard, for example:

- the percentage of victims willing to assist police;
- the percentage of victims progressing from Phase 1 to Phase 2 support (Chapter 5 describes the support phases in detail);
- the number and/or percentage of prosecutions that result in convictions;
- the time victims remain in Australia on trafficking visas;
- the number of applications for BVFs each year, and the requesting police service;
- the location of those considered for and granted BVFs (to help identify the regional impact of the Action Plan on people trafficking); and
- the number of non-citizens (lawful and unlawful) found to have been trafficked, expressed as a percentage of the estimated number of victims trafficked each year.

**2.25** As well as these quantitative measures, there would be merit in considering collecting qualitative data to help evaluate the Action Plan. For example:

- the reasons provided by victims for refusing to assist police;
- the extent to which visa conditions are (or are perceived to be) barriers to victims agreeing to assist police;
- the extent to which the travel of victims to their home country and their return to Australia is facilitated; and
- differences in applications for, and success in being granted, BVFs in different states (possibly indicating different administrative practices, as discussed in Chapter 3).

**2.26** In the absence of a performance reporting framework for the anti-trafficking strategy, there has been no consolidated reporting of the strategy's success in meeting its intended outcomes. To date, performance reporting has been ad-hoc and piecemeal, for example, individual agency answers to

parliamentary questions and submissions to government as part of the budgetary process for lapsing measures. The focus of such reporting has been agency-specific and outputs-oriented, rather than addressing the intended outcomes of the anti-trafficking strategy as a whole.

## **Measuring progress at the individual agency level**

**2.27** Subsequent chapters of this report consider the development and use of performance frameworks by individual agencies that contribute to the whole-of-government anti-trafficking strategy. In this regard, it is important that the performance frameworks established by individual agencies are aligned to the one that is developed at the whole-of-government level. This is to ensure that they generate useful information to measure both the success of individual agency contributions and the success of the whole-of-government anti-trafficking strategy. Results of individual agency activities are reported in the subsequent chapters of this report.

## **Conclusion—Measuring and reporting on progress against the Action Plan**

**2.28** The absence of performance information at both the whole-of-government and individual agency levels impedes their capacity to provide sufficient information to internal and external stakeholders to enable well-informed conclusions about progress and performance to be drawn. The development of a whole-of-government performance framework, including baseline measures, such as reasonable estimates of the approximate number of victims of trafficking, or a range that could be revised in light of better information over time, would create the opportunity for much improved systematic reporting to Parliament and other stakeholders on the success of the anti-trafficking measures.

## **Recommendation No.2**

**2.29** The ANAO recommends that the IDC, led by AGD, in consultation with relevant agencies, strengthen the arrangements for reviewing progress and measuring results of the anti-trafficking strategy by:

- developing an appropriate whole-of-government performance framework, including a method to establish reasonable estimates of the approximate number of victims of trafficking, to support the broad outcomes articulated by the Australian Government in 2004;

- identifying appropriate targets, benchmarks or activity levels against key performance indicators, where possible, to enable future results to be interpreted against expectations;
- reporting on outcomes annually; and
- ensuring that the performance information provided by key contributing agencies is aligned to the whole-of-government performance framework.

***AGD Response: Agreed***

**2.30** Appendix 5 details AGD's complete response to the recommendations.

## **Update of the Action Plan**

**2.31** The Action Plan has not been formally updated since it was published in June 2004. In light of the issues identified in this audit, particularly those relating to weaknesses in measuring and reporting progress against the Plan, there would be merit in updating the Plan.

### 3. Administration of the People Trafficking Visa Framework

*This chapter examines DIAC’s administration of the People Trafficking Visa Framework. It also discusses DIAC’s identification of victims through its compliance work, and arrangements to measure the effectiveness of the Senior Migration Officer Compliance Trafficking positions.*

#### Introduction

**3.1** The People Trafficking Visa Framework was implemented in January 2004 and is a key component of the whole-of-government strategy to combat trafficking in persons. The Framework is centred on the identification of trafficking victims and their participation as witnesses in the criminal justice process.<sup>45</sup> It enables suspected victims to remain lawfully in Australia to assist law enforcement agencies in proceedings against their alleged traffickers.

**3.2** The *Migration Act 1958* provides authority for the Trafficking Visa Framework, which DIAC administers on behalf of the Minister for Immigration and Citizenship. There are four visa types in the Framework (see Table 3.1).

**Table 3.1**

#### Overview of the People Trafficking Visa Framework

Visa Type	Overview
<b>Bridging F</b>	Entry to the Framework is through a Bridging F Visa.
<b>Criminal Justice Stay</b>	This Visa may be issued after a Bridging F Visa expires, if law enforcement officers decide to continue to investigate a possible crime.
<b>Witness Protection (Trafficking)—Temporary</b>	Victims may later be granted this Visa if they meet criteria about their contribution to, and cooperation in, prosecuting a people trafficking crime.
<b>Witness Protection (Trafficking)—Permanent</b>	Holders of the Temporary Visa may later be eligible for a Permanent Visa if certain criteria are met, for example, they would be in danger if they returned to their home country.

Source: Migration Act and Regulations.

<sup>45</sup> Burn, Jennifer and Frances Simmons, ‘*Trafficking and Slavery in Australia*’ *An Evaluation of Victim Support Strategies*’ (2006) (15(4) Asian and Pacific Migration Journal: 553-570).

**3.3** All but the Criminal Justice Stay Visa were new visas introduced on 1 January 2004. Appendix 2 provides more detail on the four visa types.

*Number of trafficking visas issued*

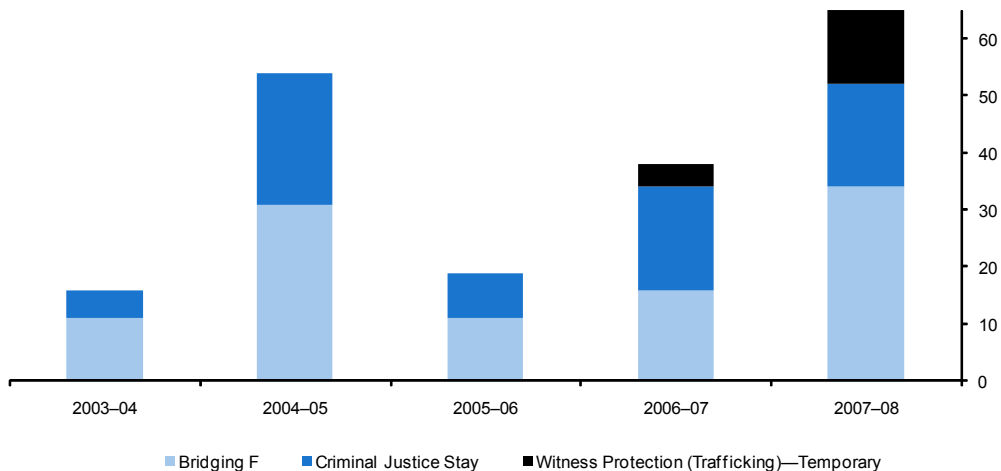
**3.4** Since the introduction of the Trafficking Visa Framework:

- 103 Bridging F Visas (BVF) have been issued to 92 non-citizens by DIAC;
- 72 Criminal Justice Stay Visas (CJSVs) have been issued to 58 persons; and
- 17 Temporary Witness Protection (Trafficking) Visas have been issued to 17 persons. No Permanent Visas have been granted.<sup>46</sup>

Figure 3.1 sets out the number of trafficking visas issued by financial year.

**Figure 3.1**

**Number of trafficking visas issued**



Source: DIAC.

Note: Figures for 2003-04 are from 1 January 2004.

<sup>46</sup> Figures to 30 June 2008. Some victims have held multiple trafficking visas, either because they have progressed from one type of visa to another, and/or because they have held one type of visa more than once. DIAC advised that the last can occur when a victim travels overseas on compelling and compassionate grounds—they return to Australia on a BVF and then are granted a subsequent CJSV.



## DIAC's administration of the Trafficking Visa Framework

3.5 The ANAO examined DIAC's administration of the Trafficking Visa Framework. In particular, it examined whether:

- adequate guidance is provided to support decision makers;
- a consistent approach is employed by decision makers in the granting of visas; and
- performance standards are being met when matters are being referred to the Australian Federal Police.

### Guidance for decision makers

3.6 Decision makers need adequate guidance on, and understanding of, the legal and administrative framework in which decisions need to be made.<sup>47</sup> To this end, DIAC has developed a range of policy and guidance material to help decision makers interpret and apply the law in administering the Trafficking Visa Framework.

#### *Guidance relating to BVFs*

3.7 DIAC has developed a range of guidance material to assist staff in implementing BVFs. This guidance specifies the requirements that staff must observe when assessing a BVF application, such as what constitutes a valid application, and how to assess the application.

3.8 However, the ANAO found that the guidance does not set out the procedures to follow when an application is lodged on behalf of an eligible 'lawful' non-citizen. That is, when an applicant, who already holds a substantive visa<sup>48</sup> (for example, a Working Holiday Maker visa or student visa) applies for a BVF. As a result, the ANAO found that there has been an inconsistent application of the law in this area (discussed below at paragraph 3.14).

3.9 In addition, BVFs have a number of conditions to which holders must comply. For example, holders must not engage in work. However, the guidance does not address how compliance with these conditions is to be

<sup>47</sup> Administrative Review Council, Department of Immigration and Citizenship Decision Making: Lawfulness, Best Practice Guide 1 p. v.

<sup>48</sup> A substantive visa includes all permanent visas, protection visas and temporary visas (with the exception of the criminal justice visa or enforcement visa). Bridging visas are not substantive visas.

monitored. DIAC advised the ANAO that the monitoring of such conditions is not a high priority for its compliance work. This is because during the 30 days the BVF is valid, victims have ongoing contact with both the AFP and the case manager, and are receiving intensive support under the *Support for Victims of People Trafficking Program*. DIAC considered that this ongoing contact would make breaching of visa conditions less likely.

**3.10** The ANAO accepts that more intensive monitoring may not be cost effective, but considers there would be merit in DIAC amending its guidance to reflect its actual approach in this area.

### *Guidance relating to CJSVs*

**3.11** DIAC's guidance on the administration of CJSVs does not specify the action that staff should undertake when presented with a police-sponsored CJSV application from an alleged victim who is already a 'lawful' non-citizen.<sup>49</sup> About 80 per cent of alleged victims in 2007–08 would have fallen into this category (see Appendix 1).

**3.12** In practice, DIAC staff require the applicant to request cancellation of their substantive visa before a CJSV is granted. However, it is not clear whether alleged victims are being appropriately informed about the impact of the cancellation on their immigration status. DIAC advised the ANAO that where a suspected victim of people trafficking intends to ask DIAC to cancel their visa to enable access to victim support, the person will have access to legal advice (as part of the *Support for Victims of People Trafficking Program*).<sup>50</sup> Clearer guidance in this area would provide DIAC with greater assurance that alleged victims are being afforded procedural fairness.

## **Consistency of approach in granting visas**

**3.13** Administrative consistency in the granting of visas is important to ensure that people in the same circumstances are treated equitably and consistently.

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<sup>49</sup> CJSVs provide a mechanism for unlawful non-citizens to remain in Australia while they assist law enforcement agencies.

<sup>50</sup> At the time this report was being prepared, the link between victim support and the Trafficking Visa Framework was being considered by Government, but no decision had been announced.

**3.14** However, the ANAO found inconsistencies in DIAC's approach to granting trafficking visas. These inconsistencies and their impact are discussed in the following case study.

**Table 3.2**

**Case Study—cancellation of substantive visa on grant of BVF**

DIAC's Melbourne Office routinely cancels a lawful non-citizen's substantive visa when granting a BVF, while its Sydney Office does not.

