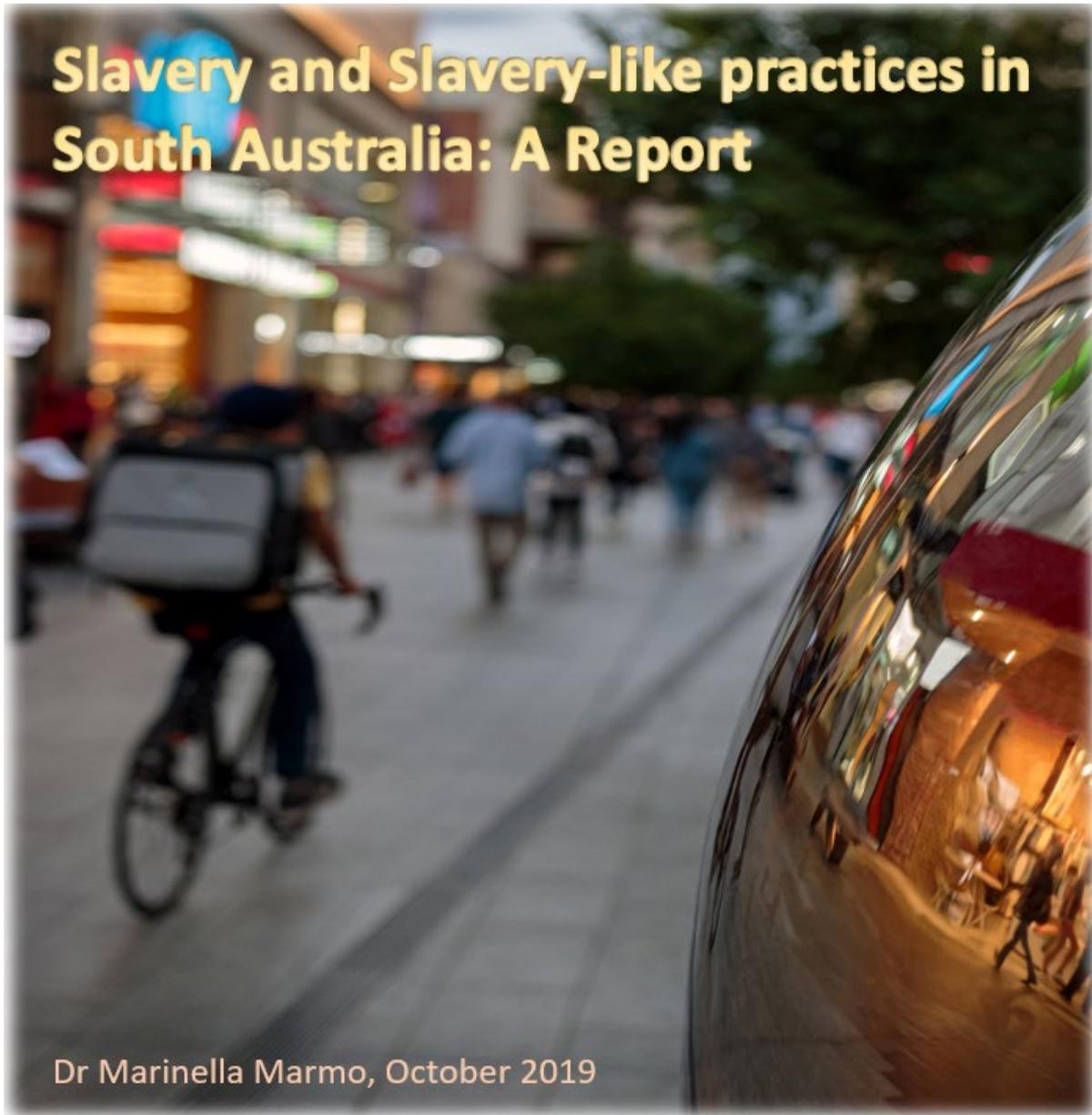




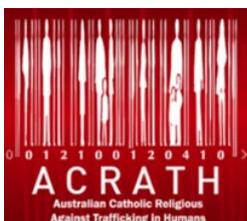
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## COLLABORATION

This study has enjoyed the in-kind and financial support of the Australian Catholic Religious Against Trafficking in Humans (ACRATH) and Flinders University. These institutions partnered up through a Memorandum of Understanding.

The project relied enormously on ACRATH SA (whose assistance ranged from providing a brainstorming platform to facilitating connections with potential participants), and I would like to thank the SA regional coordinator, Sister Meredith Evans, for her encouragement and energy.

## ACKNOWLEDGEMENTS

The project is indebted to the background research of, and the author's discussions with, PhD candidate Alexandra Baxter and Sister Anne Tormey, PhD.

It is also indebted to all the service providers at the state and national level who took the time to talk to me despite their very busy schedules.

All mistakes contained herein are the responsibility of the report's author.

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## EXECUTIVE SUMMARY

Slavery and slavery-like practices are a reality in South Australia (SA). These situations include cases of forced marriage; forced labour; and domestic, labour and sexual servitude in intimate partner violence cases linked to partner visas. These slavery practices are a gross violation of human rights as they reduce a person to a commodity to be exploited, and they are criminalised in the Commonwealth Criminal Code 1995 (divisions 270 and 271).

Human trafficking and slavery practices in SA have remained of marginal importance in the literature, receiving very limited reference in government and non-government organisation reports as well as academic research. Therefore, formally it appears as though these practices are minimal or non-existent in SA and, up until recently, very little was known about the types, conditions, extent and impact of slavery (Curnow 2012; Salvation Army 2014).

In recent years, a growing number of reports have highlighted the issues around labour exploitation and wage theft in this state. Based on evidence collected using a mixed-method approach drawing on quantitative and qualitative data analysis, it is clear that forced marriage and the exploitation of partner visa holders akin to servitude are an increasing issue in SA. In addition, labour exploitation cases, where the person has not given their full consent to the exploitative conditions they are subjected to and cannot simply walk away from the situation, should be scrutinised more closely using the forced labour indicators produced by the International Labour Organization (ILO 2012).

### Key findings:

- Eighteen (18) suspected victims in SA have been referred to the Support for Trafficked People Program (STPP) by the Australian Federal Police (AFP) over the past few years, with a peak in numbers in 2017. All these suspected victims are women and the majority of current cases involve the slavery-like practice of forced marriage in metropolitan Adelaide.
- In the past few years, the AFP has also investigated cases in SA involving a range of other offences under divisions 270 and 271 of the Criminal Code (Cth), namely sexual exploitation, labour exploitation, domestic servitude and other trafficking offences.
- A few service providers expressed disappointment that such a low number of people have been identified as suspected victims as their anecdotal evidence and observations indicate much higher numbers. Yet they are also not surprised at the official numbers, as their own clients are reluctant to approach the authorities about such offences.
- Conditions of domestic, labour and sexual servitude in intimate partner violence cases linked to partner visas are increasingly being encountered by service providers, with the overwhelming majority of cases involving women as victims, in both Adelaide and rural SA.
- In the commercial labour sector in both metropolitan and rural SA, in cases involving exploitative conditions where deception, threats and/or coercion are present, male victims are also the target. Indeed, in such cases the gender ratio is 50:50, except where elements of sexual exploitation are present, in which case the victim is more likely to be a woman.
- The key industries for commercial labour exploitation are hospitality, cleaning and horticulture/agriculture.
- In all these cases, the peak age group is between 20 and 35, with some exceptions at both ends. In some instances, such as some cases of forced marriage, the suspected victim is under-age.
- Primarily but not only, the suspected victim of any type of exploitative practice (whether or not they are officially recognised via an AFP referral to the STPP) comes from an Asian country directly to SA, with the exceptions coming from all over the world apart from the Americas.

---

Common to all the cases cited in this study is a combination of the following elements:

- temporary migratory status;
- isolation and lack of a reliable network;
- a lack of knowledge of, trust in and/or access to the Australian system;
- a lack of sufficient technical-legal English to keep oneself adequately informed of one's rights;
- a fear of repercussions and an inability to 'walk away' from the exploitative conditions due to threats, blackmail or other reasons (for example, related to honour, shame or financial constraints).

The combination of these factors renders the person particularly vulnerable, and the more vulnerable they are, the greater is their susceptibility to exploitation.

In these cases, various forms of threats, deception and/or coercion are present. Therefore, based on the findings of this study, this report calls for all situations of extreme exploitation to be recognised and named for what they are: conditions of slavery or slavery-like practice.

## Recommendation

This report demonstrates that slavery and slavery-like practices are not just happening in other countries or states; they are occurring in SA as well. Alongside official numbers of identified victims, it also considers the service providers' experience and knowledge regarding hidden victimisation, a point recognised by the Australian Institute of Criminology, estimating that per each identified victim four are undetected (Lyneham et al 2019).

This state relies on temporary migrants to support many aspects of its economy and enjoys successful multiculturalism. It would thus be a positive step if the SA Parliament acknowledged these issues via a **position statement** and embraced the Commonwealth Government's recognition that 'any instance of crimes of this nature is unacceptable' (Australian Government 2016: iii).

It is recommended that an inquiry into human trafficking, slavery and slavery-like practices in SA is launched. Establishing this inquiry is the key recommendation of this report, as it would enable the collection and dissemination of more consolidated and wide-ranging information and data on the extent and conditions of slavery and slavery-like practices in this state. In the recent past, similar inquiries have been pursued by other state parliaments, such as in Victoria and New South Wales, to look at the need for policy and legislative reform in this area at the state level.

### Key recommendation

**To set up an inquiry into slavery and slavery-like practices in South Australia**

It is also advised that programs be introduced to raise the awareness of SA metropolitan and rural communities regarding slavery and slavery-like practices, and the consequences of breaching relevant Commonwealth criminal legislation.

---

## Gaps

Further to the key recommendation to launch an inquiry into these matters, **the following is recommended** in order to address the gaps in this area:

- **Adopt a soft approach to raise awareness within communities and companies regarding all forms of slavery and slavery-like practices.**
- **Continue building networks among service providers in South Australia.**
- **Produce a directory of SA and nationwide services in the different areas of slavery and slavery-like practices for distribution among metropolitan and rural service providers.**
- **Improve database input and sharing (for example, by adopting a common template client information sheet across agencies) to facilitate the collection of data and longitudinal studies.**



Image: A box full of hope, Berri 2018 @A.Baxter

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## BACKGROUND

Slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (division 270, 1995 Criminal Code Cth) and the following slavery and slavery-like practices are included under divisions 270 and 271:

- slavery
- servitude
- forced marriage
- forced labour
- deceptive recruiting
- trafficking in persons
- debt bondage
- organ trafficking

### SA literature review

Human trafficking, slavery and slavery-like practices in SA have remained of marginal importance in the academic literature and have received very limited attention in government and non-government organisation reports. Based on the information provided by formal channels, it would therefore appear as if slavery and slavery-like practices were rare or non-existent in SA. This is not helped by reports of forced labour, in cases where the indicators of slavery are clearly present, being 'downgraded' to cases of underpayment.

This lack of knowledge is a concern because human trafficking and related issues have been at the forefront of the national agenda since the introduction of the first Action Plan to Eradicate Trafficking in Persons in 2004 (Australian Government 2004), with the government recently acknowledging that 'any instance of crimes of this nature is unacceptable' (Australian Government 2016: iii).

Against this national backdrop, there have been no studies or investigations conducted on these issues in SA. This gap was raised by a 2012 report released by ACRATH into human trafficking in each Australian state and territory (Curnow 2012), which highlighted a lack of concern and research surrounding the issue in SA. The federal government recognises that victims have been identified in SA, but because of the low numbers of suspected victims each year or because relevant court proceedings took place elsewhere (see Box 1), the official narrative regarding these matters is very limited (Australian Government 2011; Australian Government 2016). Further, SA is only given brief mention in existing reports. For example, the Australian Institute of Criminology briefly mentions SA in its 2009–11 Trafficking in Persons Monitoring Report (AIC 2012) and the TC Beirne School of Law 'statistics on human trafficking' make only limited reference to SA (TC Beirne 2015). When SA is discussed in this context, it is often represented via aggregated data so it is difficult to disentangle the SA narrative from that of the rest of the country (see, for example, George et al 2018).

As a result of these knowledge gaps, most available references on the subject are sporadic and anecdotal.

The project therefore aims to render visible the invisible by presenting a coherent and reliable set of data regarding the state of South Australia.

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**Box 1: Court proceedings occurring interstate but involving incidents that occurred in Adelaide.**

Below is an extract from the sentencing remarks in a case of sexual servitude in a commercial setting, which evidences one incident of sexual servitude in Adelaide, although the case was discussed by the District Court in New South Wales (*R v NETTHIP* [2010] NSWDC 159 (30 July 2010) sections 3, 4 and 9):

(3) The offender was born in Thailand. In 1987, she came to Australia. In 1994, she became an Australian citizen. Since arriving in Australia, from time to time the offender has worked in brothels, as either a sex worker or a receptionist. She has no prior criminal history.

(4) Between about August 2005 and March 2008, the offender conducted a business through which she organised the placement of 11 Thai women ('the complainants') in brothels in Australian cities, including Sydney, Newcastle, Wollongong, Melbourne, Canberra, **Adelaide** and Perth. Each complainant was recruited in Thailand. A Thai facilitator arranged passports, visas and travel for the 11 women. Each complainant agreed that, once in Australia, she would repay a 'debt' of \$53,000.

(9) From the sum of \$53,000, the offender paid the agent in Thailand the sum of \$20,000. After covering the rent, food, telephone, medical and other expenses of the complainant, the offender received a net profit of between \$10,000 and \$18,000.

### **Labour exploitation in South Australia**

The exploitation of temporary migrant workers in SA has been discussed in two main reports in recent years:

- The 2018 Harvest Trail Inquiry Report by the Fair Work Ombudsman (FWO), which covers the national level, and includes a small section addressing the SA situation (Box 2).
- The 2016 Inquiry Report from the SA Parliamentary Economic and Finance Committee (2017), which led to the introduction of the *SA Labour Hire Licensing Act 2017*, judged by many of the service providers interviewed for this study as representing an important legislative development.

Both reports contribute to our understanding of this complex issue in SA; and both stem from the joint Fairfax–ABC *Four Corners* (2015) investigation into the case of wage underpayment by 7-Eleven. The *Four Corners* investigation also revealed how labour hire contractors have been employed in farms and factories at low cost and the extent of harassment and mistreatment of workers. It covered a few companies operating in SA, including a chicken factory near Adelaide, as well as highlighting the problems at onion and tomato farms in SA.

Yet, both reports, the FWO 2018 and the SA Inquiry on Labour Hire, cited above do not present the exploitation of workers as a slavery-like practice but rather as a matter of wage underpayment.

A third report, which is emerging as a result of the SA Parliamentary Inquiry into Wage Theft in SA, is projected to be released some time in 2020.

SA is also mentioned, albeit briefly, in two important studies on the labour exploitation of temporary visa holders, in which some of the key results are aggregated across states:

- 1) A report produced by the Commonwealth Education and Employment References Committee titled *A national disgrace: the exploitation of temporary work visa holders*, which cites the exploitation occurring in a meat processing facility in SA (EERC 2016: 170).

- 2) A report produced by academic researchers Laurie Berg and Bassina Farbenblum (2017) titled *Wage theft in Australia: findings of the national temporary migrant work survey*, which provides a breakdown of the top two industries with the lowest paid jobs for temporary migrant workers in SA (waitressing and fruit packing or picking).

SA also features prominently in a 2017 FWO report that presents an empirical analysis of why international students are not approaching the FWO more often to raise issues they encounter in the workplace, despite the widespread prevalence of non-compliance with Commonwealth workplace laws (Reilly et al 2017).

**Box 2: FWO Harvest Trail Inquiry Report – relevance to SA**

The FWO Harvest Trail Inquiry concluded in 2018. At the national level, it investigated 444 growers and 194 labour hire contractors. For the purposes of the present report, all key information regarding SA is extracted below:

- In SA, in order to collect data, the FWO visited farms with the following crops: strawberries, citrus, grape (for wine), cherries, mushrooms, apples and pears.
- Figure 1 below shows the locations of the farms visited in SA by the FWO. The metropolitan area and nearby regions received more visits, even if each place was visited only at the ‘green level’ (between one and four times). The other regions visited are in the Riverland and in or near Mount Gambier.

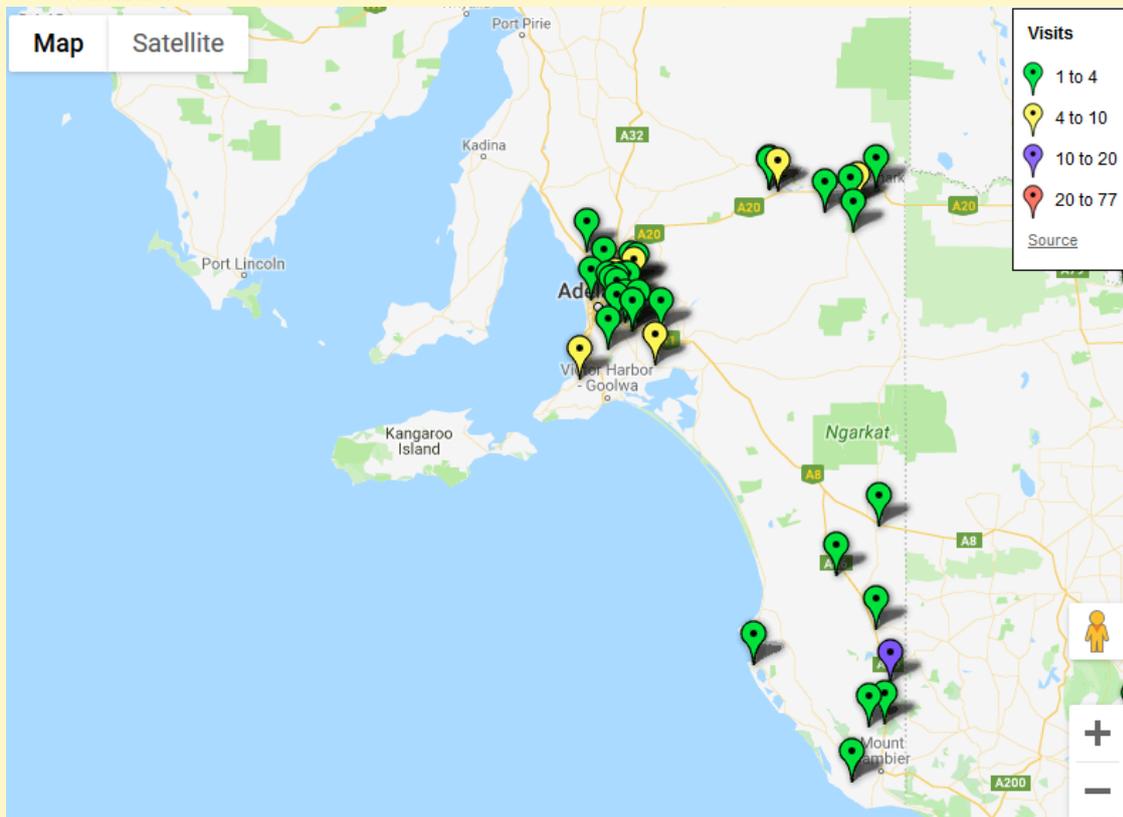


Figure 1: The places in SA visited by the FWO (extracted from the FWO Harvest Trail Inquiry Report)

The FWO report found widespread non-compliance to workplace laws and poor working and living conditions. Most (almost 70%) of those employed in the harvest trail businesses were visa holders, with the majority being working holiday subclass 417 visa holders (aged 18–31 years old).

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## METHODS AND PARTICIPANTS

The study employed two methods:

- A quantitative method was adopted to
  - identify the number of incidents of slavery and slavery-like practices in SA investigated by the AFP and referred to the STPP under divisions 270 and 271 of the Criminal Code (Cth)
  - conduct an overview of SA cases investigated and completed by the FWO in recent years as a background before interviewing service providers in the area of commercial labour exploitation.
- A qualitative method, to capture the observations of service providers in different geographical areas.
  - The target was 10 service providers, to include some in rural SA (mainly the Riverland and Port Augusta, although some information was collected about Port Pirie and Whyalla). The target was achieved and surpassed. A list of service providers who participated is presented in Appendix A, together with some further methodological notes.

The study was conceived as a blank canvas, in asking service providers what they see on the ground, rather than being focused on one particular area of human trafficking, slavery or slavery-like practice. This approach was deliberately chosen to see what type of data would emerge. This was necessary, given that no previous study in this area has focused on SA. It is clear that service providers are encountering exploitation akin to slavery in different areas in this state. Therefore, the value of this study is in providing a limited but accurate snapshot of some of the statistical data and some of the observations of key service providers dealing with cases involving different areas of exploitation.

Ethics clearance for this project was obtained on 18 December 2017 (n. 7829) from the Flinders University Social and Behavioural Research Ethics Committee.

A literature review of material relevant to SA was undertaken to provide background information. This also serves, as much as possible (given the limitations outlined above), the purpose of offering a reference document for further reading.

## LIMITATIONS OF THE STUDY

This pilot study, being small in its reach, was subjected to financial and human resource constraints.

It is further acknowledged that in the area of commercial sexual exploitation, it was not possible to triangulate the data across sources, for a number of reasons. A brief snapshot of these reasons can be found in the sub-section titled 'Commercial sexual exploitation'.

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## ANALYSIS OF DATA ON SUSPECTED VICTIMS IN SA

This section presents some data on suspected victims admitted into the Support for Trafficked People Program (STPP).

### Number of suspected victims

In the period January 2004 to February 2019, across Australia<sup>1</sup> 449 suspected victims were identified and assigned by the AFP to the STPP. The AFP is the only agency that can currently refer suspected victims to the STPP.

For the same period, SA had a total of 18 suspected victims placed on the STPP, representing 4% of the entire population of identified suspected victims (see Figure 2). While this percentage is relatively low, the data do show that this state has had suspected victims of human trafficking, as recognised through investigation by the AFP.

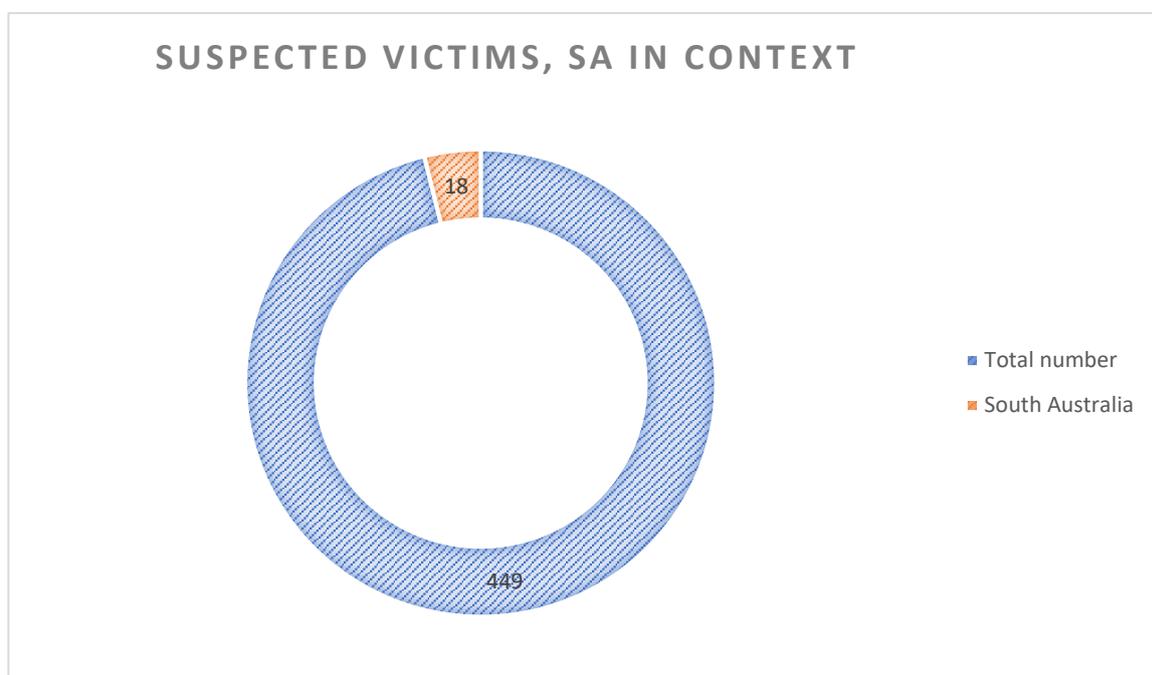


Figure 2<sup>2</sup>: Total number of suspected victims Australia-wide and in SA

The Red Cross assumed the role of service provider in this area in March 2009, and it is interesting to note that the first referrals made in SA after that date were not until June 2014, after which a peak in numbers occurred in 2017 (8 clients). It is also noteworthy that, in SA, before 2014, there were still a few STPP clients, meaning that there were still clients during this time from intake on the program by the previous service provider.

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<sup>1</sup> In this section, where possible, national data for the same period are offered to place SA data in perspective. Any data included in this section is directly related to offences under divisions 270 and 271 of the 1995 Criminal Code (Cth), which sets out the slavery and slavery-like practices in Australia. See the Department of Home Affairs for further information at <https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/people-smuggling-human-trafficking/human-trafficking>.

<sup>2</sup> All figures are based on combined data from the Department of Home Affairs and the Department of Social Services and integrated by other sources as explained in more detail in Appendix A. These data refer to suspected victims who were placed on the STPP by the AFP during the period 1 January 2004 – 28 February 2019.

## Exiting the STPP, average period of support in SA and type of support provided

Up until November 2018, 12 people had exited the SA STPP, meaning that from this month onwards, at least 6 people were still on the program.

The people referred by the AFP to the STPP in SA have received support for between a minimum of 45 days to a maximum of 6.6 years, with the majority of clients receiving support for 1 to 3 years.

The type of support provided in the first three months is usually intensive, with Red Cross case workers meeting with clients frequently due to the urgent needs of clients in this early stage. As a representative of SA Red Cross points out:

They [clients] don't have families, they are quite isolated, they don't have a place to stay, so we engage with a lot of services ... it can be youth accommodation, it can be domestic violence shelter. So we meet with them as much as we can. And they don't have the language as well, so it's really important that we are actually really connected. So, perhaps [we meet with them] two to three times a week depending on the need.

[...]

we have to process everything, like it's either Centrelink, it's either Medicare, it's either counselling... The quicker we put them in place, the better they feel comfortable.

## Age

The age groups of all identified suspected victims across Australia for the period January 2004 to February 2019 are shown in Figure 3. The highest number of suspected victims fall into the 21-30-year-old age group (with 223 victims), followed by the 31-40-year-old group (with 104 victims). It is relevant to note that, for the same period, under-age suspected victims (aged 13–18) numbered 58.

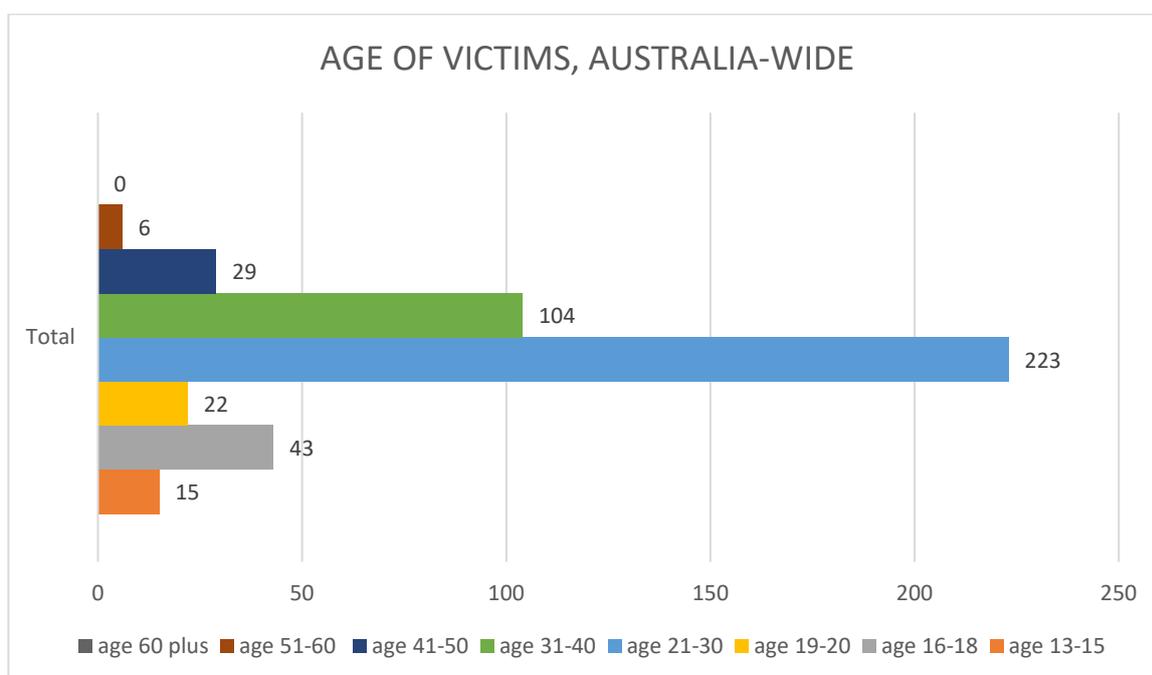


Figure 3: Age of victims – total Australia-wide

At the national level, the data suggest that the metropolitan referrals of younger people are more often in connection to victims residing in metropolitan settings within a family environment. The rural referrals were more often linked to single adults in exploitative situations.