Cancellation of the substantive visa by the Melbourne Office is based on the premise that the visa was obtained fraudulently, that is for the purpose of trafficking a person.<sup>51</sup>

Over the period 2006–07 to 2007–08, 100 per cent of substantive visas were cancelled by the Melbourne Office prior to granting BVFs.<sup>52</sup>

The inconsistent approach to substantive visas on the grant of BVFs has resulted in inconsistent outcomes for alleged victims. For example, those who have their substantive visa cancelled:

- may have their future immigration options—that is, to apply for other types of visas—jeopardised; and
- those who had work rights<sup>53</sup> lose those rights with the granting of a BVF.<sup>54</sup>

Victims also face uncertainty about whether they will be removed from Australia at the expiration of their BVF, if police are no longer interested in them for the purposes of a trafficking investigation.<sup>55</sup>

Over the period 2006–07 to 2007–08, two alleged victims who had had their substantive visas cancelled, were subsequently not supported by the police for another trafficking visa at the end of the 30 day BVF period. These persons were immediately removed from Australia.

DIAC documentation also indicates that where a substantive visa is not cancelled on granting a BVF, the BVF is not considered to have effect; instead, it sits in the background. There are two issues that arise as a result:

- retention of the substantive visa enables the alleged victims to remain and work in Australia after expiry of the BVF. While they remain in Australia, they are also eligible to apply for certain other types of visas,<sup>56</sup> and

<sup>51</sup> DIAC advised that the decision to cancel a substantive visa is a separate step to considering whether a person meets the criteria for the grant of a people trafficking visa. It advised that a person's visa may be cancelled for a range of reasons, including breaches of visa conditions, and that such decisions are taken on a case-by-case basis.

<sup>52</sup> ANAO analysis of BVFs granted at the introduction of the Trafficking Visa Framework indicates this was also standard practice at the Melbourne Office for the calendar year 2004.

<sup>53</sup> Some visas, for example Visitor visas, have conditions attached that do not allow the visa holder to work.

<sup>54</sup> A further consideration is whether cancellations act as a disincentive to victims' willingness to provide evidence in subsequent proceedings.

<sup>55</sup> Under the *Migration Regulations (Schedule 2, 060.5)*, a BVF can expire at a date specified by the Minister (BVs can be issued for up to 30 days) or be withdrawn if the Minister, acting on the advice of the police, informs the visa holder that his/her visa is no longer in effect because s/he has ceased to be of interest to the police.

<sup>56</sup> For example, an alleged victim whose student visa is not cancelled may be entitled to apply for a permanent visa under the skilled migration program or a provisional skilled visa with the possibility of becoming eligible for permanency, after they have successfully completed their studies in Australia.

- as an alleged victim is required to hold a BVF to access the OfW's *Support for Victims of People Trafficking Program* (the Program is discussed in Chapter 5), it is not clear whether they can do so, as the BVF *sits in the background* to the substantive visa.<sup>57</sup>

It is not clear whether alleged victims are being appropriately informed about the impact of the cancellation on their immigration status when their substantive visa is cancelled. As noted in the preceding section, clearer guidance in this area would assist.

Source: ANAO analysis.

**3.15** In response to the audit, DIAC advised that it would strengthen existing guidelines used by its staff to include the handling of suspected victims who hold substantive visas. The ANAO considers that this positive step would be enhanced by monitoring of decisions across DIAC State Offices for consistency with the revised guidelines.

## Performance standards

**3.16** The *AFP-DIAC People Trafficking Referral Protocol* sets out each agency's responsibilities in relation to the referral of people trafficking matters by DIAC to the AFP, including the response required from the AFP. In particular, the Protocol sets out timeliness standards relating to the exchange of information between the two agencies. For example, DIAC is required to: 'Contact the Australian Federal Police ... by telephone within **one hour** where any indications of people trafficking arise'.<sup>58</sup>

**3.17** The ANAO sought to examine whether the Protocol's standards were being met, but found that the necessary information is not being captured. This reduces the assurance to DIAC, and AFP, that agreed standards are being met.

**3.18** It would be sound practice for DIAC to periodically collect and analyse performance information relating to referrals. The ANAO also notes that as the Protocol has not been reviewed since its implementation in 2003, it would be timely to assess whether the agreed standards are still appropriate and measurable.

**3.19** DIAC advised the ANAO that the Protocol is under review. The review will cover the current performance standards and their practicality.

<sup>57</sup> DIAC advised that the Migration legislation allows a person to hold multiple visas, although only one visa is in effect at any one time. At the time this report was being prepared, the link between victim support and the Trafficking Visa Framework was being considered by the Government, but no decision had been announced.

<sup>58</sup> This is to ensure that information is passed quickly to the AFP so that the AFP can provide timely advice back to DIAC officers regarding a trafficking allegation as to what further action should be taken while on-site.

## Overall Conclusion—DIAC's administration of the Trafficking Visa Framework

**3.20** DIAC has developed a range of guidance material to assist staff in administering the Trafficking Visa Framework. However, the absence of adequate guidance in a number of important areas resulted in inconsistent application of the law in the granting of trafficking visas where alleged victims also held substantive visas.

**3.21** More intensive monitoring of BVF holders for compliance with visa conditions may not be cost effective, but there would be merit in DIAC amending its guidance to reflect its actual approach in this area.

**3.22** DIAC does not collect and analyse performance information relating to its referrals to the AFP. Periodic review of relevant performance information would provide assurance that agreed standards for referrals from DIAC to the AFP are being met.

## Recommendation No.3

**3.23** The ANAO recommends that DIAC strengthen its administration of the People Trafficking Visa Framework by:

- enhancing its guidance on the granting of trafficking visas to those who have substantive visas, and subsequently monitoring decisions across State Offices for consistency; and
- improving management information on its people trafficking referrals to the Australian Federal Police by periodically reviewing relevant performance information.

### ***DIAC Response: Agreed***

**3.24** The Department agrees with Recommendation No.3. Overall DIAC agrees that the guidelines could be enhanced by inclusion of information regarding the granting of visas to those who hold a substantive visa and monitoring of these decisions. Advice has been provided to DIAC's Service Delivery Network on this issue and periodic monitoring will be undertaken. In relation to analysing performance standards within the Referral Protocol, the current Protocol is under review and the performance standards and whether they are considered practical in relation to all referral matters is one of the issues being considered.

## Identifying victims through compliance work

**3.25** DIAC identifies alleged victims of people trafficking through its compliance work. DIAC is often the first agency to encounter trafficked victims through its compliance team raids of brothels and other work places.<sup>59</sup> DIAC's Sydney and Melbourne Offices have compliance teams that work in both the sex industry and in the hospitality industry. In the smaller DIAC offices, compliance staff undertake multi-industry compliance activities.

**3.26** DIAC supports its sex industry compliance teams by setting out procedures that staff must undertake prior to, during and after compliance visits (see Table 3.3).

**Table 3.3**

### DIAC compliance visit guidance

- Pre-operational briefing requirements.
- Handling of information received before compliance visits.
- Advice on how to conduct an on-site interview with a non-citizen in the sex industry using the *Sex Industry On-site Interview Questions*.
- Handling of information post-location interview.
- Who should undertake non-citizen sex industry interview.
- What to do if a minor is located working in the sex industry.
- How to refer people trafficking indicators to the AFP.

Source: DIAC Compliance Officer Training Course—Module 9.

## ANAO observation of compliance operations

**3.27** The ANAO accompanied two DIAC sex industry compliance teams on compliance operations:

- the first operation involved a visit to a licensed brothel in New South Wales in conjunction with the NSW Police, NSW Fire Brigade, and the Parramatta City Council; and
- the second operation involved a visit to a remedial massage centre in Victoria which was believed to be offering sexual services. This operation was undertaken in conjunction with the AFP and the Victorian Justice Department.

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<sup>59</sup> DIAC's Submission to the Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, June 2004, p. 38.

**3.28** During both operations, the ANAO observed that DIAC's compliance teams conducted themselves in a professional manner, and implemented the procedures outlined in Table 3.3. In particular, the DIAC officers were sensitive to the circumstances of the women subjected to 'screening' for trafficking indicators.

## Senior Migration Officer Compliance Trafficking position

### Introduction

**3.29** The establishment of a Senior Migration Officer Compliance Trafficking (SMO CT) position in Thailand was one of the five key initiatives announced as part of the 2004 *Action Plan to Eradicate Trafficking in Persons*. The position was described as being:

responsible for implementing Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) initiatives to combat trafficking in persons across the Asian region, including working closely with local authorities and the Australian Federal Police (AFP) in the identification of possible trafficking organisers and organisations.<sup>60</sup>

**3.30** The SMO CT's objectives are to contribute to the prevention, detection and investigation of trafficking activity by helping to stop traffickers accessing visas to Australia for their victims. In 2006–07, additional funding was provided to establish two new SMO CT positions, in Beijing and Manila.

**3.31** The ANAO examined the expected impact of the SMO CT positions at the time funding was sought, and their reported effectiveness since that time.

### Expected impact of the SMO CT positions on people trafficking

**3.32** In its 2004 funding bid to the Government, DIAC stated that the SMO CT position in Thailand would enhance its capacity to actively combat people trafficking at its source, and would positively contribute to the strengthening of ties between Australia and countries in the Asia region. However, the expected outcomes (impacts) of the initiative were not identified.

**3.33** In 2006 the Attorney-General's Department reviewed the Action Plan's anti-trafficking measures and reported that 'the actions of the SMO CT have

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<sup>60</sup> *Australian Government announces major package to combat people trafficking*, Joint Ministerial Press Release, October 2003.

been effective in lessening the impact of people trafficking in Australia'. The ANAO notes, however, that the review did not produce evidence to support this conclusion—indeed, DIAC had not established relevant baseline data, performance indicators or targets to measure success. Notwithstanding the lack of evidence in the review, it was later used to support an increase in SMO CT funding over four years from 2006–07.

**3.34** DIAC advised the ANAO that the work of the SMO CT position in Bangkok has contributed to a number of investigations through analysis and referrals of information, identification of trends, and evidence that has subsequently been used in the investigation and prosecution of traffickers.

**3.35** DIAC considers that the nature of the crime makes it difficult to set specific targets. However, in conjunction with the appointment of the additional two SMO CT positions DIAC advised that it has put in place a range of reporting measures. These include reporting on the number of visas examined, referrals, trends identified, training delivered and stakeholder engagement issues.<sup>61</sup>

**3.36** The ANAO concluded that there would be merit in DIAC ensuring that the performance information it collects in relation to its people trafficking measures reflects appropriate targets where possible, and is aligned to the performance framework that is developed for reporting on whole-of-government outcomes against the Action Plan (discussed in Chapter 2).

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<sup>61</sup> At the time of preparing this report, DIAC did not have data on performance against these measures.



## 4. Transnational Sexual Exploitation and Trafficking Teams

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*This chapter outlines trends in people trafficking referrals to the Australian Federal Police Transnational Sexual Exploitation and Trafficking Teams (TSETT). It also looks at the administration of TSETT in terms of arrangements to assess its impact and effectiveness; planning; resourcing and guidance for staff.*

### Introduction

**4.1** As part of the package to combat trafficking in persons, the Australian Federal Police (AFP) received additional funds to strengthen its capacity to detect, investigate and provide specialist training to combat those crimes.<sup>62</sup> Funding already held by the AFP for another transnational sexual offence—Child Sex Tourism—was absorbed into the package. Funding for the package was renewed and increased in the 2007–08 Budget.<sup>63</sup>

**4.2** The funding provided to the AFP was used to establish mobile strike teams—Transnational Sexual Exploitation and Trafficking Teams (TSETT)—to combat people trafficking. TSETT initially had 23 Full Time Equivalent (FTE) staff, which was expanded to 30 FTEs in the 2007–08 Budget. TSETT comprises an intelligence element located in Canberra (TSETT Intel) and two TSETT investigative teams (located in Sydney and Melbourne). TSETT investigations in other AFP offices are conducted by members drawn from the operations pool, in consultation with the Sydney and Melbourne Offices. The arrangements are overseen by a Canberra-based National Coordinator.

**4.3** This chapter outlines trends in people trafficking referrals to TSETT. The administration of TSETT is then examined, in terms of: arrangements to assess its impact and effectiveness; planning; resourcing and guidance for staff.