The age of identified victims in SA at the referral stage fell within the range of 15–59 years. Nine victims were 25 years or younger at referral and nine were 26 years or older, as shown in Figure 3a. During the interviews, it became evident that the age group with the highest number of suspected victims (10) for this period was the 21-30 age range.

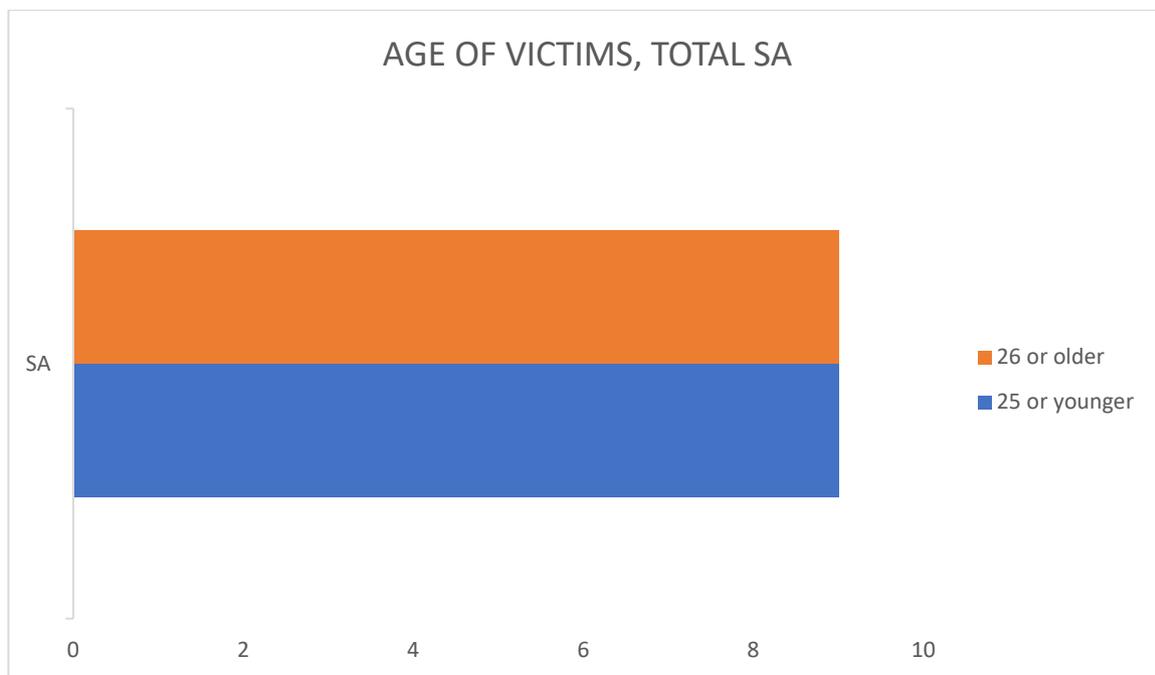


Figure 3a: Age of victims – total SA

## Gender

Figure 4 depicts the gender of suspected victims at the national level for the period 1 January 2004 – 28 February 2019. The vast majority (86%) were women, with 14% classified as male. This gender division closely corresponds to the international data.



Figure 4: Gender of victims – total Australia-wide

The gender distribution of victims in SA leaves no doubt as to the gender imbalance, with all cases being female suspected victims, as shown in Figure 4a.

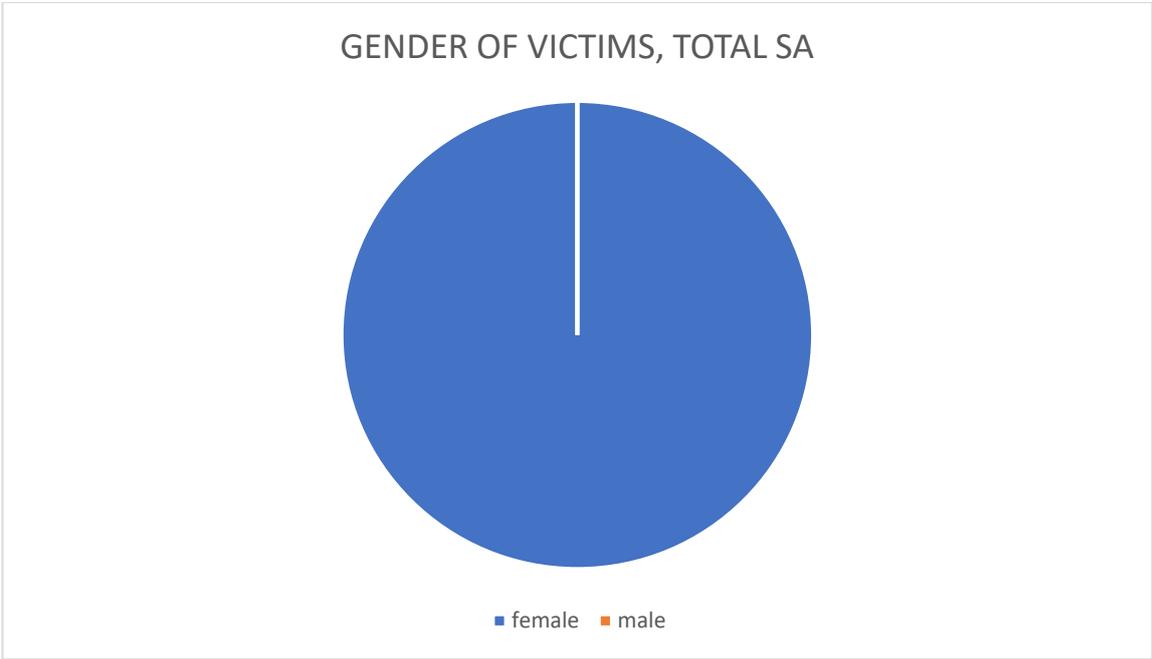
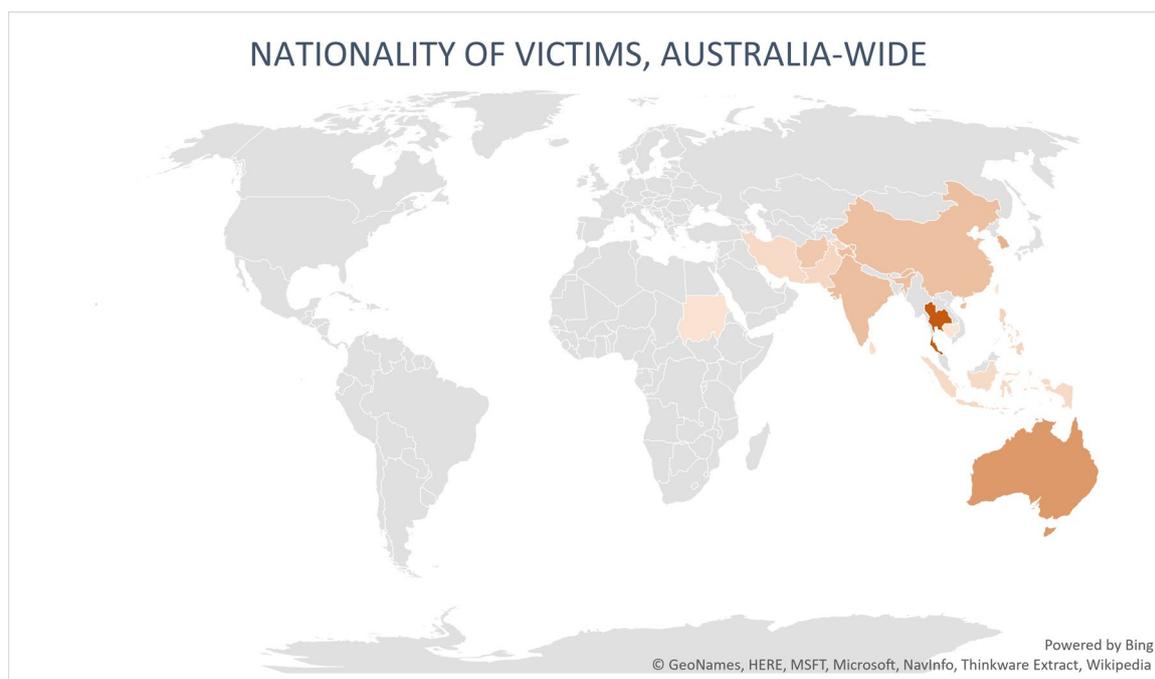


Figure 4a: Gender of victims – total SA

## Nationalities

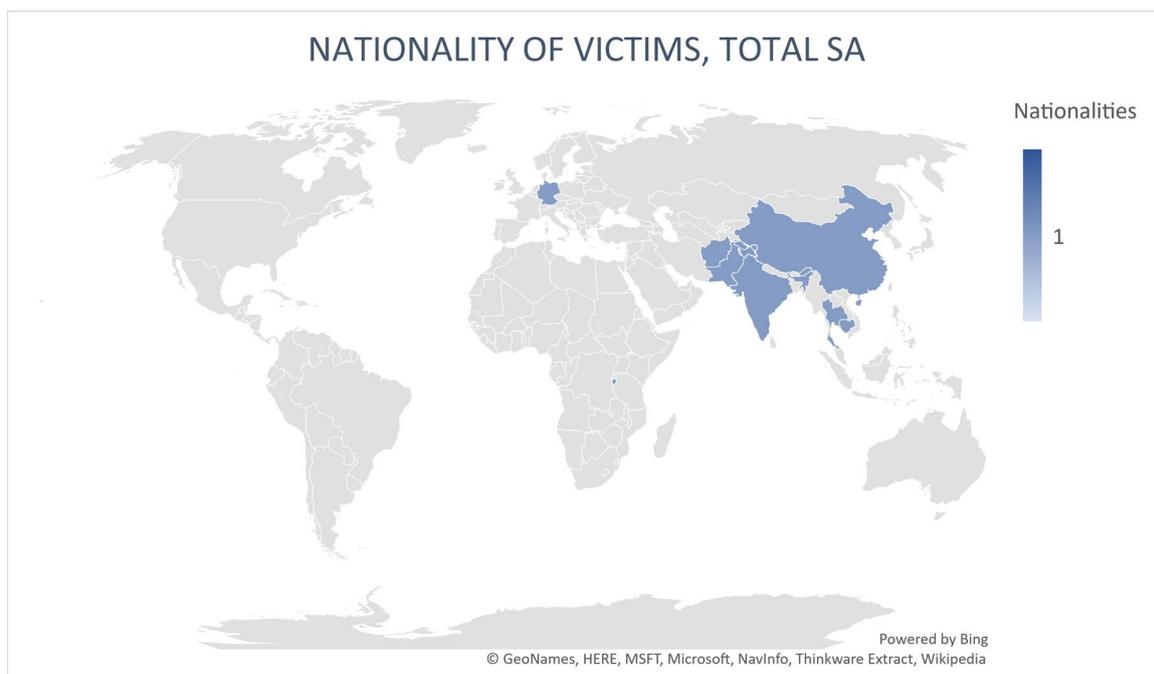
Figure 5 shows the nationality of all suspected victims, highlighted by country of origin. The most represented country was Thailand (96 suspected victims), followed by Australia (53 suspected victims), Malaysia (44 suspected victims) and South Korea (38 suspected victims). The data are depicted via a geographical map showing country of origin in order to showcase the regions of origin, which are highlighted in different shades of orange. Central and South Asia is clearly a prominent area of origin. The combined data on Asian nationalities (excluding Australia, and Sudan, which had 7 suspected victims) and on the generic 'other' group of nationalities (each with numbers of less than 7, adding to a total of 55) showcase the number of suspected victims originating from this region, which totalled 334.



*Figure 5: Victims by nationality – Australia-wide*

Figures 5 and 5a are based on combined data from the Department of Home Affairs and the Department of Social Services on the nationalities of all suspected victims in Australia during the period 1 January 2004 – 28 February 2019 who were placed on the STPP by the AFP. The country represented most was Thailand (96), followed by Australia (53), Malaysia (44) and South Korea (38); while there is a handful of 55 'other' nationalities that comprise fewer than five victims each.

The vast majority of STPP clients in SA were of a culturally and linguistically diverse (CALD) background (see Figure 4a). In SA, the overwhelming majority were not born in Australia and none were Australian citizens. The vast majority were from an Asian country but there were cases from Western Europe and Africa as well. They were born in eight different countries from every region except the Americas.



*Figure 5a: SA victims by nationality – SA*

In SA, the immigration status of suspected victims varied, with the vast majority of victims residing in Australia on temporary visas covering a wide spectrum (from work-related to family, education-related and humanitarian visas). Only a handful had come to SA with a permanent visa (which also ranged in type). Almost all overseas suspected victims came directly to SA. A few victims obtained citizenship while in Australia, either prior to or after being placed on the STPP.

### **Trafficking type**

Figure 6 presents the breakdown of the total number of suspected victims nationally (449) according to type of trafficking. The type with the highest number of victims was sex trafficking (48%), followed by labour trafficking (29%), forced marriage (18%) and other not specified (5%).

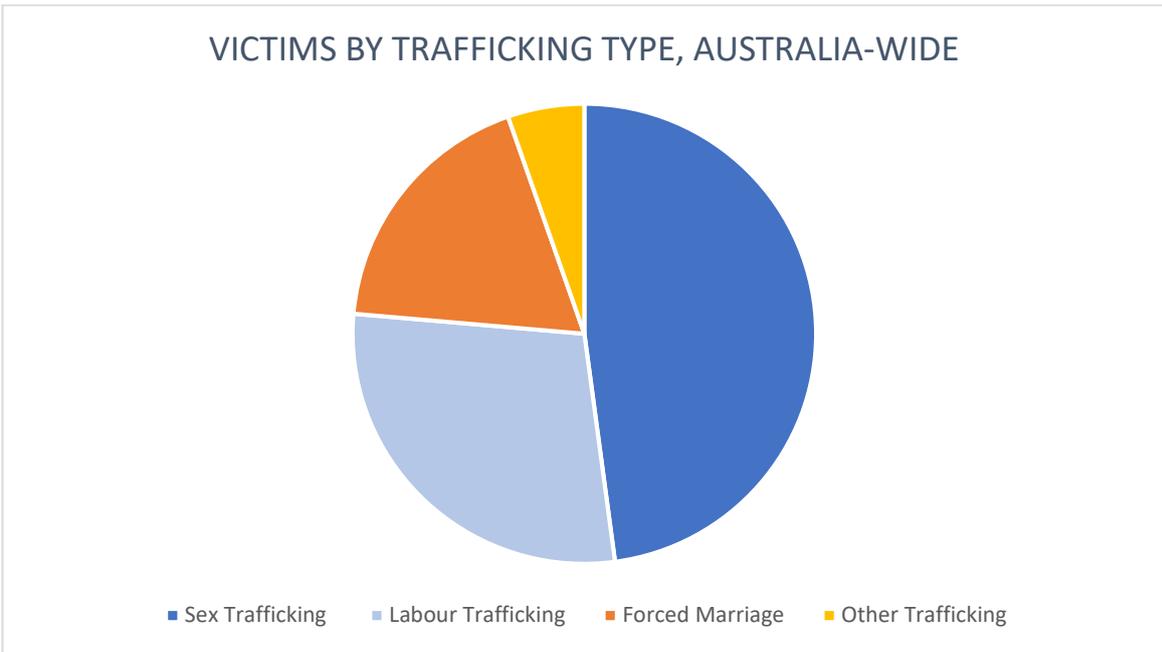


Figure 6: Victims by trafficking type – Australia-wide

Initially, referrals were more prevalent in the area of sexual exploitation in a commercial setting, where clients were from South-East Asia. However, currently, at the national level, the majority of people supported by the STPP are migrants referred due to suspected labour exploitation. This includes people who have been exploited in workplaces such as in restaurants, the horticulture sector and diplomatic households, as well as migrants who have been exploited in the sex industry or who have provided labour or services in exploitative conditions in private households or in the context of familial or intimate partner relationships.

In SA, out of the 18 suspected victims, 10 were in forced marriages and 8 experienced sexual or labour exploitation, as shown in Figure 6a.

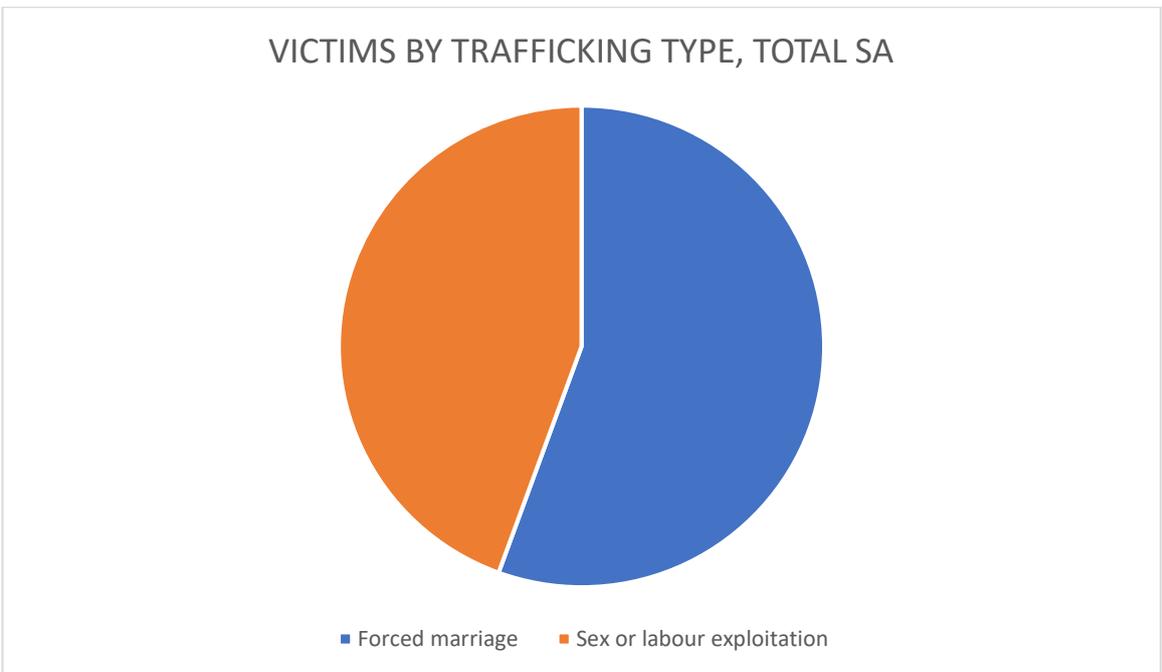


Figure 6a: Victims by trafficking type – SA

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From the interviews with service providers, some more details emerged as follows.

Out of the 10 victims in a forced marriage type, most were young people aged 23 years or under who received support from the STPP after leaving or when wanting to avoid a forced marriage.

Eight people were supported to recover from either sexual exploitation in the sex industry, or from providing labour or services in exploitative conditions in private households or in the context of familial or intimate partner relationships. None of the victims in SA had experienced labour exploitation in a commercial setting (in industries other than the sex industry, such as hospitality, agriculture or construction).

The majority of the SA clients referred in the peak year 2017 (total number = 8) were referred because they had been subjected to or were at risk of a forced marriage.

### **Participation rate in the criminal justice process and outcome of the program**

In SA, 12 people have exited the STPP since 2004 and have received support for between 1.5 months and 6.6 years, with the majority being supported for between 1 and 3 years. According to the Red Cross data for SA, 10 clients have chosen to participate in the criminal justice process (CJP).

In relation to exiting the program without participating in the CJP, a representative of SA Red Cross explained that clients

exit the program because it's their choice to, and also [because] there is a limit in support if they don't want to access the criminal justice process. Some of them may still be at risk of that [original situation]. And if they aren't ready to transition out, or if we think that the client is really at risk, we do put forward reasons as to why we are looking for an extension. It's not going to be a forever extension, we're talking about probably another 40 days, or another 60 days. It just depends really on the situation. Yes, some of them can be potentially still at risk of that type of situation. But they can always re-join the program if they choose to.

We have seen the positive impacts [of the program] on some clients. [For example,] we can see that they are quite independent now, they are doing things on their own, some of them have been granted a permanent visa.

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## ANALYSIS OF DATA ON AFP INVESTIGATIONS IN SA

This section presents some data on referrals of suspected victims to, and investigation by, the AFP.<sup>3</sup>

### Number of investigations

For the period mid-2013 to the end of 2017, there were 30 cases investigated by the AFP. In Figure 7 below, we can see the peak towards the end of 2016 and into 2017, explaining why more people entered the STPP during this time. For the same period, nationally, the AFP investigated 643 cases, with a peak in 2015–16 (with a total of 169) (see Figure 8).

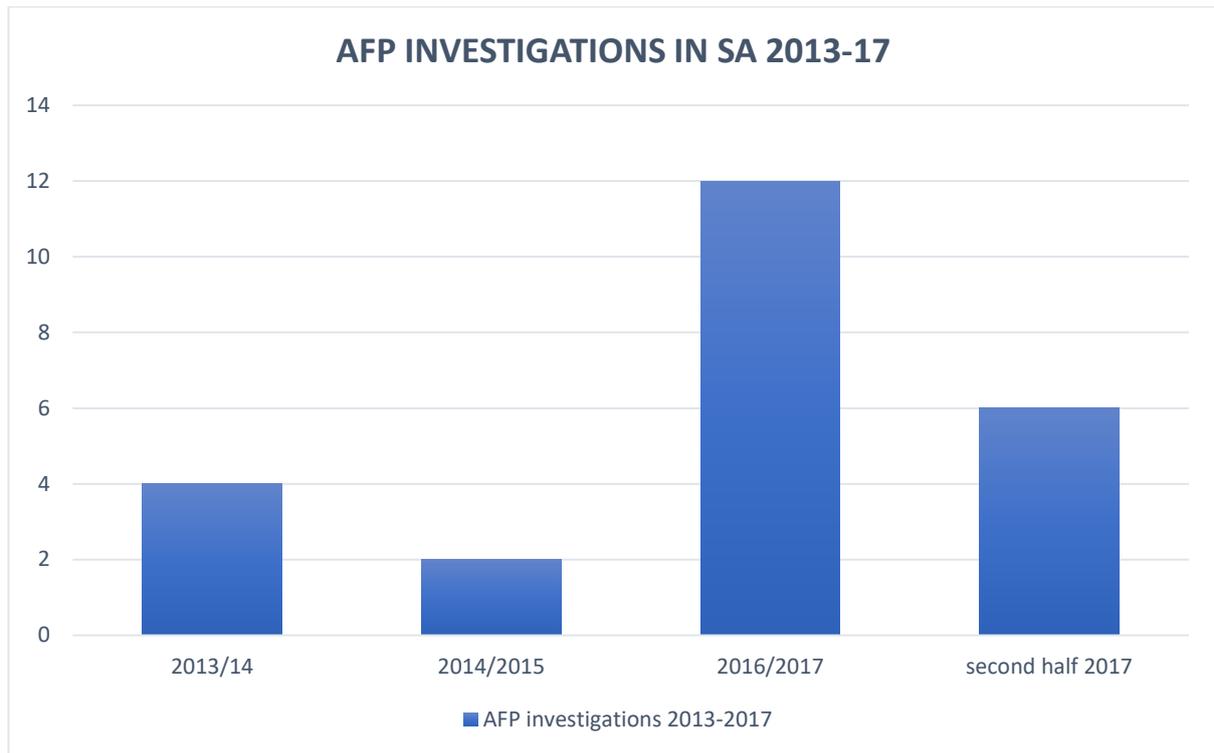


Figure 7: SA AFP investigations 2013–17

If we take the financial year 2016–17, and compare it with the national context (see Figure 2), we can also see how relevant it becomes: not only does SA have the third highest number of cases investigated, but if we consider this in the context of the populations of New South Wales and Victoria, we can see that the numbers in SA are disproportionately high. Obviously, this is just one year and the numbers do fluctuate over time; yet it would be of interest to see how the data vary in future, as SA service providers are giving more attention to these matters.

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<sup>3</sup> All data presented in this section were kindly provided by the AFP.

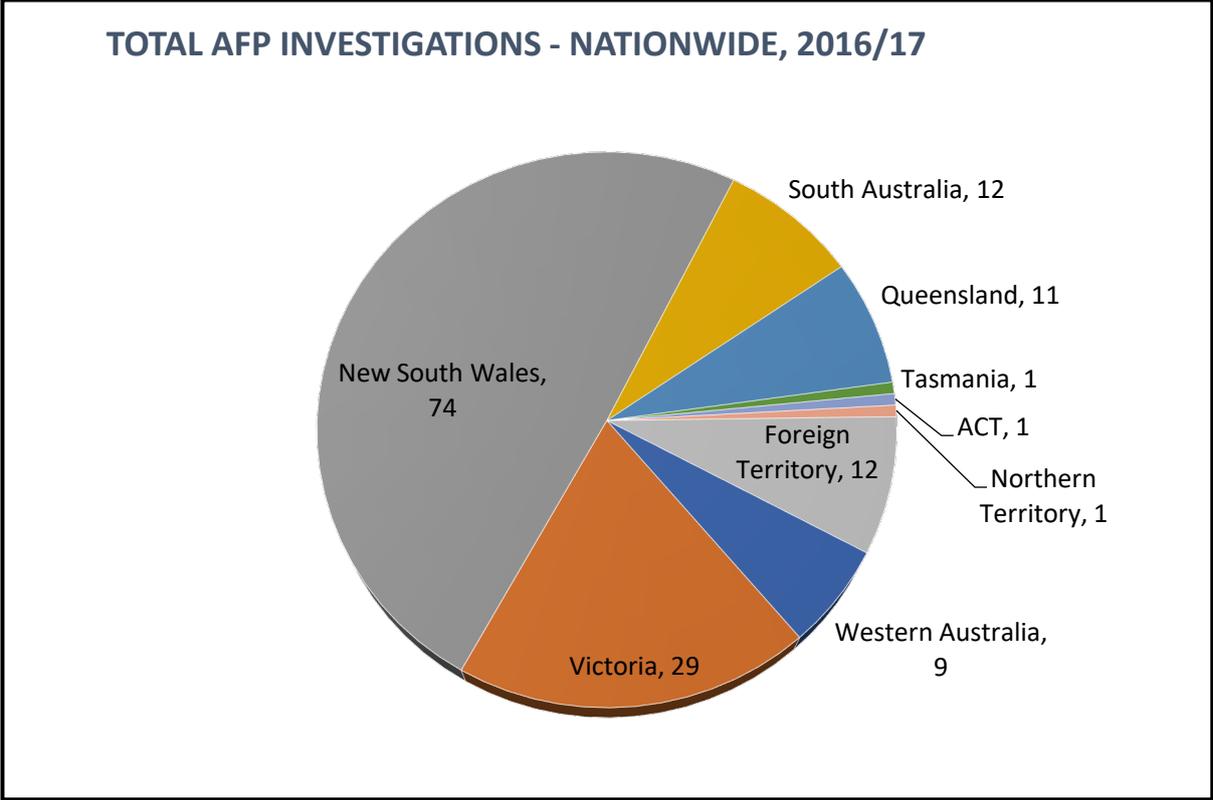
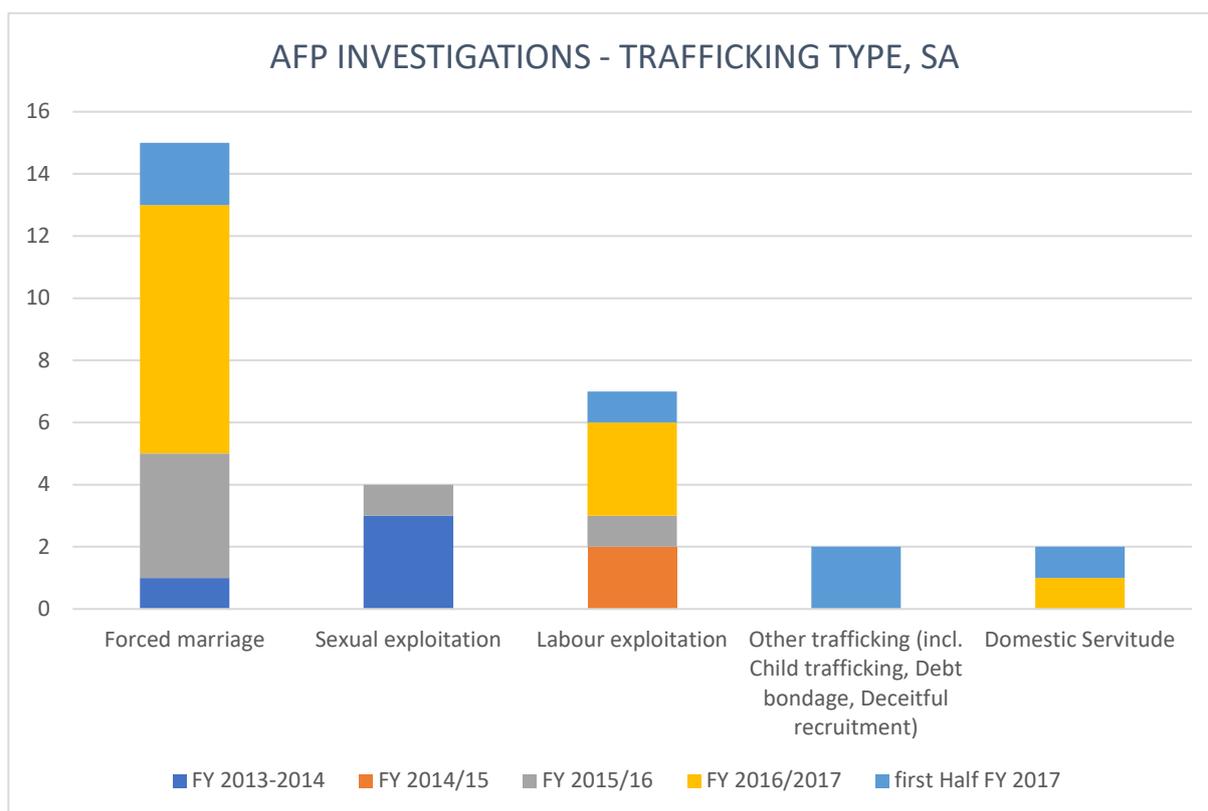


Figure 8: Total AFP investigations nationwide 2016–17

**Trafficking type**

When we analyse the AFP investigations in SA by trafficking type for the period mid-2013 to the end of 2017 (see Figure 9), it is immediately evident that the highest number of investigations occurred in the area of forced marriage, followed, although not closely, by labour exploitation and the other types.