### Trends in people trafficking referrals to TSETT

**4.4** TSETT investigations are generally triggered by a ‘referral’, that is, an allegation that a trafficking offence has been committed where the

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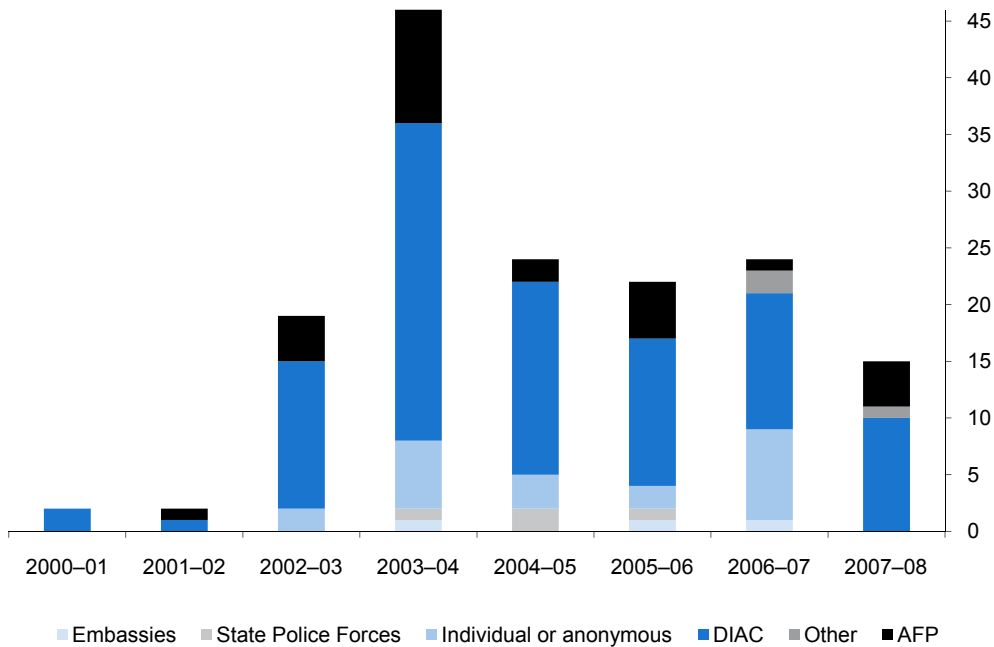
<sup>62</sup> \$7 million was provided to the AFP over four years from 2003–04 to combat people trafficking.

<sup>63</sup> In 2007, the AFP received additional funding of \$9.1m for the period 2007–08 to 2010–11 (and a continuation of the base funding) bringing total funding for that period to over \$16 million.

circumstances warrant an investigation by the AFP. Referrals come from two sources: external (outside the AFP) and internal (from TSETT itself, or other parts of the AFP).

4.5 Since the announcement of the package and the introduction of the Action Plan in 2003-2004, the AFP has received a total of 131 referrals (see paragraphs 4.11-4.12) relating to people trafficking. Of these, 22 (17 per cent) were internal referrals, while 109 (83 per cent) were referrals from external sources (see Figure 4.1). DIAC has been responsible for 61 per cent of the external referrals.

**Figure 4.1**  
**Number and source of referrals by financial year**



Source: ANAO analysis of AFP data.  
Note: 'Other' includes Interpol, Australian Crime Commission, and Commonwealth Director of Public Prosecutions (one referral each).

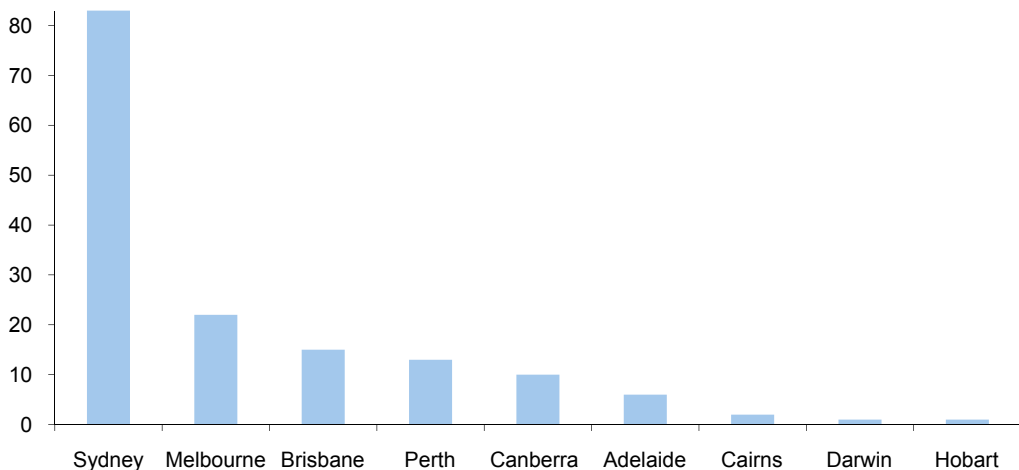
4.6 Figure 4.1 also shows that in 2003-04, when the package was announced (October) and the Action Plan released (June), there was a spike in referrals. Since then, the number of referrals has decreased from over 45 in 2003-04 to around 15-25 per year subsequently. External referrals have constituted over 80 per cent of the total over this period.

**4.7** There is no empirical evidence as to whether the change in referral numbers has been as a result of the package or Action Plan measures. The AFP advised that it is not possible to categorically explain the reason for the decrease. The AFP noted that referrals for people trafficking offences are directly reliant on a victim's willingness to speak to police—there are a range of factors influencing a victim's willingness, including the availability of legitimate visas, the fear of consequences of speaking to police, and the length of time taken for TSETT matters to be prosecuted. The ANAO considers that factors such as those identified by the AFP are worthy of consideration by the People Trafficking IDC, as they could affect the performance of the anti-trafficking package as a whole (see Chapter 2).

**4.8** Most AFP investigations have occurred in Sydney and Melbourne, where the TSETT investigative staff are located. Around 65 per cent of the victims identified to date were located in Sydney. The AFP advised that Sydney is the primary destination for the arrival of people trafficked for the purpose of sexual exploitation, and that those people will often then travel between Australian capital cities for work (see Figure 4.2).

**Figure 4.2**

**Number of people trafficking investigations across AFP offices**



Source: AFP Police Realtime Online Management Information System.

Notes: Data from 1 July 2000 to 30 June 2008.

'Canberra' includes statistics from 'Canberra—Corporation', 'Canberra—Operations Coordination Centre', 'International Canberra' and 'National—Intelligence'.

**4.9** Appendix 3 shows the status of the AFP's people trafficking investigations since the introduction of the slavery/sexual servitude crime types into the Criminal Code in 1999. Most (75 per cent) investigations had

been finalised or were awaiting finalisation after investigation or court proceedings. Fourteen per cent were rejected before investigation or terminated during the investigation. Five per cent were before the courts, or were in the process of proceeding to court. Five per cent were actively being investigated or evaluated by the AFP.<sup>64</sup>

### *Assessment of 'referrals' from DIAC*

**4.10** DIAC refers all information relating to people trafficking to the AFP regardless of the quality of the information (DIAC does not evaluate or investigate the information). Over the period 2003–04 to 2007–08, DIAC made some 256 trafficking 'referrals' to the AFP.

**4.11** On receipt of the information, the AFP decides whether the information will be treated as an AFP:

- 'referral'—which involves an allegation that a Commonwealth Offence has been committed, and the circumstances warrant an investigation by the AFP; or
- 'information report'—which is used to record information on AFP systems that is not the subject of an investigation, but may be of interest or wider use to other AFP areas.

**4.12** The AFP has not formally provided feedback to DIAC that most of its 'referrals' are treated by the AFP as 'information reports', generally because of the quality of the information provided.<sup>65</sup> The ANAO considers that there would be merit in the AFP briefing DIAC on the procedures it follows in deciding how to treat DIAC referrals, and checking that the actual approach is reflected in the referral protocol between the two agencies (see Chapter 3).

### *Internal intelligence-led referrals*

**4.13** At the time TSETT was established, the Government's expectation was that TSETT would be an 'intelligence-driven' investigative body that would 'actively target and investigate trafficking syndicates'.

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<sup>64</sup> Figures as at the time this report was being prepared. Numbers have been rounded.

<sup>65</sup> The AFP also advised that where matters involve multiple victims, DIAC will count each victim as a referral, whereas the AFP will count it only once.

**4.14** The ANAO found, however, that since 2003–04, only 22 of the 131 referrals (17 per cent) have been internally generated, and of these only seven (five in 2003–04) have been referrals from TSETT Intel.

### Number of prosecutions

**4.15** The Office of the Commonwealth Director of Public Prosecutions advised the ANAO that as at 18 December 2008, 34 defendants had been charged with people trafficking offences.<sup>66</sup> Of these, 18 defendants have had charges discontinued in accordance with the *Prosecution Policy of the Commonwealth*, and two have been acquitted.<sup>67</sup>

**4.16** Nine defendants have had people trafficking offences proven. Of these:

- six have been convicted of slavery offences;
- two have been convicted of sexual servitude offences; and
- one has yet to be sentenced for trafficking in persons (involving deceptive recruitment).

**4.17** There were six matters before the courts, involving 12 defendants (some of these matters have been mentioned above).

## Assessing the impact and effectiveness of TSETT

**4.18** Effective measurement and reporting requires the establishment of a practical performance information framework with an appropriate blend of quantitative and qualitative outcome/output indicators, together with associated targets, benchmarks or activity levels. Individual agencies need to measure and report on the effectiveness of their particular initiatives.

**4.19** The ANAO sought to determine whether the AFP had established an appropriate framework for assessing the impact and effectiveness of TSETT. In particular, the ANAO examined whether there were measures to estimate the impact that TSETT would have on people trafficking as a whole, and, performance indicators for the effectiveness of TSETT activities.

<sup>66</sup> 'People-trafficking offences' refers to offences set out in Table 1.1. This is to be distinguished from 'people-trafficking-related offences', which may include offences against the *Migration Act 1958* and other offences under the Criminal Code, such as money laundering and perverting the course of justice.

<sup>67</sup> The ANAO was advised that most, if not all, decisions to discontinue charges would have been due to an assessment that, on the evidence available, the prosecution would not be able to prove all the elements of the relevant offences to the requisite criminal standard of proof (beyond a reasonable doubt).

**4.20** As discussed in Chapter 2, the number of people trafficked is difficult to quantify, in part due to its illicit nature. Against this background, it is not surprising that the AFP, in the context of seeking funding to implement the Action Plan, was unable to accurately estimate the impact that TSETT would have on people trafficking. However, at that time, both the AFP's funding submission to the Government and the ensuing Action Plan, noted that TSETT would 'make a substantial impact on combating sexual servitude in Australia'.

**4.21** While such a statement provides some confidence that the impact will be significant, the meaning of the word 'substantial' will be interpreted differently by different observers.

**4.22** In these circumstances, sound practice would be to identify baseline data as reference points from which future achievement can be measured through the use of performance indicators. However, notwithstanding the fact that the Action Plan has been underway for five years, and the considerable Parliamentary interest in this area, baseline data has not been established by the AFP. In particular, the AFP has not built on the people trafficking intelligence work undertaken by the Australian Crime Commission (started in 2003), or used its own pre-2004 people trafficking investigation data for this purpose.<sup>68</sup> Implementation of Recommendation 2 of this report could provide AFP with a method to establish the necessary baseline information.

**4.23** In addition, the AFP has not identified performance indicators to measure its impact on people trafficking. Such indicators, combined with baseline data would strengthen transparency and accountability, and help enable well-informed conclusions to be drawn on performance. This is particularly important when assessing the need to continue and/or expand the program (which occurred in 2007).

**4.24** The ANAO acknowledges that it can be difficult to measure the impact of programs, particularly where the program is complex and involves a number of contributing agencies, however, possible indicators of success might include, for example:

- the number of people who make complaints about trafficking;
- the percentage of investigations that are intelligence-led;

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<sup>68</sup> Parliamentary Joint Committee on the Australian Crime Commission, Supplementary report to the Inquiry of women for sexual servitude, August 2005, Paragraphs 1.7-1.15.