Figure 9: AFP investigations by trafficking type



Looking at Figure 9, it is interesting to note that in the past (2013–14) more investigations were in the area of sexual exploitation, closely followed by labour exploitation in the following financial year 2014–15. However, since forced marriage became criminalised in 2013, we have seen a rise in this type of investigation in a few states, including SA. As shown in Figure 9, in the financial year 2016–17, the type of trafficking offence investigated in SA reached yet another peak in the field of forced marriage, followed by labour exploitation.

### Final remarks

It is widely recognised that it is difficult to accurately identify the extent of slavery in Australia. In early 2019, the Australian Institute of Criminology (AIC) attempted to estimate the size of this ‘dark figure’ of hidden victimisation using the multiple systems estimation. Based on this calculation, the AIC suggested that, as a conservative estimate, for each detected victim there are four undetected victims (Lyneham et al 2019). If we apply this estimate to the SA numbers, we immediately see that, given the 18 victims who entered the STPP, 72 have remained unknown. The literature in the field has discussed the reasons why victims are unidentified and unassisted (see for example, Surtees 2014). Indeed, some service providers are aware of this problem. A representative of one of the service providers, when confronted by such a low number of STPP clients, reflected:

the statistics maybe ... are based on people who are actually coming forward and actually reporting what is happening. And that, I think, is the issue, because not so many people willingly go and report these abuses.

This interviewee then proceeded to summarise the possible reasons why clients fail to report these abuses to the authorities. They observed:

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So, it's all these little things that probably stop them from coming forward and hence the reason why maybe the official statistics are not as realistic at times and do not actually reflect what is happening on the ground.

Also, in terms of gender, the qualitative data based on service providers' observations in this study suggest a very different ratio of female to male victims, closer to 50:50 rather than primarily or only women.

It was therefore important to access the observations of people in the different fields of interest to obtain a more comprehensive understanding of the matter at hand. These observations are explored in more detail in the next sections.

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## FORCED MARRIAGE AND PARTNER VISA HOLDER SERVITUDE

SA service providers attested to the rising incidence of two slavery-like practices: forced marriage and partner visa holder servitude.

Forced marriage refers to someone being tricked, coerced or forced into marriage without their consent.

The domestic, labour and sexual servitude of partner visa holders in intimate partner violence cases is defined as the exploitation of people who believe they entered into a legitimate marriage but, once they have migrated to Australia or their spouse has reached them in Australia, they find themselves coerced or forced into domestic, commercial and/or sexual service. Heather Moore refers to some of these cases as domestic servitude with intention to marry (Moore 2019), while the AIC has defined some of them as ‘human trafficking involving marriage and partner migration to Australia’ (Lyneham and Richards 2014). This report will refer to such cases as ‘partner visa holder servitude’. The term servitude is used to describe a slavery-like practice where a person is significantly deprived of personal freedom, cannot exercise their own agency and cannot cease domestic, sexual and/or labour service.

While forced marriage and partner visa holder servitude are different, they have similar harm typologies that primarily affect women.

The identification of these practices in SA and the development of their typology can help with building a framework that facilitates the identification of such abuse rotating around a broader umbrella concept of marriage exploitation and slavery-like practices. While forced marriage is openly included in the Australian definition of slavery and slavery-like practices, the exploitation of partner visa holders, in the domestic, sexual and/or commercial settings akin to slavery has been considered far less; yet it also deserves more attention, as SA service providers have noted that it has become more prevalent in recent years.

At the end of this section, a short discussion on **commercial sexual exploitation** is included.

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## FORCED MARRIAGE

Forced marriage is a marriage lacking the free and full consent of at least one of the parties and became a Commonwealth criminal offence in 2013.

Forced marriage has been singled out through STPP statistical data as the most prevalent form of slavery-like practice in SA in recent years and women are the sole clients (see above).

The common pattern for the majority of the STPP SA cases is that the woman is forced to go overseas to get married against her will or that someone comes from overseas to marry her (see Box 3 for examples of cases in SA).

### Box 3: Recent cases in SA

#### *Case study 1: Under-age forced marriage*

Two under-age sisters (the youngest of whom was 15 years old at the time of the events) were enrolled in a metropolitan Adelaide high school and were experiencing difficulties at home. At school they were misbehaving and the school eventually reported the problems to their parents. The parents decided to take the sisters overseas to the parents' country of origin to marry. There was an attempt to marry them overseas, but the sisters managed to escape with some assistance and returned to SA without their parents or any other family members.

#### *Case study 2: Stopped before leaving the country by school intervention*

Two sisters were enrolled in school to finalise their studies after they had arrived in Australia. The family was unhappy with their behaviour so arranged their return to their home country to get married against their will. The sisters went back to school to say goodbye to their friends and were met by law enforcement officials who then acted to stop their travel.

### **Number of cases**

A surge in the number of forced marriage cases in recent years was noted by other SA agencies who participated in the qualitative part of the project:

we started seeing cases two to three years ago and then increasing[ly more], we have four cases on our books at the moment [as of early 2019]. (Refugee Health Centre)

This surge is explained by the Red Cross in terms of 'increased awareness and information from services in the community about the referral pathway to the Support for Trafficked People Program'.

The service provider Anti-Slavery Australia believes that another cause of the sharp rise in forced marriage cases in SA, alongside criminalisation in 2013, is 'the influx of refugees in South Australia,

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[where] there's been a rise in forced marriages in particular as a type of trafficking'.

A number of agencies have identified the need for a more concerted soft approach towards raising awareness among communities in SA as a priority in this area.

The present study has identified an urgent need for awareness raising in rural SA. As almost all identified cases and investigations have occurred in metropolitan areas, this raises a concern about the lack of discussion and awareness raising around the issue in rural areas. For example, in Renmark, Centacare Catholic Family Services has observed a number of cases of under-age forced marriage among the sub-Indian communities, which only come to the attention of service providers at a later stage as a domestic violence situation. And in the Riverland, agencies have encountered cases where parents take their daughters – not their sons – overseas for marriage.

## **Demographics**

### *Gender*

At the national level, most cases of forced marriage have involved a woman, although the Red Cross and Anti-slavery Australia support some men as well. In SA, both the quantitative and qualitative data suggest that all victims of forced marriage are female.

### *Age*

The Refugee Health Centre's representatives reflected that in cases of forced marriage, they tend to see younger women (compared to spousal visa cases), with one recent case involving a girl who had just turned 18 and one new referral involving a girl aged 15 years. Anti-slavery Australia has observed that the average age group for SA is 15–25, with one case being in her 60s (see Box 4).

#### **Box 4: Case study on an unusual case of forced marriage**

This case involved an Australian woman in her 60s who spoke English as a first language. She was a single woman, estranged from her family, with very few resources of her own, was unemployed at the time and, exacerbating her vulnerability, held Australian citizenship. She met someone online and had a long-distance relationship with this person online and then was asked to meet this person overseas and from that first-time meeting in the boyfriend's country of origin, she claims she was deceived about the nature of the relationship and was forced to marry this person. There was probably some deception about the marriage that occurred overseas. She found her new husband to be abusive, but also loved him dearly and therefore willingly sponsored him to come to Australia. But the actual marriage itself was problematic: there were some questions about what she understood about it and about what happened to her. At the time, the legislation on forced marriage had not yet come through but this woman was still seen by law enforcement authorities as someone the AFP considered to have been potentially subject to a forced marriage. She now recognises that it was a false relationship orchestrated by the counterpart in order to get citizenship or some sort of right to work in Australia.

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## Nationalities

Various countries of origin for victims of forced marriage are cited (India, East Africa, Afghanistan, Pakistan and Turkey are some examples cited by agencies). Most of the victims have not held a permanent visa, but in two cases they held Australian citizenship. Precariousness is greatest in cases where the victim holds temporary visa status, as they often cannot obtain knowledge of, understand, access or trust the Australian legal system. It is also recognised that for those women with a more permanent status, such as Australian citizenship, their vulnerability consists in being able to sponsor a partner to come to Australia as a pathway to citizenship.

## Dynamics of safety

### *Lack of participation in the CJP*

In 2018, a forced marriage support stream program was added to the STPP, through which victims can access up to 200 days of support without being required to contribute to a criminal investigation or prosecution. This period of support is longer than that provided in other cases of trafficking, where the initial 45 days of support can be extended to another 45 days under the Extended Intensive Support Stream, after which the victim can decide whether to pursue the CJP. Under the forced marriage support stream program, the person can be assigned double that period of support (180 days) plus an extra 20 days to transition out.

The extra time was introduced to address the low number of suspected victims participating in the CJP. Based on the information that this project was able to obtain, in the SA context very few STPP clients have decided to collaborate with the authorities beyond the stage of support and contribute to the CJP. As explained by a Red Cross representative:

there are a few clients who did participate [in the CJP] ... I'm talking about nationally ... but it's a very, very difficult process for them to participate and go through the whole thing. Because there's no time limit, it can go for so long.

And they're quite traumatised ... in the criminal justice process they can change their mind any time they want, there's no time limit, [and] they can come out from the program any time they want.

[once they are out of the program] they are not supported through the STPP, but ... once they go out from the program they'll be supported by other services.

Because the forced marriage support stream program is fairly new, at the time of the interviews, fewer than five STPP clients in Adelaide had accessed the extra 90 days of support.

The Refugee Health Centre's representative noted the gaps in support if the victim decides not to pursue the CJP option:

in terms of pursuing legal charges, there're really significant gaps because, for example, [if the] woman decide[s] to stay in the home, in terms of the services that can be offered, they're actually quite limited. There's a time frame within that with Red Cross that they'll follow up with a client for a period of time if they've made a decision not to [pursue the CJP], then they close the case.

The lack of CJP participation may be explained in part by recognising the complexities of cases (such as is evident in the case studies presented in Boxes 5 and 6 below), which are exacerbated by the dynamics of safety outlined in the sub-sections below.

### *Small communities influence dynamics of safety*

There have been cases where STPP clients from SA have asked to relocate to a different state. The reasons for this request can be that they wish to live in an interstate community already known to them or may be

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related to safety concerns in SA, amongst other factors. In this regard, the Red Cross points out that safety concerns are 'exacerbated in the smaller' communities (see case study in Box 5).

*Response designed to solely address the needs of the victim*

Many cases involve complex familial dynamics and occur in historically trauma-infused situations. The support provided is centred on helping the victim, yet the victim may have a familial relationship with others, towards whom she feels a sense of responsibility and a duty to protect (Boxes 5 and 6 below provide a good overview of these issues). In some cases encountered by SA service providers, these family members are under-age and so is the victim: this can exacerbate the situation, in terms of both who can act as her guardian if she removes herself from the family and the type of support she can access (financial, housing, visa support or other services), especially if she exits the STPP.

Agencies are calling for a multi-agency **child protection framework** to respond to these cases, and SA Red Cross is also calling for **specialist family support services** to embrace a holistic approach, including family mediation.

**Box 5: Complex familial relationships**

This case is interesting because it demonstrates the intricacies of real scenarios and the repercussions of the decision to leave the family for people other than the victim. This case study points out that services such as housing services are organised around the victim, yet this person is intertwined in a set of responsibilities towards members of their family. Another relevant aspect of this case is that it highlights how under-age clients may be in a situation where they have to look after younger siblings but have no 'authority' to do so. A further element of interest is the impact on victims of living in a 'small community', as mentioned above. In the words of a service provider:

That's the case from a smaller community [in a non-Asian region]. A relative, an extended family [relative], who sponsored the whole family [to come over to Australia] and this young woman [from this sponsored family, who did not want to marry] has many younger siblings, so she's actually decided to leave the family home ... the little sister has also left ... she's also decided to pursue criminal charges, but is really concerned about the remaining siblings at home.

With the client that has pursued criminal charges, there's this ongoing fear and worry about the siblings that are remaining in that home and that if she pursues the charges, the position they're going to be in [may worsen].

[Further] information had already been breached in the community by a worker within the Education Department who was a trusted interpreter, who, when the police came out to see her at a school, wasn't actually giving her the correct information [as presented by the AFP], so she was feeling pressured to sign and pressured to actually withdraw from the case when in fact the police were wanting to give her information, to give her options. So once that breach had occurred, it was really difficult with that ongoing fear of what's going to happen to the younger siblings. [It] is overwhelming for her, completely.

[Because of this situation, we are now] using an interstate interpreter. We're finally at a point where she's saying there's one particular interpreter she trusts so we can actually access this person here [and we are therefore making progress now].

[Also she has been ] approved [by the] Housing Trust, but that being time-limited and also within that, she's not actually able then to have extra people living in the home with her, let alone the legal implications of her being the guardian of her siblings here [in Australia]. It's just so complicated.

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### **Box 6: Ongoing family violence**

One of the service providers shared a very recent case of a young woman who had just turned 18 so was under-age when the situation started to unfold, and was refusing to consent to marry a much older man from the same Asian background. She moved with her family to Australia 'a number of years ago'. The service provider recounted the case in the following terms:

she's still in the family, doesn't want to leave the family, doesn't want to pursue legal options, because of the fear of the repercussions of that ... [She has many fears, including a] fear of losing the family, and also fear because her mum is in a relationship of domestic violence and there is violence within the family home, so she's feeling as though she's wanting to stay in the home to protect the mum and so if she decides to leave the home, what happens to the mum, for example? That's her biggest fear. And also if she decides to pursue criminal charges, that also means she needs to leave the home, and [then] she's completely isolated from her family. And then there's the cultural shame as well. [The girl said that] 'This doesn't happen in our community, and I'll be subjected to abuse, ridicule. I'll be ostracised from my community and really fear for my mum's safety'.

### **Cycle of marriage without consent and the grey area between forced and arranged marriage**

In this research, the service providers were given the opportunity to reflect on those cases that would have fallen under the category of forced marriage but are now well established marriages in which the victim has accepted it as 'a fact'. The Refugee Health Centre's representative commented:

older [women in forced marriage] are more the 'unofficial' cases, if I can say that. Of forced marriage from newly arrived communities, for example, from the Afghan community, I'm still seeing a lot of women in their 40s, 50s that have reported being in a relationship where they really didn't have a choice, they're stuck with it, they're living with it, they have children, and they don't really see any other options ... this is their lot in life. And that could be from 30, 40 years so that tends to be the slightly older group that I've been seeing and some have been here for a number of years, [while] some are quite recent arrivals. That just sort of, they're just getting on with what they have to do and they're married to this man, but they have their children and that's their priority, establishing a better life for their children. That's it. They may have had their first kids when they were 13 or 14.

These cases do not fit within the forced marriage legislation but are not rare either. This study identified such cases in the Riverland (see section above on 'Number of cases').

This study is concerned with investigating the grey area of 'consent', and the often blurred distinction between an arranged marriage and a forced marriage. Also of concern is the cycle of forced marriage being perpetuated and imposed on new generations.

It is strongly advised that an education campaign on the issue of forced marriage be introduced in both SA metropolitan and rural communities.

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### **'Exit trafficking' in forced marriage**

Exit trafficking is when a person is deceived into leaving Australia under false premises and will then find it difficult to return to Australia. The Refugee Health Centre's representative reflected on one case of forced exit, where the man tricked his new bride into returning to her home country:

she was sent back to the Philippines, her passport went missing and she was duped into going back.

This is a fairly new aspect of forced marriage identified – when the husband 'rejects' his overseas bride and forces her to return home – which Anti-Slavery Australia terms 'forced exit'.

*Forced Marriage is not an arranged marriage: it's marriage without consent*

**Right to choose**

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## PARTNER VISA HOLDER SERVITUDE

The exploitation of partner visa holders typically unfolds as a marriage that starts off as a voluntary agreement but then an element of deception or coercion is introduced when the partners are united in Australia, resulting in the removal of freedom and the beginning of abuse. This is aggravated by the fact that one party only holds temporary migration status, which acts as a disincentive to report domestic abuse to the authorities, thereby diminishing in practical terms the ability of victims to access the family violence protections afforded by the *Migration Act 1958* and associated regulations. For these reasons, this report refers to this type of exploitation as ‘partner visa holder servitude’, referring to a situation of intimate partner violence that occurs during the two years in which the victim is awaiting permanent residency, when they are subjected to coercion, threats or other forms of abuse of the vulnerabilities linked to their migration status. Typically, blackmailing occurs around the withdrawal of the partner’s sponsorship. In many of the cases identified for this project, the victims were women being held in captivity in suburban or rural homes and subjected to forms of sexual and/or domestic servitude, and occasionally also commercial labour exploitation (see Box 7).

While similar to family violence, partner visa holder servitude involves additional layers of disadvantage, including the exploitation of visa vulnerability, and the victim’s lack of an independent support network, lack of access to independent economic and non-economic resources, lack of sufficient English, lack of trust in enforcement agencies, lack of freedom to remove oneself from the situation, and lack of job choice or freedom to pocket one’s wages; and thus such situations could constitute a form of slavery. Usually, if the victim reaches out to a service provider, it is after the first year and **most often towards the end of the two-year period**.

As one service provider explained, over the course of the two-year period, ‘they’re completely at the mercy of the person who’s sponsored them’.

### Box 7: SA service provider observations

Typically, the partner visa cases observed by the Refugee Health Centre’s representative fall under the category of domestic violence, albeit aggravated by further isolation due to a lack of networks, a lack of English language, a lack of knowledge of the legal system and a fear of deportation:

coming here, feeling incredibly oppressed, feeling very frightened and overwhelmed by not only resettlement but by a relationship of domestic violence; being silenced over a period of time, being abused in many ways for an extended period of time; and then systematic abuse over time; and women coming in feeling extremely vulnerable, extremely overwhelmed, afraid to speak up and describing really awful relationships where the classic signs of domestic violence [are present such as:] being cut off from any sort of social contact with their family [and] with anyone that might be able to offer support; then finally getting to some point of refuge where they’re able to ask for help and receive help. And that’s when they’re referred to us.

We hear really awful stories about sexual abuse. No money, not allowed to use the phone, being locked in the house ... pretty much that. Occasionally they’ve had a child as well. Not with the perpetrator, but they come with a child.

All the classic, sort of, signs of experience of domestic violence essentially ... physical, financial, sexual, social.

And the added threat of deportation, which is the additional form of silencing that these situations provide.

And the language barrier as well, of course ... classic for pretty much everyone we see.

Fear of police, fear of systems, fear of just about everything [is also present].

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### **Three typologies**

According to data provided for this study by participating service providers, there are three types of partner visa holder servitude:

- 1) A non-Australian woman marrying an Australian male citizen (sometimes referred to as 'mail-order bride', although this does not always capture the dynamics of these relationships).
- 2) A non-Australian woman marrying a non-Australian or permanent resident man who is already in Australia.
- 3) An Australian citizen/permanent resident woman from a CALD background marrying a man from the same country of origin (see Box 8 below for a case study).

### **Demographics**

#### **Age**

In the second typology, the peak age of the victim is 20–30 years old, with some women aged in their mid-30s; while in the third typology service providers indicated that the peak age is between 30 and 40 years old. Not enough age-related data were collected in relation to the first typology to offer a reliable age-range.

#### **Gender**

It is confirmed that most of the victims of all three typologies are women. The Refugee Health Centre's representative qualified this statement, claiming that 95% of their clients are women.

#### **Nationality of clients**

In cases covering all three typologies, a range of nationalities have been identified, from Asia and Europe. A Refugee Health Centre representative observed that there are very few cases from newly arrived communities and more from well-established migrant communities, representing an interesting contrast with forced marriage:

We've seen people from a range of backgrounds: a few from Asian backgrounds ... so there's been some Vietnamese cultural groups; [from other regions, we have seen] Polish, some from the former Yugoslavia. Not a lot from newly arrived communities, in my experience. It's more the established communities that often have family here, which increases that sense of isolation for the women [because the extended family supports the perpetrator]. And that's generally what takes them so long [to ask for help], because of the oppression within that family environment to be able to disclose to someone to get help.

And the threat that she's deported if they speak up. (Refugee Health Centre)

A number of agencies across the territory highlighted the cases involving female victims from sub-Indian countries. Over the past few years, the Women's Health Network representatives have encountered cases from these countries, as one recounted:

quite a few from India. And we've had a number of Bhutanese and Hindi women who've come over on arranged marriages or spousal visas and then they've found themselves in domestic violence [situations].

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## Nationality of perpetrators

In cases falling under the second and third typologies, service providers in both rural and metropolitan areas have observed that the husband and wife share the same ethnic background:

Generally [they have] the same background ... the last few years have pretty much all been the same cultural background, a lot of [the husband's] family members being here, which makes it more difficult [for the wife]. (Refugee Health Centre)

In relation to the first typology, a Refugee Health Centre representative spoke about the 'wife cycle', referring to those cyclical cases where the husband searches for a 'new' wife by exploiting the system:

[In the case of Australian men,] sometimes for some of these Australian men it seemed like it was a serial behaviour. It's not the first time that they had brought someone over. Because I remember being astounded that they couldn't be picked up somehow through immigration. That, you know, there was a cycle happening here.

In rural SA, a similar account of perpetrators 'dumping out' a bride and finding a replacement was provided by a St Vincent de Paul representative:

I've dealt with a couple of Russian brides who have been brought over here and then, through domestic violence, they've been dumped out of the relationship and because they're on a restricted visa, a sponsorship visa, which usually happens with Filipino women too, then they're in the same position [of vulnerability].

'Cyclical' cases that fit with the second typology have also been observed, with the Women's Health Service reporting:

In some instances, it's interesting that women, when they leave, the partners just abandon them. And I find that very interesting because I suspect it's because they think they can get another one easily. And the truth is that generally they can.

Cyclical cases are also linked to 'exit trafficking', which is discussed further below.

## Numbers

The Women's Health Network has observed a rise in the number of cases of partner visa holder servitude in SA, with about four cases per year over the past three years in metropolitan Adelaide. In fact, it was not delivering this type of support to CALD women on spousal visas until it received a request from the Refugee Health Network (then called Migrant Health) in 2014, as the latter agency had started picking up cases and needed support, especially around acting as the second social worker to assist with gathering the case documentation to put forward to authorities.

A Refugee Health Network representative reflected that the agency was only seeing the 'tip of the iceberg' in terms of the number of cases:

My sense is that it's more widespread than what we see. I think we see the tip of the iceberg basically.

Similarly, in the Riverland, Centacare Catholic Family Services has come across more cases in recent years, especially those fitting the third typology (see Box 8).

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### Box 8: Third typology

Cases falling under the third typology have been observed in both metropolitan and rural SA, where women marry an overseas man from the same country, and sometimes the same town or village. Common to these cases is that the woman is older (30–40 years of age) and in a position of financial independence. There have been cases from a number of migrant communities from Africa or the sub-Indian continent where the husband arrives in Australia and subjects the wife to physical, sexual, financial and other forms of abuse. She is forced to give all of her money to her husband for the purpose of sending money to his family or bringing his family over to Australia.

The following case is representative of a number of similar cases reported by agencies:

A 34 yo African woman came over with her two children and later sponsored a man from same background (Congo) through a spousal visa. He abused her physically and sexually. He was removed from the family house, but threats continue through community links. She wishes he's deported back for her safety and wellbeing.

### Types of violence

**Physical, psychological, sexual and other types of violence**, such as financial bondage, were recurrent themes in the metropolitan and rural interviews. The layers of psychological abuse (verbal and emotional) are sometimes not obvious indicators of slavery-like conditions, as in the case observed in metropolitan Adelaide where a Vietnamese woman holding a partner visa was forced to do the housework but 'nothing was ever good enough'. Yet such 'conditioning' creates and reinforces dependence and vulnerability in a situation where the woman is already completely dependent on her husband and husband's family.

Reflecting on cases involving sexual abuse, a representative from the Women's Health Service commented:

When you come on a spousal visa, you might have interacted via the internet, by phone. And then the partner may have gone to your country, met all your family; and then there would be a wedding and he comes back here. They do all the paperwork and then you come out here, and then he turns into a demon, and basically you find out that he has a high interest in watching horrendous pornography, and not only that, he wants to practise it on you. And these are real scenarios. And these women are not in a voluntary process when this happens. And their level of agency to affect any change [is non-existent] ... they are extremely vulnerable women.

...

around sexual behaviour and forced sex, for instance, and rape, they can't say 'no' because they don't know legally their rights in Australia, because they stay in that relationship and they don't call the police, they may not have access to a phone, the phone's removed, you name it, they are left in a situation where they have no other options. Some women will stay in **diabolical circumstances** and it may be then that they come to our attention after they've [already] been in the country for 18 months.

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**Isolation and fear of repercussions** are also present. In relation to the first typology, a St Vincent de Paul representative reflected on what he had observed while working in Whyalla, and spoke of the isolation of female foreign nationals once they are in Australia:

in that sense it is slavery, especially when we are working with Filipino women who have been brought over here ... under the guise of a relationship, and then they've been abused and held almost against their will, because there is no other outlet for them. They don't have a wide network; they're in an isolated place; they're isolated from their families and their communities; they feel that they can't seek out services because of the ... often because of the nature of their background ... being Catholic they feel they failed in their duties.

This sense of failing in one's duties, which adds to a sense of shame, was another recurrent theme across the interviews. The Refugee Health Centre representative talked about the shame brought on one's family and the threat to one's family as aspects of the same silencing technique. Further, it is evident that the fear of threats to one's family is present in those cases where the couple originates from the same country and the families know each other:

there's that added element of shame if it's within the same community, if it's a relationship that the family have supported ... that makes it even more difficult because if the woman leaves, there's that added sense of shame and lack of support from their own family, let alone from the husband's family.

I guess the added threat, about the families knowing each other, where there's the threat of families ... violence overseas as well ... you have to stay there, you have to go through this or I will, we will, kill your brother ... so there's a flip side, it can be either way.

**Sponsorship being withdrawn and the fear of losing the partner's sponsorship** are also directly linked to the cycle of abuse. A case worker from a rural St Vincent de Paul office referred to these situations as being held at ransom; in such cases the victim 'chooses' to stay with their partner rather than face deportation:

once their sponsorship is cancelled, then in essence they're an illegal immigrant and they don't receive any form of income, any form of support ... and in that way, they're almost **held at ransom** to the person who has brought them or sponsored them over here.

The fear of losing one's visa status was a recurrent theme in metropolitan cases too.

**Dowry abuse** has also been identified as a type of abuse perpetrated against the victim in order to control her. Dowry abuse refers to the groom or groom's family displaying dissatisfaction at the bride's dowry and demanding further payment or an alternative payment. A Refugee Health Centre representative recalled two cases of dowry abuse they had encountered recently in the metropolitan area, highlighting that the dowry is 'a particular form of control' where 'money has been given for, in exchange for her for the marriage, and it's either her or the money hasn't come through ... [so that] whoever's perpetrating at this end is exploiting that system'.

**Exit trafficking**, and the associated exploitation of the victim's vulnerabilities, is another aspect of these situations that has received limited attention. Linked to the wife cycle discussed above, 'exit trafficking' occurs when the woman is misled or forced into leaving the country and leaving the relationship against her will or knowledge. A representative of the Women's Migrant Service recounted a story of exit trafficking and described how being rejected by the husband can exacerbate the victim's vulnerabilities:

A woman came here with [a case of domestic violence]. He wanted to get rid of her and he put her on a plane back to India, because that solves his problem. Back to [her] family. He said [to her that] he'd come to India [at a later stage] and talk with [her] family members, which is quite cultural, but he never came. So, in the end she came back to Australia and she met him, they reconciled briefly, and then it all blew up. The police were called, and the police said she had to leave.

She goes interstate with the husband's friend. He already had a wife, but he wanted her to **provide [him with] sexual favours** for staying there. So then, again, she's in a terrible situation.

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**The victim's subjectivity** is another factor that is worth raising in relation to these matters. Victims being 'judged' through the same lens as would an 'Australian woman' adds to the range of their vulnerabilities. The Women's Health Service discussed this issue in the following terms:

[The authorities] are looking at whether or not she feared for her safety, but I think they're looking at it in the way of an Australian woman, who lived in Australia, who knew about her rights, and therefore at a lower level of domestic violence could have reached out, as opposed to a woman who was exceedingly isolated, couldn't speak the language.