- the number of AFP referrals to the CDPP that are prosecuted, compared with the number that are rejected;
- the number of AFP referrals to the CDPP that result in convictions;<sup>69</sup> and
- feedback from other agencies and non-government organisations.

**4.25** A combination of indicators could be used to help assess impact, particularly where baseline data for those indicators has been established. This is particularly important as the AFP has not reported objectively on the effectiveness of TSETT in either its 2006 lapsing measure review of TSETT<sup>70</sup> or in its Annual Reports.<sup>71</sup> Key indicators of TSETT's success would also form a key element in measuring and reporting on the success of the Action Plan at the whole-of-government level (discussed in Chapter 2).

## Recommendation No.4

**4.26** The ANAO recommends that the AFP improve the transparency and accountability of TSETT by:

- using baseline data, such as estimates of the number of victims of trafficking, to measure TSETT's impact in combating people trafficking; and
- developing key performance indicators and associated targets, benchmarks or activity levels against which its activities can be assessed and reported.

### **AFP Response: Agreed**

**4.27** Noted by the report is the difficulty in quantifying this crime type due to its illicit nature. TSETT has maintained yearly statistical data relating to victim complaints, investigation outcomes and prosecutions. TSETT has

<sup>69</sup> The ANAO notes that the AFP's Outcome/Outputs Framework does identify a key performance indicator for Output 1.1 *Criminal Investigations—border and international network of Percentage of cases reaching court resulting in a conviction*. This performance indicator (which has a 2008–09 target of 90 per cent) incorporates results relating to people trafficking.

<sup>70</sup> *Review of Lapsing and Terminating Measures Departmental Report on Combating Trafficking in Persons: Whole of Government Strategy*.

<sup>71</sup> While AFP annual reports identify the number of people trafficking investigations undertaken, no baseline comparators or annual targets, benchmarks or expected activity levels are identified.

ongoing engagement with AFP Intelligence to determine annual patterns and trends within this crime type as well as emerging threats for exploitation.

**4.28** TSETT has committed to key performance indicators outlined in a phased NPI implementation plan and yearly action plan to support achievement of government and organisational objectives. Assessment of performance against each plan occurs quarterly. Through these initiatives the AFP is able to monitor progress and activity levels to support proactive and victim based investigations leading to successful prosecutions.

**4.29** It is recognised that some refinement is required to ensure greater measurability of certain performance indicators outlined in the TSETT yearly action plan. The impact of strategies against objectives in KPI's is currently being created with assistance from the AFP Business Analysis function with the engagement of external stakeholders to assist in the process.

## Planning

**4.30** Planning is an activity that allows program objectives to be clarified, strategies to be developed, and measures agreed to track progress in delivering results. The ANAO examined TSETT planning at both the strategic and operational levels.

### Strategic planning

**4.31** Strategic planning 'maps' how an initiative will be implemented; addressing matters such as timeframes, phases, roles and responsibilities and resourcing. Effective implementation planning reduces the risk of delay to and dilution of, outcomes.<sup>72</sup> Experience has shown that optimal outcomes from policy initiatives are more likely when there is early and systematic consideration of the practical aspects of implementation.<sup>73</sup>

**4.32** The ANAO found that the AFP did not develop an implementation plan for TSETT until 2008, some five years after receiving initial funding, when the additional funding for the expansion of the initiative was received. The absence of an implementation strategy means that the AFP is not in a position

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<sup>72</sup> ANAO Better Practice Guide—*Implementation of Programme and Policy Initiatives*, October 2006, Canberra, p. 1.

<sup>73</sup> *ibid.*, p. 23.



to assure itself and stakeholders that the initiative has been implemented effectively, and in a timely manner.

## Operational Planning

**4.33** As part of normal business practice, agencies generally develop annual operational plans.<sup>74</sup> These plans provide staff with direction and enable management to monitor achievements against planned objectives.

**4.34** The AFP did not develop an operational plan for TSETT until June 2007, when a range of 'Action Plans' was developed.<sup>75</sup> These plans set out annual objectives, strategies and performance indicators for TSETT. However, these are broadly defined and generic in nature and have application to a broad range of crime types. Some examples, together with the ANAO's comments, are set out in Table 4.1.

**Table 4.1**

### Key findings on TSETT Action Plans

Objective/performance indicator	ANAO comment
Objective— <i>Enhanced engagement with intelligence and the international network in support of Border investigations.</i>	Can be applied to a broad range of Border Function crime types. <sup>76</sup> Objective is specified as an action to be undertaken rather than what is intended to be achieved.
Objective— <i>Identify and treat emerging threats which are suitable for policy consideration.</i>	It is not clear what is intended to be achieved by TSETT in meeting this objective.
Performance indicator— <i>Border Crime Investigations conducted both in Australia and offshore are conducted responsive to the victim based crime type.</i>	Does not specify what is actually being measured.

Source: ANAO analysis.

**4.35** As a consequence, internal performance reporting against Action Plans has focused on activity based reporting such as the number of investigations undertaken and number of prosecutions achieved, rather than the impact of the strategies on the objectives.

<sup>74</sup> Murphy, J., 2007, Undertaking a Governance Review, paper to the Ethical Leadership and Governance in the Public Sector Conference, May 10 2007, Canberra.

<sup>75</sup> Operational plans for 2007-08 included a Border TSETT Action Plan, a TSETT Intel Action Plan and State Office Action Plans.

<sup>76</sup> The AFP's Functional model identifies the following eight operational functions: 'Border and International Networks', 'Economic and Special Operations', 'Intelligence', 'International Deployment Group', 'Counter Terrorism', 'Protection', 'Aviation' and 'ACT Policing'.

**4.36** The ANAO concluded that the absence of TSETT action plans, and hence operational objectives, in the first three years of TSETT's operation means that the AFP is not in a position to be assured that TSETT achieved its intended (albeit undocumented) operational outcomes during this period. In addition, the objectives and performance indicators within current plans provide little guidance and direction to TSETT staff on what is expected to be achieved and how their work will be measured.

**4.37** There would be merit in the AFP strengthening its TSETT operational plans to ensure that they specify relevant and clear objectives, strategies and performance indicators so that staff are clear on what is to be achieved, and management is able to effectively monitor progress toward those ends. Effective monitoring at the operational level would assist the AFP in assessing the overall effectiveness of TSETT, and ultimately help assess the success of the anti-trafficking package as a whole.

## Use of TSETT resources

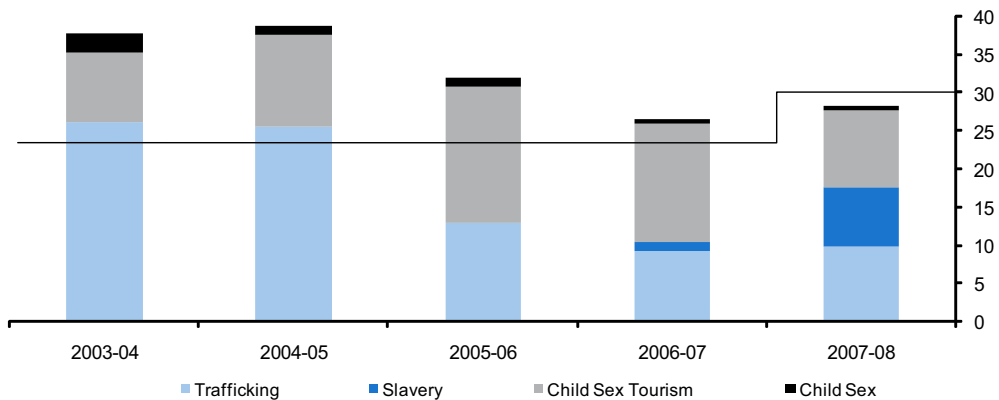
**4.38** TSETT was established via a specific new policy proposal, announced as part of the 2003–04 Budget. Funding was provided over four years for 23 Full Time Equivalent (FTE) staff. The 2007–08 Budget extended funding for another four years, and provided resources for an additional seven FTE staff.

**4.39** The ANAO examined the use of TSETT resources to ascertain whether the resources had been used as advised to government and appropriated by Parliament. The ANAO's estimates<sup>77</sup> that over the period 2003–04 to 2007–08, overall TSETT resource use was 34 per cent more than the additional amount appropriated by Parliament, mostly in the first three years of the Action Plan (see Figure 4.3).<sup>78</sup>

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<sup>77</sup> The ANAO's estimate was based on a formula supplied by the AFP to convert hours attributed by staff to TSETT crime types to FTEs. This can only be described as an estimate because the AFP advised that it 'currently has no standard methodology for calculating FTE from hours worked that all stakeholders (that is, Finance, HR and Performance Analysis) are in agreement with'.

<sup>78</sup> Figures provided by the AFP in January 2009. The figures for 2003–04 to 2005–06 differ substantially from advice previously given to government in the 2006 lapsing measure review of TSETT on resource usage. The 2006 lapsing measure review reported 11.6 per cent fewer hours attributed to TSETT crime types (around 12.6 FTE) than the data used in this audit. Almost all of the difference was for 2004–05.

**Figure 4.3****Estimated TSETT resource usage (FTE) by crime type**

Source: ANAO analysis of AFP data.

Notes: Estimate was based a formula supplied by the AFP on the conversion from recorded hours to FTEs (see footnote 77).

'Trafficking'=Transnational Sexual Servitude crime type; 'Slavery'=Slavery Traffic crime type; 'Child Sex Tourism'=Transnational Child Sex crime type; 'Child Sex'=Child Sex crime type.

**4.40** As Figure 4.3 shows, investigating child sex crime offences has absorbed a substantial proportion of TSETT's investigative resources. For example, for the period 2003–04 to 2007–08, only 55 per cent of hours attributed to TSETT crime types were used for the investigation of people trafficking/slavery crimes<sup>79</sup>—the balance (about 45 per cent) has been directed towards the investigation of child sex crime matters<sup>80</sup> (almost all of these were child sex tourism matters).<sup>81</sup>

**4.41** While Child Sex Tourism was incorporated into TSETT in 2003 and was explicitly noted as a component of TSETT at the time of the provision of additional resources for TSETT in the 2007–08 Budget, it is not clear whether the Government envisaged that such a large component of TSETT resources would ultimately be used for this purpose. It is also not clear that information

<sup>79</sup> 'Transnational Sexual Servitude and Slavery' offence types.

<sup>80</sup> 'Child Sex Tourism' and other 'Child Sex' offence types.

<sup>81</sup> TSETT investigators might also work on other crime types, as needed, such as drug related investigations.

on the use of TSETT resources has been provided to the People Trafficking IDC (see Chapter 2) or to government.<sup>82</sup>

**4.42** The ANAO acknowledges that decisions on the allocation of departmental TSETT resources are within the discretion of AFP management. However, such decisions on allocations must inevitably have an impact on whole-of-government efforts to combat people trafficking. There is clearly a need for the AFP to keep stakeholders—in particular, the IDC—better informed about decisions to use resources originally intended for anti-trafficking activities for other activities and of their expected impact on the anti-trafficking package as a whole.

## Recommendation No.5

**4.43** The ANAO recommends that the AFP improve the transparency and accountability of TSETT funding by regularly reporting to the People Trafficking Interdepartmental Committee on decisions about the use of resources intended for anti-trafficking activities and of their expected impact on the anti-trafficking package as a whole.

### ***AFP Response: Agreed***

**4.44** Since commencement of the audit the AFP has improved the transparency of the reporting regime against the NPI. Quarterly reporting against the NPI incorporates resourcing and funding information. The People Trafficking IDC is predominately a forum for policy development however such financial and resourcing reporting can be made available.

**4.45** It is further noted that the AFP operational responsibility for investigation of child sex offences is no longer aligned to TSETT. It is acknowledged that child sex crime investigations were an accepted part of TSETT activity, however since March 2008, the responsibility for these investigations has transferred to AFP Child Protection Operations under High Tech Crime Operations where it is better aligned. All TSETT resources are now allocated to trafficking related investigations.

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<sup>82</sup> The ANAO notes that, as responsibility for Child Sex investigations was moved from TSETT to another AFP area in March 2008, more reliable data on TSETT's people trafficking resource usage should be readily available for this purpose.

## Guidance for TSETT investigators

**4.46** Clear guidance and/or standard operating procedures for key activities are important to facilitate operational efficiency and sound and consistent decision-making. The ANAO examined whether the AFP had developed appropriate guidance to support TSETT's management of alleged victims and the decision-making process which impacts on them.<sup>83</sup>

### TSETT-specific guidance

**4.47** While the AFP has developed a range of agency-wide guidance that is applicable to all crime types, there is no formal TSETT-specific guidance or standard operating procedures to support TSETT officers in their management of alleged victims. For example, there is no formal guidance on how to:

- monitor alleged victims of people trafficking, which is particularly important where cases depend on traumatised victims and their testimonies; and
- make a decision on whether to sponsor an alleged victim for a trafficking visa.<sup>84</sup>

**4.48** The ANAO identified a number of examples where TSETT-specific guidance would have assisted officers in making decisions and may have led to more consistent, fair and transparent outcomes. These are set out below in Table 4.2.

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<sup>83</sup> The ANAO did not examine the AFP's specialist training program for TSETT investigators because the course's main focus is on the legal framework and investigation techniques.

<sup>84</sup> Trafficking victims are not empowered under the *Migration Act 1958* to apply for a Bridging F Visa in their own right; instead application relies on an officer of the AFP, or an officer of a State or Territory police force, having provided a 'supporting statement' advising DIAC that an applicant is a person of interest in relation to a people trafficking, sexual servitude or deceptive recruiting offence.

**Table 4.2**

**Examples where TSETT-specific guidance would have assisted officers in making decisions**

Example	ANAO comment
AFP State Offices which do not have dedicated TSETT officers occasionally investigate people trafficking cases. The ANAO noted one case where the AFP was unaware that an alleged victim had allegedly become a trafficker until notified by DIAC.	Guidance on how and when to monitor an alleged victim may have alerted the AFP to the situation earlier.
AFP records show that the number of referrals received often exceeds its investigative capacity. The ANAO noted one case where an AFP State Office did not make arrangements to sponsor an alleged victim for a trafficking visa, even though the alleged victim was assisting the AFP. <sup>85</sup> In the absence of a trafficking type visa, the alleged victim was ineligible to apply for and receive victim support assistance.	Guidance on sponsoring of alleged victims would help facilitate fair and consistent decision-making, particularly when staff are under time and resource pressures.
TSETT officers occasionally withdraw support from an alleged victim who has been assisting the AFP. <sup>86</sup> The AFP has been subject to strong criticism by non-government organisations and by the media for withdrawing support from some alleged victims or choosing not to sponsor others. The ANAO found limited recording of reasons for decisions to withdraw support. For example, one case note simply stated that the <i>AFP withdrew support for BVF</i> , while another stated that there was a <i>lack of evidence</i> .	Guidance on documenting reasons for decisions in these cases would improve transparency in decision making.

Source: ANAO.

**4.49** Overall, the ANAO considers that the development of TSETT-specific guidance and/or standard operating procedures would facilitate consistent decision-making by AFP officers.<sup>87</sup>

## Recommendation No.6

**4.50** The ANAO recommends that the AFP strengthen the management framework for its anti-trafficking initiatives by developing TSETT-specific guidance and/or standard operating procedures for its officers.

### **AFP Response: Agreed**

**4.51** The standard operating procedures for TSETT were in existence prior to this audit however were in need of amendment to bring these in line with

<sup>85</sup> This assistance later resulted in the conviction of two persons for slavery offences.

<sup>86</sup> From June 2003 to the time of preparing this report, the AFP has withdrawn support from 38 Bridging F Visa holders.

<sup>87</sup> Guidance is also important to ensure that victims of trafficking are dealt with properly in accordance with the processes outlined in the Action Plan. For example, officers need to be able to recognise indicators of trafficking and respond appropriately by ensuring that victims are treated as victims and not as offenders, and are removed from servitude and placed in a secure environment.

current threats and trends. A review of this documentation is currently underway to update and reflect current procedures for assistance to TSETT investigators.

**4.52** As outlined in the report the AFP conducts a specialised investigations program each year for officers involved in investigating this crime type since 2004. Along with AFP members, representatives from State and Territory police services, Department of Immigration and Citizenship and international law enforcement members participate in the program each year. The program for 2009 has been reinvigorated to ensure professional guidance in creation of operational collaboration with external stakeholders, rapport with witnesses, cultural considerations, international collaboration, standard operating procedures, intelligence collection, current trends domestic and international and case study analysis.

## 5. Support for Victims of People Trafficking Program

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*The Office for Women (OfW) is responsible for administering the Support for Victims of People Trafficking Program (the Program). The services provided under this Program are delivered by an outsourced service provider. This chapter examines OfW's management of the service delivery contract held with the Service Provider.*

### Background

**5.1** Providing support to victims of trafficking is a key component of the strategy to combat trafficking in persons. The Office for Women (OfW)<sup>88</sup> is responsible for the Support for Victims of Trafficking in Persons Program (the Program).

**5.2** The purpose of the Program is to provide 'support to victims of people trafficking who are both willing and able to assist with criminal investigations and prosecutions of people trafficking offences within Australia.'<sup>89 90</sup> The expected overall outcome<sup>91</sup> is:

Victims of People Trafficking are able to meet their basic needs for food, accommodation, health and welfare while they assist the Australian Federal Police (AFP) with investigations into people trafficking and the Commonwealth Director of Public Prosecutions with respect to the prosecution of such offences; and

Victims of People Trafficking will also be given the opportunity to learn new skills to support their reintegration upon returning home.

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<sup>88</sup> OfW is a policy advisory and program implementation unit and a division of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). Planning for the Program (Phase 1 and Phase 2) was the responsibility of the Office for the Status of Women in the Department of Prime Minister and Cabinet. In 2005, the Office for the Status of Women was moved to FaHCSIA and became OfW. Since this time, OfW has been responsible for the Program, including delivery of existing services and planning and implementation of Phase 3.

<sup>89</sup> OfW, *Fact Sheet - Support for victims of people trafficking* paragraph 1, April 2008.

<sup>90</sup> Victims of trafficking who are children will be supported for up to 48 hours under the Program and then transferred to the relevant state or territory child protection authority.

<sup>91</sup> These outcomes have not been made public.



## The support services

5.3 The Program assists victims of trafficking in three phases. At the time of the audit, the following phases were in place.<sup>92</sup>

### Phase 1

5.4 Under Phase 1, which commenced in 2004, victims receive up to 30 days of intensive support including:

- secure accommodation;
- a living allowance;
- a food allowance;
- an amount for the purchase of essentials such as clothing and toiletries;
- access to health care, including counselling; and
- access to legal services.<sup>93</sup>

### Phase 2

5.5 Phase 2, which also commenced in 2004, offers less intensive support whereby victims have access to the following types of support:

- Special Benefit, Rent Assistance and a Health Care Card administered by Centrelink (if they meet eligibility requirements);
- assistance with securing longer term accommodation;
- assistance to purchase essential furniture and household items;
- access to the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme;
- access to legal services;
- assistance to obtain employment and training if desired; and
- links to social support.<sup>94</sup>

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<sup>92</sup> OfW advised the ANAO that as of November 2008 Phase 1, Phase 2 and Phase 3 were renamed to 'Assessment Stream', 'Justice Support Stream' and 'Temporary Trial Support Stream' respectively.

<sup>93</sup> OfW, *Fact Sheet—Support for victims of people trafficking*, April 2008.

<sup>94</sup> *ibid.*

### *Phase 3*

5.6 Phase 3, which commenced in July 2007, offers intensive support to victims returning to Australia to provide evidence pertaining to a people trafficking prosecution. The support offered to these victims includes:

- secure accommodation;
- a living allowance; and
- a food allowance.<sup>95</sup>

### **Workload**

5.7 The Program is demand-driven—victim support workload is driven by case referrals from the Australian Federal Police (AFP). The Program was funded to cater for up to 90 victims a year. Uptake of available support has fallen substantially short of the planned numbers. As at August 2008, the Program has assisted 107 victims, none of whom have received support under Phase 3.<sup>96</sup>

### **The Service Provider**

5.8 Since April 2004, victim support services have been provided by a private company (the Service Provider) under contract to OfW.<sup>97</sup> The contract was extended in 2007, following an unsuccessful tender process. Late in the audit process, the contract was successfully re-tendered.

5.9 Irrespective of the decision to outsource service delivery, ultimate responsibility for the quality of services provided remains with the contract owner, in this case, OfW.

5.10 In order to assess OfW's management of the service delivery contract with the Service Provider, the ANAO examined:

- the specification of services for victims;
- OfW's processes to manage the contract; and
- OfW's public reporting arrangements.

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<sup>95</sup> *ibid.*

<sup>96</sup> OfW advised that the funding allows for funds to be readily available should there be demand for it—one investigation could lead to a significant increase in the number of victims on the Program. Any unspent funds are returned to Consolidated Revenue.

<sup>97</sup> From January 2004 to 31 March 2004, Centrelink were responsible for delivering Program services through an MOU.

## Specifying services for victims

**5.11** One of the most critical aspects of any contract is the definition of contract deliverables. Contracts should have well defined and documented requirements for the service provider that align with the Program's aims to ensure appropriate services will be delivered.

**5.12** At the time of the audit, there were two key documents that specified the Program's services: the schedule of activities and the Program Guidelines. The ANAO assessed whether these documents adequately specified the services for victims.

**5.13** The ANAO found that the documentation prepared by OfW provided a basic outline of services and requirements. However, the ANAO identified a number of weaknesses with the contract and associated documents relating to: eligibility for the Program; specification of Phase 3 services; and the definition of service quality.<sup>98</sup>

**5.14** In response to the initial audit findings, OfW informed the ANAO that improvements to the contract documentation had been made. This now includes a revised contract,<sup>99</sup> updated Program Guidelines,<sup>100</sup> a Communication and Operation Protocol,<sup>101</sup> Standard Operation Procedures and Service Standards.<sup>102</sup> The ANAO notes the responsiveness of OfW to the issues raised.

**5.15** The ANAO analysed relevant elements of the revised documentation and found that, whilst many improvements have been made, some problems remain. For example, victim eligibility requirements still need further clarification. Whilst it is stated that the AFP determine eligibility, the Service Provider must be satisfied that the client is in possession of a valid visa to register a client as eligible to the Assessment Stream or the Temporary Trial Support Stream. However, there is no explanation of which visas are currently

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<sup>98</sup> An OfW 2008 internal review identified the contract as 'vague'.

<sup>99</sup> The revised contract was not submitted to the ANAO.

<sup>100</sup> This document will form part of the new contract.

<sup>101</sup> Parties to the Communication and Operation Protocol include Australian Federal Police, the Case Management Service Provider, Department of Families, Housing, Community Services and Indigenous Affairs, Department of Immigration and Citizenship, Commonwealth Director of Public Prosecutions and the Attorney-General's Department. This document will form part of the new contract.

<sup>102</sup> This document will form part of the new contract.

valid, either in the contract or related documents.<sup>103</sup> More clearly specifying eligibility for services would reduce the risk that the service provider makes ill-considered or inconsistent decisions about whom it is to register to the Program.

## Managing the contract

**5.16** Contract management is most effective when it is supported by robust governance and risk management practices and procedures.

**5.17** OfW does not have a documented process for managing the contract with the Service Provider. Consequently, in order to assess management of the contract, the ANAO examined OfW's contract management practices, such as:

- risk management strategies;
- skills and experience required to manage the contract;
- managing the relationship with the Service Provider including the frequency of meetings with the Service Provider;
- managing Service Provider performance including the performance reporting requirements; and
- administration of the contract, including payment processing.

**5.18** The ANAO found no evidence that victims referred to the Service Provider were not receiving services. In this, OfW are meeting the basic aims of the Program, which is to provide support to victims of people trafficking.

### *Risk strategies*

**5.19** Risks to the management of individual contracts can include:

- the agency's capability to manage the contract;
- the performance of the service provider;
- changes in circumstances and or requirements, and
- stakeholder relationships.