...

[The Immigration Department] is not looking for evidence that supports her story, they're looking for evidence that doesn't support it.

**Forced domestic and commercial labour** are also types of abuse observed by service providers. In Box 9 below, three case studies are summarised that highlight the question of whether the victim is a bride or a domestic/commercial labour servant.

#### **Box 9: A bride or a domestic/commercial labour servant?**

Case 1: A Middle Eastern woman was brought over as a sponsored bride. She was ensconced in the house and used as the general cook and cleaner. She was controlled and sometimes physically constrained by both the mother-in-law and the husband.

Case 2: An Indian wife who followed the husband to Adelaide in around 2015 found herself forced to serve the husband's family, with the mother-in-law in charge of her duties. She was forced to work on the husband's family farm with no financial recompense. She was not allowed to sleep inside the house but was forced to sleep outside.

Case 3: A Philippine woman aged in her 30s married an older Australian man. She spoke no English and had no social network of her own. He worked for an interstate trucking company and she received an ID badge from this company and followed him around, providing him with paid assistance (such as loading and unloading the truck), but the money she received for this work was pocketed by her husband. She was denied the proper clothing for the season (for example, in cold weather she had to wear his old clothes). She was in what the service provider described as 'an awful domestic violence situation'. She was injured at work, but there was no WorkCover and everybody denied that the injury had occurred. She did not receive any treatment, so by the time she presented to the service provider she had a work-related injury as well as injuries from the domestic violence.

(Subclasses 309 and 100)

**Partner visa (apply overseas)**



#### **Basic Eligibility**

You must be in a genuine relationship with your spouse or de facto partner who is:

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## COMMERCIAL SEXUAL EXPLOITATION

Forced sexual service is very briefly discussed in this report.

This study encountered a number of problems in relation to collecting reliable and recent data in this area and, among all the forms of slavery and slavery-like exploitation discussed in this report, this area was the only one where it was difficult to ‘triangulate’ the data and double-check on findings, because the accounts received are either not verified by other agencies or are outdated (see also Appendix A). It is recognised that sometimes there is a misrepresentation of migrant sex workers from Asian countries in SA as being held in sexual servitude and that these women are often misidentified as trafficked for or forced into commercial sexual exploitation, either from abroad or from interstate. This is a point of concern and it is taken seriously.

Some significant cases encountered were **partner visa holders** being subjected to commercial sexual exploitation, as a form of forced prostitution. This was observed in metropolitan areas as well as in the Riverland. One service provider observed that such cases most often involved women with Chinese or Thai ethnicity, while another reported coming across other Asian nationalities as well. A service provider shared two cases for inclusion in this study (see Box 10 below).

### **Box 10: Two cases of partner visa holders forced into commercial sexual service by husband**

Case 1: This case occurred around 2014–15, when a Vietnamese woman with a child from a previous relationship married an Australian man who had a problem with gambling. She was forced into prostitution and, as she held a temporary spousal visa, she was threatened with withdrawal of sponsorship if she did not comply with her husband’s demands.

Case 2: A more recent case involved a Thai woman on a spousal visa who was forced into prostitution by her husband. The safety plans for her extraction from this situation were disrupted by the on/off nature of their relationship. This highlights how agencies may have difficulty obtaining a full disclosure of the extent of harm and abuse in the first few meetings with a victim, as she may take a while to trust the service provider and/or to come to terms with the level and nature of the abuse or exploitation.

### **Other cases**

A portion of a court case on sexual servitude in a commercial setting took place in Adelaide more than 10 years ago (see Box 1 in the ‘Background’ section). Further to that, there have been a few cases where the women entered the STPP in SA but then later returned to their home state. This was explained by one of the service providers as most likely because the women were identified in SA by SAPOL as victims of commercial sexual exploitation and were therefore referred to the Adelaide Red Cross (via the referral agency, the AFP), but later expressed a preference to return to their home state.

Anti-slavery Australia has followed one case of sexual servitude for commercial exploitation in SA in the past few years, but this study could not access any details of this case.

It has been reported in local newspapers (Schriever 2018) that SAPOL identified some Chinese-run brothels as part of the ‘Operation webpage’, where cases of human trafficking were also identified; but no further details on this were accessible for this report.

One service provider talked about the big events (such as the car race Clipsal) where cases of forced sexual service may arise in metropolitan Adelaide; for rural SA, the same service provider mentioned truck routes

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and truck stops, as well as regional airports, as possible hot spots for such cases. Another service provider claimed that matters in this area sometimes overlap with organised criminal syndicate activities, but no sufficient details were provided.

This study is only a pilot and therefore, at this stage, cannot proceed with the collection of data in this area. One possible explanation for the difficulties around obtaining reliable information is that this is an area closely linked to matters that are still criminalised in SA, although the involvement of organised crime may well be another possible explanation.

Thus, the limitations of the information presented herein are acknowledged.

### **Final remarks**

Emerging forms of marriage exploitation and gender abuse have been identified as current practices in SA. Raising the awareness of communities and reinforcing the links between service providers have been singled out as priorities in terms of identifying and tackling forced marriage and partner visa holder servitude. Also, a directory of SA and nationwide services would be useful, especially in more remote areas and in those environments where there is a high rate of staff turnover.

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## LABOUR EXPLOITATION AKIN TO SLAVERY

This section discusses some emerging patterns in the area of labour exploitation that is sufficiently extreme to meet the definition of slavery-like practice outlined in Box 11 below.

The McKell Institute has identified both direct and indirect economic impacts of wage theft and underpayment in SA and that at least 20% of all workers are subjected to wage theft, highlighting the hidden extent of this form of exploitation and the urgent need to tackle it (Cavanough 2019). The most comprehensive study on temporary migrant workers suggests that around 50% of them may be subjected to forms of underpayment while employed in Australia (Berg and Farbenblum 2017).

The findings of the present study suggest that there are indeed severe forms of underpayment in SA and that many of these cases would meet the threshold of slavery-like indicators set by the International Labour Organization (ILO 2012) as per Box 11 below.

Forced labour impacts not only the SA economy – for example, by distorting it and removing award achievements under labour laws – but also the state’s reputation, where the protection of human rights and the dignity of all should be a priority.

### Box 11: The ILO’s indicators of forced labour

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

It is recognised that at times it is very difficult to distinguish between sub-standard or exploitative working conditions and forced labour, as they are part of the same spectrum. The ILO indicators serve as a basis from which to make this distinction. Further to this, it is also recognised that external parties may assess that a worker has given their free and informed consent to either stay in or leave their job without understanding the worker’s overall position. In particular, the worker may be caught up in circumstances that are most easily described as wage underpayment – or, more prevalently, ‘wage theft’ – yet which are in fact akin to slavery. It is therefore critical that the conditions facing the worker, including their subjective experience of stress, lack of understanding of the system and fear of repercussions, are carefully considered to avoid minimising the gravity of their situation.

These situations are exacerbated when the worker is a non-national, on a temporary visa, and especially when their aim is to return to Australia or even to settle in Australia in future.

The service providers interviewed for this report highlighted that temporary migrant workers are often more vulnerable to deceptive recruitment and coercive labour practices and their freedom to leave an exploitative situation is very much limited for a number of reasons. During the interviews it was not uncommon to hear stories of a cycle of vulnerability, whereby the temporary workers, such as international students, often after

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a long struggle to find a job, are then not only underpaid but also forced to work in breach of their visa conditions, which increases their vulnerability. Indeed, the different types of vulnerabilities experienced by temporary visa holders can increase the likelihood of them being subjected to various forms of exploitation and blackmail, in situations where the definition of free and informed consent may not find application (see section below on 'Types of vulnerabilities').

It is also to be assessed whether the ILO definition of 'fraudulent debt' should include, for the Australian context, a house bond that has not been returned or excessive rent charged for accommodation (under the so-called **accommodation racket** – see below).

Among the cases identified for this report were examples of exploitation that could not be defined simply as situations of underpayment. A representative from the Salvation Army said:

[when] you're looking at cases involving criminal forms of exploitation ... for me the question that I will always ask when I see these cases is, why aren't we looking at this as a potential forced labour case?

... we see a lot of these indicators [of forced labour] [...] there is a lot of anecdotal evidence and yet the law enforcement response, even the Fair Work response, continues to fail to recognise some of this for what it actually is.

... even if there are situations of disruption, where the exploitation is disrupted, there is very little if any remediation [...] where [temporary] workers see the [Australian] system as not serving their best interests, there's no incentive to cooperate with the system.

It is difficult to provide accurate figures and to profile the demographics of people who are victimised by labour exploitation in SA because such data are not systematically collected. However, this study presents a snapshot of what has been observed by the key agencies working in this area.

## INCIDENCE OF LABOUR EXPLOITATION

### *Metropolitan and rural areas and types of industries*

The Fair Work Ombudsman (FWO 2018a) data<sup>4</sup> utilised in this study suggest that most cases investigated in SA in the relevant period (2013–18) were located in the metropolitan area, with the incidence of exploitation highest in the hospitality industry (mainly dine-in and takeaway).

It is perhaps not surprising that the metropolitan area is where the highest number of disputes have been completed (690 of over 1400 cases statewide), distributed across 10 suburban Adelaide locations. The two most prevalent causes of completed FWO disputes revolved around wages: 'underpayment of hourly rate' or 'not paid for time worked'.

In SA, the greatest incidence of FWO industry disputes completed in the period June 2013 to March 2018 were in the food entertaining industry (cafes and restaurants – 464 cases; and takeaway food services – 144 cases) followed by other industries (including road freight transport – 340 cases), hairdressing and beauty services<sup>5</sup> (204 cases) and other auxiliary finance and investment services (158 cases).

In the SA Parliament in October 2018, the building and construction industry was also discussed in relation to regulating the labour hire contract legislation to address severe forms of exploitation linked to organised crime.

**The service providers** interviewed for this study mentioned the **food entertaining** (see Box 12 below), **cleaning** and **agricultural industries** as the top three areas of concern.

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<sup>4</sup> The FWO report was kindly provided to offer some background information on underpayment disputes, to locate hot-spots areas/themes and to support the key objectives of this study.

<sup>5</sup> Hairdressing and beauty services also came under some scrutiny by other service providers. See, for example, the case involving an employee owed six years of back pay (United Voice 2018).

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The SA Union representative confirmed these data by highlighting that:

in South Australia it's probably [in] the **food industry and agriculture** in the rural areas that the most **egregious examples of exploitation** take place. [...] So, hospitality and retail are more metropolitan. [...] and many franchises that demand round-the-clock service (such as 24/7 types), including service stations.

United Voice discussed the problems arising from the pyramid scheme<sup>6</sup> in the **cleaning industry in metropolitan areas**. Indeed, various service providers reported that **schools, universities, hotels and cinemas** are the key locations where temporary visa holders, especially international students, employed as cleaners are heavily underpaid and instructed by their employees on what to say if unions should contact them. For the purposes of this study, it has also been suggested by multiple parties that any interactions migrant workers in cleaning pyramid schemes have with external people are 'watched', and that if they do not comply with their employer's instructions they won't be given any more work.

Another service provider pointed out that, in the horticultural sector, labour exploitation is worse in rural areas. The National Union of Workers representative commented that:

in the last few years in our exposure into the **farming / horticultural sector** we're seeing much more of it in the regions. So the Riverland, up in the north area and then, sort of, the Mallee Hills area, we're seeing much more of it. We've had a much greater exposure to it in the last two and a half years, so our eyes have been opened very significantly to the scale of the problem.

we'll go and talk to 30 workers that are employed legitimately, but for every worker that's employed legitimately you know there's maybe not one for one, but two legitimate employees for every one that's not employed in a proper relationship and is subject to many problems [such as] **people having their passports confiscated, not free to leave the farm** ... there's just a whole host of problems. It's certainly hard to quantify, **but it's much more significant than I think we thought before we got into the regions in the last couple of years.**

in the last two and a half years, [we have observed that] the numbers are larger in the regions than they are in the city. Because certainly as a percentage of the workforce, definitely higher. But I think on the overall numbers, I think that you'll probably find that it's higher in the regions. [For example,] recently in the Riverland we've had 50 or so members that have been working across various farms and they've probably spoken to us about **25 to 30 people across a couple of farms** that they've got concerns that they're not employed properly, but also that **they're not free to leave**. That's across a couple of farms.



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<sup>6</sup> Inappropriate use of pyramid subcontracting involves a supply-chain structure where business owners do not have direct responsibility of cleaners' work-related conditions, and, at the bottom of the chain, cleaners are often employed as independent sub-contractors.

### **Box 12: Metropolitan food entertainment industry – case studies**

The Multicultural Communities Council of SA as well as SA Unions have observed that many Chinese cafes and restaurants around the Central Market in Adelaide exploit temporary-visa workers, with special reference given to international students. There is evidence that these migrants do have some awareness that they are not being treated poorly (for example, not paid the proper hourly rate) but because of their circumstances (financial or otherwise) they tolerate such behaviour.

The Multicultural Communities Council of SA spoke to a Chinese community insider who observed that in most Chinese restaurants in Chinatown migrant students are exploited 'while the employers drive the Mercedes'. Unprompted, the SA Unions representative commented:

I would suggest, for example, that were the Fair Work Ombudsman to do a decent audit of businesses within a kilometre of the Central Market, they would find almost every business in that area operates outside proper award arrangements and it is very prevalent.

However, it is imperative to acknowledge that the exploitation of temporary visa holders is **not confined to one socio-cultural or ethnic group**. Another service provider discussed the case of a well-known mainstream restaurant in Adelaide that employed a qualified young non-Asian man with an industry-sponsored visa. This person worked long hours for two years, being told that the paperwork for his visa extension had been lodged; but he was later found out to be a visa overstayer by a random police routine check and had become an unlawful subject in Australia, as clearly his employer had deceived him about lodging the visa extension paperwork. The case involved other issues, such as those related to overall payment versus effective working hours, other awards and more.

The wilful act of rendering unlawful a person who has trusted their employer in good faith is quite problematic. Further, assessing this young man's circumstances against the ILO's forced labour indicators reveals that his case clearly involves the following: abuse of vulnerability, deception, and withholding of wages.

## **DEMOGRAPHICS**

Based on the evidence provided by the participating service providers, below is a snapshot of the demographic profile of labour exploitation victims, which may be used to inform further evidence collection and analysis.

### ***Age and gender***

The service providers suggested that most labour exploitation victims are aged between the mid-20s and 35, with a smaller number of cases involving temporary visa holders aged in their 40s. The gender ratio is reported as balanced (close to 50:50) both for seasonal workers and for other temporary visa holders (such as international students).