**5.20** A risk mitigation strategy, which should be reviewed at key stages, helps to ensure the identified risks are dealt with.

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<sup>103</sup> In response to the audit, OfW suggested that the new contract could be worded to require the use of the most recent program guidelines.

**5.21** There is no documented assessment of the risks to the delivery of the services specified in the contract at any stage of Program development or implementation. Therefore, the ANAO could not find evidence of any strategies to identify, mitigate and review risks to program delivery.<sup>104</sup> Without a risk assessment or mitigation strategy, OfW had reduced assurance that the Program would be delivered according to government expectations.

**5.22** In response to the audit, OfW advised the ANAO that a risk management framework has been adopted.<sup>105</sup> OfW also advised the ANAO that the recent re-tendering process was developed in line with the Department of Families, Housing, Community Services and Indigenous Affairs' (FaHCSIA's) risk team to assess and qualify the risk elements.

### *Maintaining OfW Staff Skills*

**5.23** A range of skills are needed throughout the contracting cycle and the type of skills needed may vary with the different stages of contracting and with the size and nature of the contract.

**5.24** OfW has experienced high levels of staff turnover, including managers at the senior levels.<sup>106</sup> In such a situation, it is important that new staff are provided with relevant training and guidance to enable skills development.

**5.25** At the time of the audit there were a number of weaknesses in the guidance provided to OfW staff. There was limited guidance advising OfW staff how to process monthly reports—which informs decisions on how to reimburse the Service Provider for victim costs. There was no guidance to help OfW staff interpret different financial reports. Without appropriate guidance on how to make payments to the Service Provider, there was a risk that incorrect processing may lead to inappropriate payments.<sup>107</sup>

**5.26** In response to the audit, OfW developed a template to track the financial approval process. The ANAO considers this template should improve tracking of the financial approvals.

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<sup>104</sup> While the 2006–07 and 2007–08 Branch/Group plans identify the risk of 'ineffective management of third parties delivering our Programs', there is no mitigation strategy nor has the risk been reported upon.

<sup>105</sup> The ANAO has not been provided with this framework.

<sup>106</sup> In the past year, there have been two different group managers, four different branch managers, three different section managers and four different middle managers.

<sup>107</sup> For example, in February 2008 an invoice from the Service Provider was paid by OfW without receipt of the necessary *Expenditure report*, *Comments report* or *Witness Spreadsheet*.

**5.27** Effective implementation of the improved approval process will depend on effective staff training and guidance. OfW advised there is now detailed information that provides guidance to assist OfW staff interpret monthly reports, and that handover procedures are now in place to mitigate the risks presented by staff turnover.<sup>108</sup> OfW also advised they now have processes to ensure staff have appropriate skills and training enabling them to manage program delivery.<sup>109</sup>

### *Managing the relationship*

**5.28** When managing a contract which involves ongoing service delivery over an extended period, both informal and formal pre-determined meetings are sound practice. Such meetings enable:

- discussion and resolution of minor issues relating to the performance of the contract;
- monitoring of contract performance; and
- improvements to services and amendments to the contract.

**5.29** Given the high levels of OfW staff turnover, regular meetings would have been particularly beneficial, and would have assisted new senior contract management staff to understand and develop the relationship with the Service Provider. However, at the time of the audit, OfW had not held regular meetings with the Service Provider; instead, OfW had relied on ad-hoc meetings as issues arose.

**5.30** In response to the audit, OfW advised the ANAO that:

- bi-monthly meetings with the service provider have been implemented; and
- regular interaction with the service provider is now being documented.

### *Managing contractor performance and administering contract payments*

**5.31** Effective contract management should include regular reviews of performance. Formal monitoring of performance against specified standards provides assurance that deliverables are on-track, and that implementation is proceeding smoothly. Alternatively, it will flag problems that have to be

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<sup>108</sup> The ANAO has not been provided with these documents.

<sup>109</sup> OfW provided a list of training options to provide staff with contract management skills, as well as named resources to achieve the same.

resolved for progress to continue. Service provider reporting requirements should be sufficient to support claims for payment.

**5.32** OfW established the Service Provider's reporting requirements in both a schedule to the contract and a reporting template. Combined, these documents formed a framework that was used to administer payments.

**5.33** At the time of the audit, OfW did not regularly review the Service Provider's performance against the agreed standards set out in the schedule of activities. Consequently, OfW had little assurance that services received by victims were appropriate. Instead, OfW relied on self-reporting by the Service Provider to manage the contract and administer contract payments. Although the Service Provider complied with many of its reporting requirements, weaknesses in the reporting process meant payments to the Service Provider were not adequately supported.

**5.34** OfW has since implemented a new reporting framework. The ANAO assessed the new framework and found it provides predominantly activity-based reporting, enabling monitoring and analysis of the type of services provided. As such, it represents a significant improvement on the previous approach.

**5.35** Further, in response to the audit, OfW advised they had made other changes to its contract management and monitoring, including:

- introducing a complaints handling system;
- improving guidance on the Service Provider's expenditure reporting; and
- verifying claims for payment.

**5.36** The ANAO notes OfW's enhancements to its contract management. A key challenge going forward will be to maintain this momentum and embed an appropriate and sustainable monitoring process that provides adequate assurance as to the quantity and quality of services being provided, without imposing an unnecessary burden on OfW or the Service Provider. Actions that OfW could take to further strengthen its contract management approach include:

- improving the data provided by the Service Provider to OfW, ensuring it is both complete and accurate;
- ensuring reports are monitored to confirm that eligibility requirements are met; and

- improving the activity-based reporting by implementing a performance reporting framework that focuses on measuring the quality of the services provided (see Appendix 4).

**5.37** The ANAO considers that OfW's enhanced approach to contract management is an improvement on the previous approach. The ANAO suggests that OfW look to further strengthen their processes by implementing a performance measuring process that focuses on the quality of support provided by the Service Provider.

## Public Reporting

**5.38** An effective performance reporting and monitoring system is a key aspect of a well-governed agency. Good governance requires that the agency have a structured and regular system of performance monitoring and review. This system should be aligned with the agency's outcomes and outputs framework and generate information that is appropriate for both internal and external performance management needs, and external reporting requirements such as the annual report.

**5.39** Unlike other agencies responsible for implementing anti-trafficking measures under the Action Plan, OfW has sought to measure its performance as part of FaHCSIA Outcomes/Outputs framework, and report results in the Department's Annual Report. OfW has also reported their performance on an ad hoc basis to Ministers and other stakeholders.<sup>110</sup> OfW recognised weaknesses in previous public performance reporting indicators, and introduced new measures to be reported against from 2009-2010 that are in line with FaHCSIA objectives. Table 5.1 outlines the new performance indicators.

**Table 5.1**

### Revised performance indicators

1. Percentage of identified project stakeholders satisfied that the project was appropriate to the need of the target group.
2. Percentage of victims receiving service within the Support for Victims of Trafficking quality standards.
3. Number of victims of trafficking assisted (per year).

Source: OfW.

<sup>110</sup> Such as the Australian Institute of Criminology for research purposes.



**5.40** The ANAO assessed the adequacy of the revised performance indicators for the Program. In response to comments from the ANAO, OfW have broadened their source of data for the first performance indicator to include the information from Service Provider.<sup>111</sup> This indicator is in-line with FaHCSIA's desire to monitor the satisfaction of client's provided support under a FaHCSIA-led program. This indicator is the only one that links to outcomes.

**5.41** The second performance indicator relies upon quality standards being clearly defined and measurable. Measurement will also rely on the quality and accuracy of data provided by the service provider and OfW's ability to extract, capture and record that data.

**5.42** In response to the audit, OfW prepared Service Standards which it advised is a tool against which the service provider's performance may be measured. The ANAO welcomes the development of clear Service Standards, but notes that, as presently worded, the quality standards are not easily measured in a quantifiable way. With this, comparisons are not easily made, nor are targets and benchmarks easily created. The revised reporting framework has limited capacity to report on much of the elements within the Service Standard (see Appendix 4).

**5.43** By addressing these matters, OfW's performance indicators would yield more useful information about the performance of the Program.

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Ian McPhee  
Auditor-General

Canberra ACT

29 April 2009

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<sup>111</sup> Previously information from only the following stakeholders was to be sourced: the Australian Federal Police, Department of Immigration and Citizenship, and Commonwealth Director of Public Prosecutions.



# Appendices



## Appendix 1: Whole-of-government management issues for consideration and resolution by the People Trafficking IDC/OWG

**Table A 1**

### Issues that could be addressed by the IDC/OWG

Issue	ANAO suggestion for IDC/OWG action
Monitoring the effects of the Trafficking Visa Framework, as currently implemented.	<p>The majority of alleged victims are no longer unlawful non-citizens—less than 20 per cent of alleged victims referred to the AFP in 2007–08 were unlawful.<sup>112</sup> Some trafficking visas are time-limited and preclude the holder from working,<sup>113</sup> however some victims may need to work to support a family in their home country. Other trafficking visas depend on the Minister for Immigration and Citizenship being satisfied that the victim would be in significant personal danger if s/he were to return to her/his home country.<sup>114</sup> However, this issue may not be addressed until after trial, by which time the victim may have made themselves a target for reprisals. There is no facility to bring in family from overseas who may be in danger if the witness gives evidence.</p> <p>The IDC/OWG could monitor the inter-relationship between the Trafficking Visa Framework, the change in profile of victims, particular visa time limits, ‘no-work’ conditions and eligibility requirements, to assure itself that these are not leading to unintended consequences, such as discouraging genuine victims from participating in the law enforcement process.<sup>115</sup></p> <p>Trafficking visas could also be portrayed as encouragement for alleged victims to give the most helpful evidence to the prosecution and their existence can be used as a basis for defence claims to undermine the veracity of the alleged victim’s evidence.</p> <p>The IDC/OWG could monitor the effect of the Trafficking Visa Framework on defence claims about the veracity of evidence given by alleged victims.</p>

<sup>112</sup> In the period to February 2005, 56 per cent of alleged victims referred to the AFP were unlawful.

<sup>113</sup> Bridging F Visa (BVF) is limited to 30 days and has a ‘no work’ condition.

<sup>114</sup> Witness Protection (Trafficking) visas.

<sup>115</sup> At the time of preparing this report, AGD advised that the point at which a victim might be invited to apply for a protection visa and issues relating to family reunions or family visits for those with trafficking-related visas were under consideration by the Government.

Issue	ANAO suggestion for IDC/OWG action
Monitoring the effects of the allocation of investigative effort on the identification of victims outside the sex industry and metropolitan centres.	<p>Most victims of trafficking have been found working in the sex industry in metropolitan centres. DIAC's dedicated sex industry teams are located in Sydney and Melbourne, and the AFP is located in major cities.</p> <p>While the allocation of resources is ultimately a decision for individual agencies, the IDC/OWG could periodically consider whether arrangements in place to identify victims outside the sex industry and metropolitan centres are adequate. The ANAO notes in this regard that steps have recently been taken to examine the issue of labour trafficking by the IDC, and at an inaugural trafficking round table meeting with non-government organisations.</p>
Monitoring the effects of support services for victims, as currently implemented.	<p>There is a risk that prosecutions may not achieve the desired outcome if victims are not adequately supported. There is also a risk that support services may not be appropriately provided if eligibility requirements are not clear or applied.</p> <p>The IDC/OWG could monitor the adequacy of victim support services, and could also assure itself that eligibility requirements are clearly specified for all phases for victim support.</p>

Source: ANAO analysis.

## Appendix 2: Trafficking visa types

### **Bridging F Visas (subclass 060)—Pt 2, Division 3 of the *Migration Act 1958***

A Bridging F Visa (BVF) confers temporary lawful status on a person who would otherwise be unlawful. They are granted to non-citizens who are of interest to a law enforcement agency (AFP or State/Territory police) in relation to people trafficking, sexual servitude or deceptive recruiting offences.

The BVF enables holders to remain in Australia for up to 30 days. This provides time for a trafficked non-citizen to reflect on whether s/he wishes to assist police in relation to an alleged offence. It also provides time for police to assess whether they wish to seek a Criminal Justice Stay Certificate on behalf of the person (see further below).

#### ***Applying for a Bridging F Visa***

For a BVF application to be valid, it must be accompanied by a written 'supporting statement' from a law enforcement officer advising DIAC that the applicant is a person of interest in relation to a people trafficking, sexual servitude or deceptive recruiting offence.

Applications may also be made by police on behalf of a member of the immediate family of a person of interest.

At the time of preparing this report, the AFP had been the only law enforcement agency to have supported an application for a BVF.

### **Criminal Justice Stay Visas—Pt 2, Division 4 of the *Migration Act 1958***

If, on the expiry of a BVF, a law enforcement agency certifies that a person is required to stay in Australia to assist them in the investigation or prosecution of a people trafficking matter, and that person chooses to continue to provide assistance, then the agency may request the Commonwealth Attorney-General to issue a Criminal Justice Stay Certificate.

A Certificate is an important prerequisite for the grant of a Criminal Justice Stay Visa (CJSV). CJSVs may be granted by the Minister for Immigration and Citizenship to people to whom a Certificate has been issued and who are required to be witnesses or defendants in criminal proceedings in Australia. Holders of CJSVs are eligible to access Phase 2 of the victim support program (discussed in Chapter 5).

## **Witness Protection (Trafficking) Visas**

Holders of CJSVs who have contributed significantly to the prosecution or investigation of a people trafficking matter may be offered a Witness Protection (Trafficking) Visa. There are two types of Witness Protection (Trafficking) Visas—Temporary and Permanent. Immediate family members who are in Australia are also eligible for both the Temporary and Permanent Visas.

### ***Temporary (Class UM, Subclass 787, Regulation 2.07AJ)***

A Temporary Visa may be offered to a person who holds a CJSV where the Attorney-General has certified that the person has either made a:

- major contribution to, and cooperated closely with, the prosecution of a person who has trafficked or forced others into exploitative conditions; or
- significant contribution to, and cooperated closely with, an investigation in relation to which the Director of Public Prosecutions has decided not to prosecute a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions.

The person must not be the subject of any related prosecutions, and the Minister for Immigration and Citizenship must be satisfied that the person would be in significant personal danger if they were to return to their home country.

### ***Permanent (Class DH, Subclass 852, Regulation 2.07AK)***

A Permanent Visa will be offered to a person who has held the Temporary Visa for at least two years and who continues to meet the criteria for the Temporary Visa.

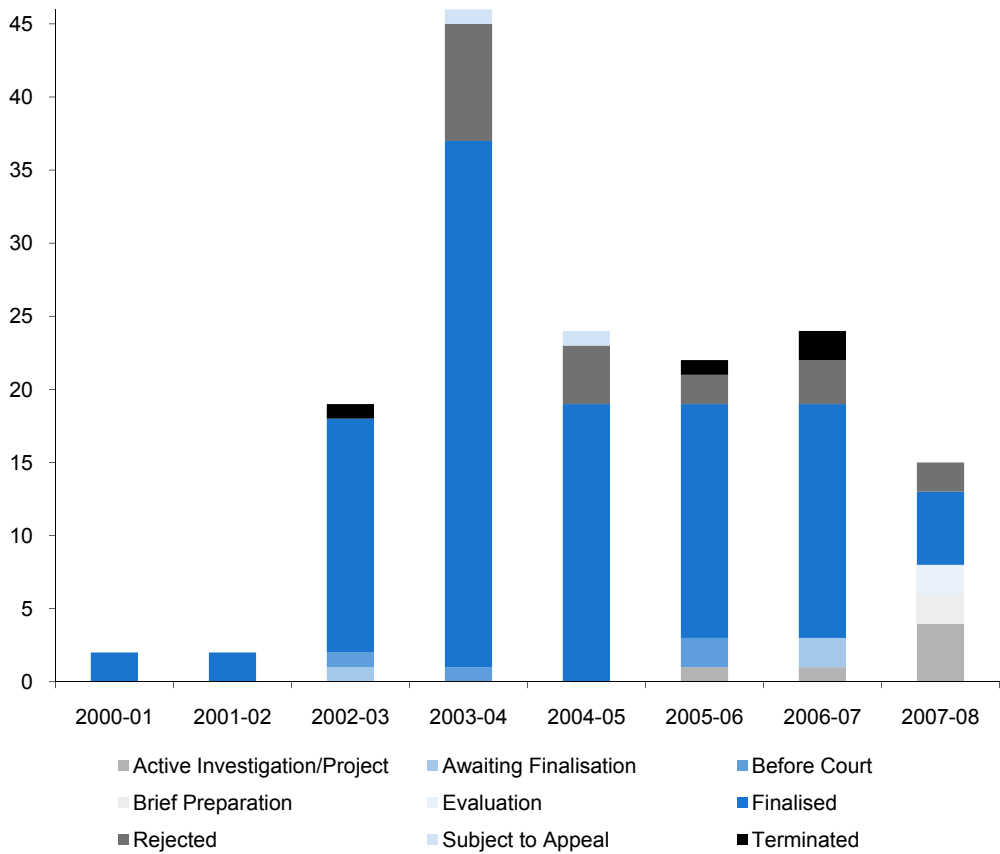


### Appendix 3: Status of people trafficking investigations

The Figure below shows the status of the 154 AFP people trafficking investigations from 2000–01 to 2007–08. The following table explains the terms used for the status of each investigation.

Figure A 1

Status of people trafficking investigations by financial year



Source: ANAO analysis of AFP data.

**Table A 2****Explanation of terms**

Term	Explanation
Evaluation	The initial status recorded when a new case is created from a client referral or information received. Generally, these matters are to be evaluated within 28 days.
Active Investigation/Project	Used for all matters accepted for investigation where a case has been assigned to a staff member and the case is currently being investigated or the case is actively being pursued by the AFP.
Terminated	Used when: A review of a case identifies that current priorities does not warrant further commitment of resources; The case is no longer within current AFP priorities; Where an alternate is available for resolution of a matter by referral back to the referrer or another Agency; Where it is unlikely that further investigation will gain further intelligence or sufficient evidence to support a successful prosecution.
Rejected	Used to identify those cases not accepted for investigation.
Brief Preparation	Used when persons have been arrested or a decision is made by the case officer, to proceed by way of summons.
Before Court	Used once an arrest has been affected, or the brief has been prepared (in an Australian Court) and submitted and the matter is at the judicial stage, the status is changed.
Awaiting Finalisation	Used when all investigations and court proceedings have been completed; or when a search warrant has been executed on behalf of an Agency, and property receipted to the Agency for criminal prosecution purposes.
Finalised	Used when all investigations, court proceedings and Administration or Property issues have been completed.
Subject to Appeal	Used when an appeal has been lodged. The status of subject to appeal is not to be used for a mandatory appeal period e.g. 28 day appeal period.

Source: ANAO summary of AFP information.

## Appendix 4: Analysis of OfW's revised performance reporting framework

At the time of the audit, the reporting framework did not require the Service Provider to report on all activities the service provider was contracted to perform.<sup>116</sup>

Subsequently, OfW have implemented a new reporting framework which allows for activity based reporting against most of the activities the service provider is required to perform. OfW advised that the new reporting tool has functions that enable trend and other analysis. However, being activity based, it does not allow for measurement and analysis of the quality of that support, such as reporting and analysis against: timeframes set out in the Communication and Operation Protocol; or the new Service Standard.

The *Bi-Annual Staff Report* includes, *inter alia*, reporting against staff performance. While the ANAO considers this tool could be used to record service provider staff performance, the guidelines do not advise of suitable performance measures.

Examples of potential improvements to performance measurement include:

- sample-based progress reporting against individual client plans;<sup>117</sup>
- Service Provider reporting against the Service Standards; and
- desk audits where case files are checked against 'Change of status reports' and/ or client plans.

OfW advised that the AFP regularly verifies that services are being delivered by the Service Provider. However, OfW did not advise the format in which this occurs; for example, a weekly report, or how the information is collated and analysed. The OfW has been unable to provide evidence that these reports are used to systematically monitor and react to performance issues with the Service Provider.

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<sup>116</sup> For example, the Service Provider Case Manager's response time when notifying appropriate agencies that a victim could not be contacted; or the Service Provider Case Manager's response time when asked to contact the AFP or the Commonwealth Department of Public Prosecutions

<sup>117</sup> The Service Provider is required to submit client plans including Intake Forms, Initial Needs Assessment Forms, Case Management Plans, and Transition to Independence Plans.

The ANAO acknowledges the benefits of the introduction of a Service Plan,<sup>118</sup> and the requirement for the Service Provider to report against this Plan.

Whilst the new reporting framework improves on the previous framework, OfW remains unable to assess the quality to which those services are being supplied.

In the interests of efficiency, the ANAO would not envisage that each activity provided to each client be monitored, but rather, OfW establish a mechanism to obtain reasonable assurance that, overall, the services that are provided within the scope of the Program are provided to a standard that is acceptable to OfW. Currently, OfW does not have such assurance. Without this knowledge, there is a risk that Program aims may not be met, that is, ensuring clients remain 'willing' to assist with criminal investigations.

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<sup>118</sup> The Service Plan is used to identify key events and timeframes for implementation.

## Appendix 5: Agency comments on the proposed report

### ATTORNEY-GENERAL'S DEPARTMENT

Australia's response to trafficking in persons reflects Australia's obligations in the anti-people trafficking field as a Party to the UN Convention against Transnational Organised Crime (since 2004) and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Protocol) (since 2005).

Since it was established in 2003, Australia's whole-of-government response to trafficking in persons has provided support to victims of trafficking for sexual exploitation and for other forms of exploitative labour, and has seen the successful prosecution and conviction of a number of people traffickers.

AGD welcomes the ANAO's performance audit of the Action Plan to Eradicate Trafficking in Persons, and considers that the audit's findings will contribute to a more effective and transparent implementation of the anti-people trafficking strategy.

#### RESPONSE TO RECOMMENDATION NO.1

The ANAO recommends that, in order to improve whole-of-government monitoring of the measures to combat trafficking, the AGD ensures that the Trafficking IDC or its sub-committee:

- Has appropriate processes to identify and initiate responses to cases involving mentally impaired victims and children;<sup>119</sup> and
- Monitors issues that could affect overall outcomes including: the trafficking visa framework; the allocation of investigative effort; and the support services for victims.<sup>120</sup>

#### **AGD response:** *Agreed*

AGD agrees with the ANAO's assessment of the importance of effective monitoring and reporting on the whole-of-government response to trafficking in persons, and welcomes suggestions for improvement in these areas.

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<sup>119</sup> ANAO note: in agreement of AGD, the text of this recommendation in the final report has been clarified to broaden its scope beyond particular cases to encompass particularly vulnerable victims.

<sup>120</sup> ANAO note: in agreement of AGD, the text of this recommendation in the final report has been clarified to emphasise the need for systematic monitoring of issues.

The IDC, which was established to develop Australia's anti-trafficking strategy, has a continuing responsibility to monitor and report on its implementation and to report to Government on its effectiveness. Agencies remain responsible for the administration of the individual components of the package. Improving monitoring and reporting mechanisms has been a focus of the IDC and of individual agencies since the strategy commenced. For example, in 2008 the Operational Working Group (OWG) was established, as a sub-committee of the IDC, to provide a more formal mechanism to resolve operational issues that arise in the management of individual cases. AGD will work with the OWG to formalise processes for referring emerging policy issues for IDC consideration.

#### *Services to vulnerable victims*

IDC agencies, especially those working with victims of trafficking, are aware that all victims of trafficking have specific and quite individual support needs. For this reason, the Support for Victims of People Trafficking Program provides individualised case management and access to a range of support services. There has been an ongoing focus over the life of the strategy on enhancing services for victims of trafficking, including through the recent introduction by the CDPF of a Pilot Witness Assistance Service to provide a formalised system of assistance to victims and witnesses in the prosecution process.

Individualised case management remains the most appropriate way to provide assistance to victims. However, given we now have the experience of supporting over 120 victims on the program since it commenced in January 2004, AGD agrees it is appropriate for the IDC and OWG to consider whether there is a need to develop standard procedures for particularly vulnerable victims of trafficking, including children and people with a mental impairment. AGD notes that the AFP advises it has not received any credible referrals of child trafficking in Australia since the TSETT commenced operation in 2004. However, that does not detract from the benefits of the IDC proactively addressing this issue.

#### *Monitoring Issues that could affect overall outcomes of the anti people trafficking strategy.*

AGD notes that the IDC and individual agencies, especially OWG agencies, already closely monitor their responsibilities under the people trafficking strategy, including those issues raised in Appendix 1 in the ANAO's report. This is demonstrated by a range of initiatives undertaken by IDC agencies.

- The victim support program and people trafficking visa framework were the subject of close consideration by the IDC when the anti-trafficking strategy was in development, and continue to be so. This includes consideration of the issues noted by the ANAO in Appendix 1.
- The ANAO report outlines a considerable body of work undertaken by the OFW in consultation with OWG agencies to improve the implementation of the Support for Victims of People Trafficking Program.

DIAC has reviewed the effectiveness of the People Trafficking Visa Framework, including through consultations with a number of peak NGOs. Suggestions put forward ranged from simplification of the visa framework to de-linking visas from law enforcement activities. Consultation on this issue was also undertaken with the IDC, with individual IDC agencies, and with the National Roundtable on People Trafficking, established by the Government in June 2008. (The Roundtable brings together government agencies across a number of ministerial portfolios with relevant nongovernment organisations and industry bodies. It provides an ongoing mechanism for consulting on, testing and developing government policy on people trafficking issues.) The results of the consultation are being considered by Government.

- The ANAO has suggested that the IDC consider the impact of providing Australian visas to trafficking victims based on the victims' evidence in court. The fact that counsel for defence could allege that visas or indeed victim support could be an inducement to participate in the criminal justice process is part of any adversarial process. That does not detract from the importance of these initiatives. Managing the impact of such allegations on victim testimony is a core part of the work of prosecutors, and the CDPP was provided with funding through the whole-of-government 2007-08 Budget measure 'Combating Trafficking in Persons extension and expansion' to provide training for prosecutors who manage trafficking cases. The IDC continues to monitor issues arising from investigation and prosecution as appropriate, given the sensitivities associated with matters which are the subject of active investigation or which are before the Courts. One outcome of this is that AGD will be approaching legal education and training bodies, including the National Judicial College, for assistance in developing resources to assist judges, prosecutors and jurors. A resource package is currently being developed in partnership with the National Judicial College for delivery later this year.

- While there are not dedicated anti-trafficking teams located outside metropolitan areas, State and Territory police services and DIAC compliance officers currently provide coverage in these areas.
- The AFP's Practitioner Roundtable on Human Trafficking brought together NGOs, IDC agencies and police from around Australia. Amongst other issues, it considered the issue of policing of trafficking in rural and remote areas. This is an area of ongoing consideration by the IDC in the context of trafficking for labour exploitation.

## RESPONSE TO RECOMMENDATION NO.2

The ANAO recommends that the AGD,<sup>121</sup> in consultation with relevant agencies, strengthen the arrangements for reviewing progress and measuring results of the anti-trafficking strategy by:

- Developing an appropriate whole-of-government performance framework, including a method to establish reasonable estimates of the approximate number of victims of trafficking, to support the broad outcomes articulated by the Australian Government in 2004.
- Identifying appropriate targets, benchmarks or activity levels against key performance indicators, where possible, to enable future results to be interpreted against expectations;
- Reporting on outcomes annually; and
- Ensuring that the performance information provided by key contributing agencies is aligned to the whole-of-government performance framework.

### **AGD response:** *Agreed*

AGD agrees that the IDC and OWG may be better positioned to measure the results of the whole-of-government anti people trafficking strategy if explicit review measures were developed. AGD notes that there has been extensive and regular reporting under the broad outcome statements contained in the Action Plan by the IDC and by individual agencies. This includes regular reporting: directly to Government; in evidence to parliamentary committees

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<sup>121</sup> ANAO note: in agreement of AGD, the text of this recommendation in the final report has been clarified to more precisely reflect the role of the IDC, as led by the AGD.



and in responses to questions on notice; through annual reports; in information and regular reports provided to the United Nations and other international and regional organisations; in presentations and other information provided to other governments; and in public presentations and speeches.

However AGD agrees there would be considerable benefit, especially from the perspective of transparency and accountability, in the production of a single, consolidated annual report, and will work with the IDC to this end.

Fortunately, opportunities to traffic people into Australia are low because of our strong migration controls and geographic isolation. This means that the scale of the human trafficking in Australia remains relatively small, particularly in comparison to the experience of other countries in our region. It is therefore more challenging to draw conclusions from changes in victim profiles or to develop appropriate KPIs.

However, with the strategy having effectively been in place for five years, we are now better placed to undertake this body of work. Accordingly, AGD will work with other IDC agencies to establish a whole-of-government reporting framework aligned with the four key indicators identified in the National Action Plan.

Key indicators of the type suggested by the ANAO in Paragraph 2.26<sup>122</sup> of this report are likely to provide a better measure of the effectiveness of the strategy than quantitative measures due to the low incidence of this crime type. We will explore the establishment of quantitative measures of the impact of individual agency processes, including the management of the AFP-DIAC Referral Protocol and the Standard Operating Procedures developed for the Support for Victims of People Trafficking Program.

The ANAO suggests that the IDC consider developing a method to produce estimates of the approximate number of victims of trafficking in Australia. The IDC will re-examine this issue. AGD notes, however, that despite the significant attention given to this issue internationally, there is little solid international, regional or national data about the extent of people trafficking. Incidence is profoundly difficult to determine due to the nature of the crime. As the UNODC notes, "due to its clandestine nature, accurate statistics on the magnitude of the human trafficking problem at any level are elusive and

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<sup>122</sup> ANAO note: the indicators are listed in paragraph 2.25 of the final report.

unreliable" (Trafficking in Persons: Global Patterns 2006). The use of population based victimization surveys to address similar issues in measuring the incidence of domestic violence and sexual assault in Australia are not viable options for this crime type for a range of reasons. Accordingly, it is likely that the collection of intelligence about trends in trafficking domestically and in our region may be more useful in measuring the success of the anti people trafficking strategy. In addition to incidence, other key issues include developing a better understanding of the nature of regional and local demand, and of the characteristics of perpetrators.

## **Department of Immigration and Citizenship**

The Department of Immigration and Citizenship (DIAC) welcomes the findings of the audit report. Enhanced guidelines have been provided to DIAC's Service Delivery Network on the granting of visas under the People Trafficking Visa Framework where a person holds a substantive visa. DIAC notes that access to the Support for Victims of Trafficking Program is currently tied to a person holding a Bridging F visa. The Government is currently considering a range of enhancements to the Anti-trafficking strategy.

The report suggests improving management information on its people trafficking referrals to the Australian Federal Police by periodically reviewing relevant performance information. This is being considered as part of DIAC's ongoing quality assurance processes.

## **Australian Federal Police**

The AFP has welcomed the opportunity to contribute to the ANAO performance audit of the management of the Action Plan and broadly agrees with the recommendations of this report. While individual agency activity has been occurring with respect to this crime type this audit has identified further measures to increase the effectiveness of the coordination and made recommendations to improve transparency and accountability from a whole of government perspective.

**Recommendation 4, Para 4.27<sup>123</sup>**

*The ANAO recommends that the AFP improve the transparency and accountability of TSETT by:*

- *Using baseline data, such as estimates of the number of victims of trafficking to measure TSETT's impact in combating people trafficking;*

The AFP agrees with this recommendation.

Noted by the report is the difficulty in quantifying this crime type due to its illicit nature. TSETT has maintained yearly statistical data relating to victim complaints, investigation outcomes and prosecutions. TSETT has ongoing engagement with AFP Intelligence to determine annual patterns and trends within this crime type as well as emerging threats for exploitation.

- *Developing key performance indicators and associated targets, benchmarks or activity levels against which its activities can be assessed and reported.*

The AFP agrees with this recommendation.

TSETT has committed to key performance indicators outlined in a phased NPI implementation plan and yearly action plan to support achievement of government and organisational objectives. Assessment of performance against each plan occurs quarterly. Through these initiatives the AFP is able to monitor progress and activity levels to support proactive and victim based investigations leading to successful prosecutions.

It is recognised that some refinement is required to ensure greater measurability of certain performance indicators outlined in the TSETT yearly action plan. The impact of strategies against objectives in KPI's is currently being created with assistance from the AFP Business Analysis function with the engagement of external stakeholders to assist in the process.

**Recommendation 5, Para 4.45<sup>124</sup>**

*The ANAO recommends that the AFP improve the transparency and accountability of TSETT funding by regular reporting to the People Trafficking IDC on decisions about the use of resources intended for anti-trafficking activities and of their expected impact on the anti-trafficking package as a whole.*

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<sup>123</sup> ANAO note: this recommendation is at paragraph 4.26 of the final report.

<sup>124</sup> ANAO note: this recommendation is at paragraph 4.43 of the final report.

The AFP agrees with this recommendation.

Since commencement of the audit the AFP has improved the transparency of the reporting regime against this NPI. Quarterly reporting against the NPI incorporates resourcing and funding information. The People Trafficking IDC is predominately a forum for policy development however such financial and resourcing reporting can be made available.

It is further noted that the AFP operational responsibility for investigation of child sex offences is no longer aligned to TSETT. It is acknowledged that child sex crime investigations were an accepted part of TSETT activity, however since March 2008, the responsibility for these investigations has transferred to AFP Child Protection Operations under High Tech Crime Operations where it is better aligned. All TSETT resources are now allocated to trafficking related investigations.

**Recommendation 6, Para 4.52<sup>125</sup>**

*The ANAO recommends that the AFP strengthen the management framework for its anti-trafficking initiatives by developing TSETT-specific guidance and/or standard operating procedures for its officers.*

The AFP agrees with this recommendation.

The standard operating procedures for TSETT were in existence prior to this audit however were in need of amendment to bring these in line with current threats and trends. A review of this documentation is currently underway to update and reflect current procedures for assistance to TSETT investigators.

As outlined in the report the AFP conducts a specialised investigations program each year for officers involved in investigating this crime type since 2004. Along with AFP members, representatives from State and Territory police services, Department of Immigration and Citizenship and international law enforcement members participate in the program each year. The program for 2009 has been reinvigorated to ensure professional guidance in creation of operational collaboration with external stakeholders, rapport with witnesses, cultural considerations, international collaboration, standard operating procedures, intelligence collection, current trends domestic and international and case study analysis.

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<sup>125</sup> ANAO note: this recommendation is at paragraph 4.50 of the final report.

The recommended AFP initiatives highlighted within this audit report have been adopted and the AFP has either implemented or is in the process implementing strategies to address the issues raised. The remedial strategies will provide greater levels of transparency and accountability with respect to funding arrangements and will provide regular activity reporting towards the identified deliverables and benchmarks within a whole of government context.

## **Department of Families, Housing, Community Services and Indigenous Affairs**

Thank you for your letter of 24 February 2009, providing the Office for Women with the opportunity to respond to the Australian National Audit Office's Proposed Report on the Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons.

The audit was particularly timely for the Office for Women, as a tender process was underway for a case management service provider for the Support for Victims of People Trafficking Program (the Program). A number of improvements were being introduced to the Program as part of this tender process. As the audit process was parallel to the tender process:

- A number of these improvements could be progressed;
- Solutions to several identified problems were revealed; and
- Concerns were raised to be addressed to ensure more effective and transparent contract management.

The Office for Women acknowledges that while the Program, as reflected in the Proposed Report, has met its requirements in providing services to eligible victims of people trafficking, this audit has unveiled further administrative improvements that could be made. The Office for Women introduced a number of these improvements during the audit process and is currently implementing more improvements through a contract with the successful tenderer for case management services under the Program.

As no recommendations made in the Proposed Report apply directly to the Office for Women or the Program, the Office for Women has no formal comments about the Report's recommendations. The Office for Women will work with partner agencies to strengthen whole-of-government arrangements raised in the Report's recommendations.

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