### ***Nationalities***

SA Unions has observed that international visa students from China or the Indian subcontinent were the groups most represented among people exploited in the metropolitan food entertainment industry.

The National Union of Workers reported that, in the horticulture industry in the Riverland, most of the workers exploited were Malaysian and Indonesian, while the seasonal working program in Port Augusta has seen the highest rates among Timorese nationals. United Voice reported that in the wine industry it has observed the

exploitation of Chinese, Cambodians and South-East Asians. The Indian subcontinent and other Asian nationalities were mentioned in relation to the cleaning industry.

The National Union of Workers has identified the existence of a pay scale range based on ethnicity within a particular farm:

[recently at] a strawberry farm [in the Adelaide Hills] Cambodians were paid a certain rate of pay [the best rate, it transpires], Indians were paid a certain rate of pay, Vietnamese were paid a certain rate of pay, the rest were juggled into another group that got paid [the lowest] amount. [...] Very loosely based on performance, the scale range was less than the minimum wage, arranged in groups: \$17, \$16, \$15, \$14.

In summary, people of Asian background have been identified as the majority of those employed in exploitative conditions. There are exceptions, however. For example, one service provider mentioned European temporary skilled visa holders.

### **Temporary visa holders**

According to the FWO, in the period June 2013 to March 2018, the proportion of SA completed disputes that involved people on a temporary visa was quite low, at 9.7% compared to 90.3% for non-temporary visa holders. However, if we consider in SA the number of non-temporary visa holders (comprised of nationals and permanent residents) versus the number of temporary visa holders, this 9.7% percentage may be quite relevant, given that the temporary migrant population is a small percentage of the total SA population, which stands at over 1.7 million people (see ABS 2016).

Figure 10 below presents a breakdown of the temporary visa types comprising the 9.7% of temporary visa holders for which disputes have been completed, which highlights that working holiday visa holders represent the highest proportion. It is interesting to note that the second-highest group was composed of a mixture of temporary visa types not identified in the FWO data.

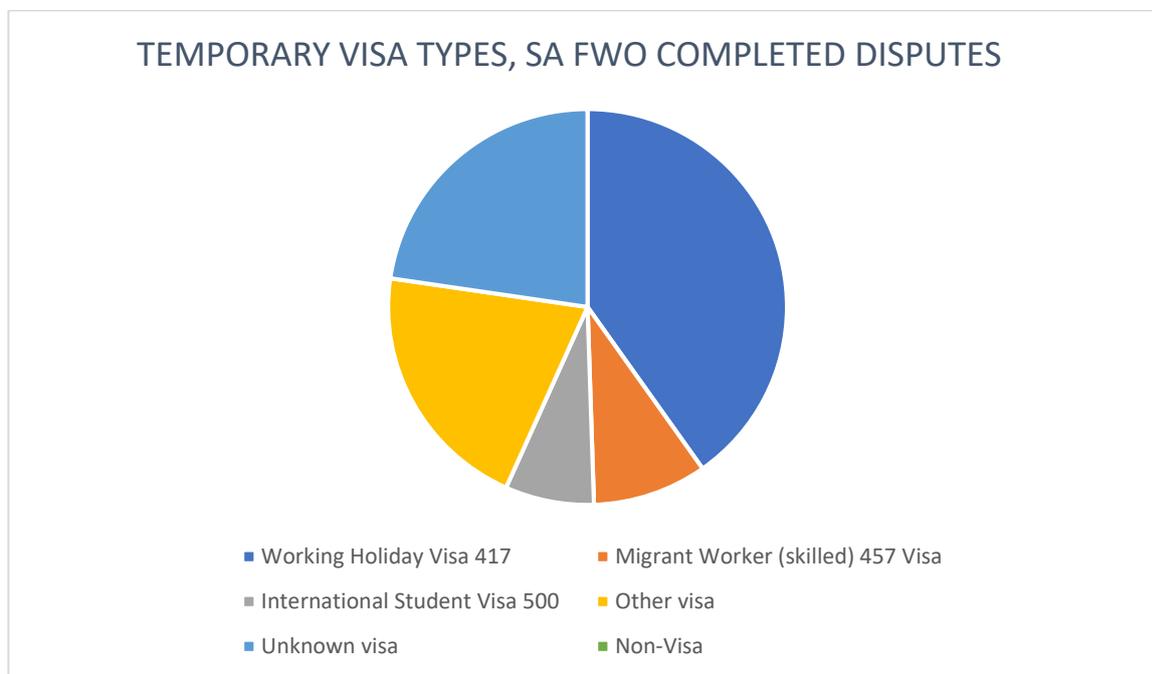


Figure 10: SA completed disputes FWO 2003–18

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Holding a temporary visa adds a layer of vulnerability and this is why it is important to go beyond the data to also consider the observations of service providers. The National Union of Workers spokesperson commented that:

the people that are exploited are the most vulnerable in the community. And it's predominantly new migrants. Not exclusively, but it's predominantly new migrants. And it's not what they deserve to be welcomed to Australia with.

For example, in the case of international student visa holders, some service providers suggested that while the number of hours these visa holders are permitted to work per week is quite low (according to the Department of Home Affairs), students find themselves in a position where they cannot negotiate because they might lose their job, and in a context where employment can be difficult to gain for international students. The SA Unions representative spoke about this cycle of vulnerability as creating a **condition of entrapment**:

a tight hold is kept on some employees by the fact they're susceptible to deportation if they breach their visas provisions. It's almost a sense of entrapment – we invite you in to work for 20 hours, or 25, if you can't work for 30 hours this week maybe we can't have you back at all. So, people work extra hours and once you're there, it is difficult to complain.

In addition, the externally induced breach of visa conditions engenders a new type of vulnerability that then facilitates blackmail, including threats to tip off the authorities about the breach, potentially leading to the student's deportation.

Linked to the FWO data on 'non-visa' holders (Figure 1), another example of the cycle of vulnerability was recounted by the National Union of Workers spokesperson, who cited the case of temporary visa overstayers and reflected that, in the horticultural industry, especially around Riverland:

A lot of the Malaysian and Indonesian workers either have been on student visas or another type of visa, but are largely here without work rights, or they've overstayed their visa. Some [from other nationalities] have been on the backpacker, the 417 visa.

Workers being employed while on expired visas or without work rights and protections has been identified as a major issue that gives employers 'leverage' over their workers. As a National Union of Workers spokesperson said:

[what] the employers are using against them is that, well you've overstayed your visa so I'm allowed to treat you however I like.

## Language

The FWO data reveal that, in SA, one of the variations of the Chinese language (such as Mandarin or Cantonese [Chinese]) is prevalent, with 90 cases from a total of 169 cases completed. All the other cases but two (which involved French and Italian workers) required an interpreter in an Asian language other than Chinese.

In the case of horticulture in the Riverland, according to the National Union of Workers, Bahasa Malaysia (Melayu) and Bahasa Indonesia are the most prevalent languages spoken among all temporary visa holders, followed by a variety of other Asian and European languages. It is highlighted that the standard of English (spoken as a second language) varies, from proficient or good (most cases) to basic.

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## TYPES OF VULNERABILITIES

Further to the vulnerabilities discussed above, more types emerged from the interviews.

### ***Exploitation of familial connection***

An emerging pattern from the overall observations of service providers is that a worker's familial connections can be used either directly or indirectly to impose leverage on them, forcing the worker to remain in an exploitative situation.

This form of vulnerability can be divided into two types: 1) indirect or self-imposed family leverage; and 2) direct and violent family leverage used by external parties.

#### *First type*

There is pride and honour, not to mention a significant financial investment on the part of parents, when international students take up university study in Australia, or when young people take a working holiday here. In relation to the latter, a service provider reflected on the case of Western Europeans who find themselves in a condition of helplessness, even sleeping rough, because they have exhausted their financial resources, having experienced exploitative employment conditions in Australia. While the family back home may be in a position to help, the young people often do not want to be perceived as a failure, raise the alarm or bring attention to themselves, so do not ask for help.

In relation to international students, a Young Christian Workers representative recounted the cases of several international students from a variety of Asian countries whose immediate family and various other relatives had 'invested' all their savings to enable the student to undertake an Australian university degree. In this situation, the student cannot afford to simply 'walk away' from exploitative working conditions because their family is depending on them (see case study in Box 13 below).

#### **Box 13: Case study of an international student cited by a service provider**

'I get a call from my family reminding me of the loans they had taken from relatives and friends to send me here ... I cannot simply ignore this because I know the way out from their situation rests on my shoulders ... I need to pay back those debts, pay my university fees, pay my rent, groceries, basic living expenses ... but the only work I can get is cleaning jobs that do not pay fairly. I feel helpless and I am afraid this stress will overcome me.'

#### *Second type*

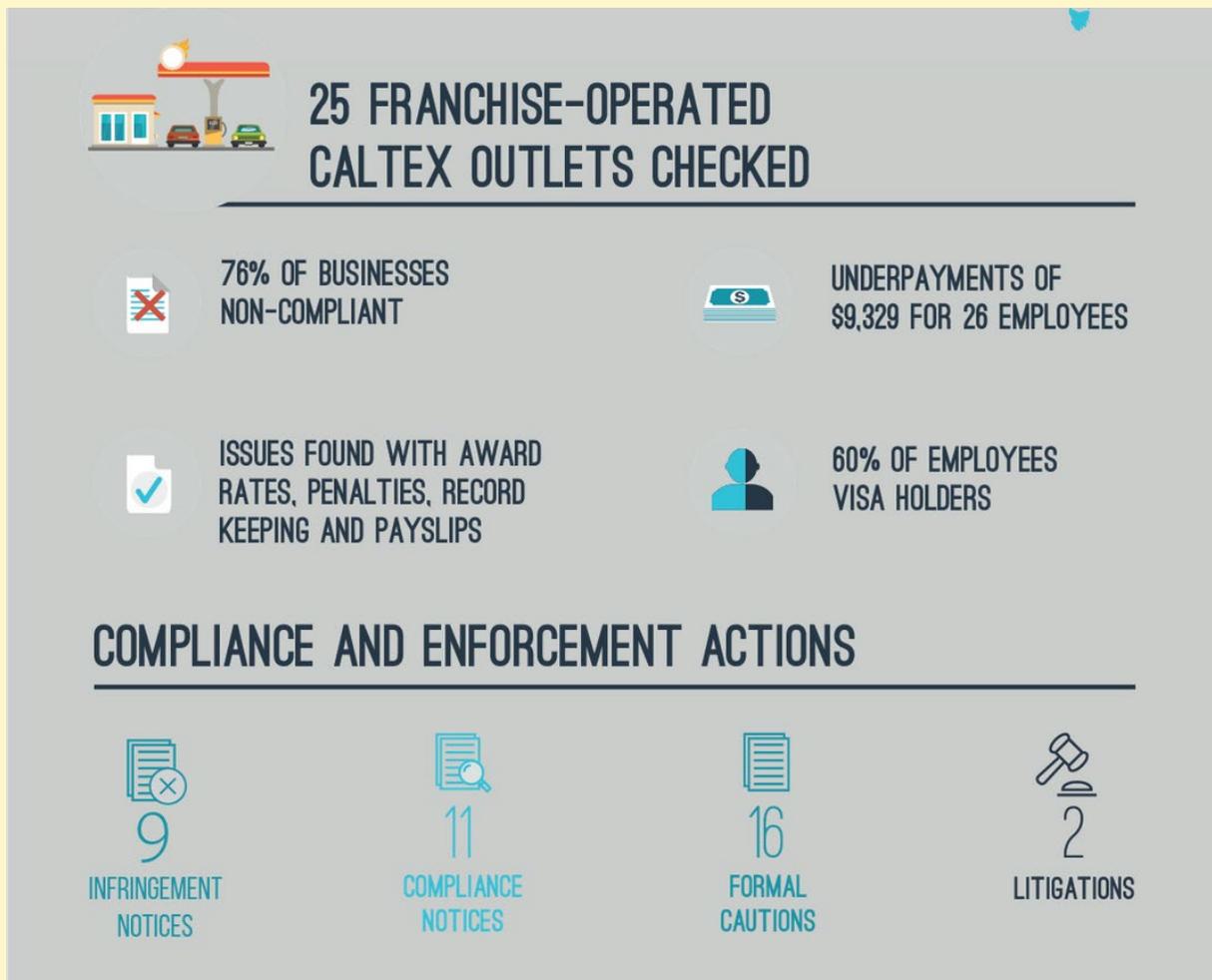
A few service providers referred to employers or contractors exploiting familial networks in the migrant worker home country 'and even their village', 'encourag[ing] people to come out from that area or be[ing] a point of contact when people arrive here', as well as 'threats made in home countries against relatives of the employees there' (extracts from SA Unions interview). A case study collected for this report that raised these issues is discussed in Box 14 below. This and other similar cases were reported in the media in 2016 (Ferguson and Christodoulou 2016), where underpayment (in this case \$13 per hour) in the context of threat and coercion was highlighted. These cases were later the subject of an FWO report (FWO 2018b) that identified serious and systemic non-compliance with labour laws. However, in this FWO report, the extent of fear and repercussions linked to threats to the family back in the home country or even the village of origin was significantly underreported.

### Box 14: Case study

In metropolitan SA, the owner of five petrol stations, originally from Pakistan, employed temporary visa holders, most of whom were on international student visas, who had all come from the same Pakistani village. As the employees became increasingly vocal regarding the conditions of work and underpayment, they were threatened with retribution against their relatives in Pakistan, and with having their visas cancelled so that they would not be able to finish their studies. Further, the employees' parents back home in the village also received threats.

In a 2018 news article by Adele Ferguson, a similar (or possibly the same) case was reported as follows: 'In Caltex's case it had an added twist, with stories emerging of workers threatened with violence and in one case sending hit men to visit their family in Pakistan to guarantee their silence' (Ferguson 2018 online and unpaginated).

The main brand Caltex redressed the damage inflicted by individual franchisees by taking some action (including regaining ownership of the petrol stations and paying the employees – see Ferguson 2018) while the company was also subjected to a national FWO investigation (2018b). The image below is extracted from the FWO report.



This case study is significant because we see the presence of a number of the ILO's slavery indicators and yet the underpayment of workers became the primary focus of investigation and reportage.

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## Voicelessness

Temporary visa holders have a substantial **lack of voice for fear of repercussions**.

In the horticulture industry, temporary migrants tend not to communicate with their co-workers and indeed what is problematic is that the fear of losing one's job is felt on both sides: by the underpaid temporary worker who is unable to leave, and by the other workers who may even be union members. The National Union of Workers representative observed:

our members speak to us about their concern for some of these people, but there's very little interaction between them directly on the farm. So there's some interaction from a work point of view, but very little discussion, because **both parties are scared** to have that discussion because if the supervisor sees you doing that, then there's a consequence. You know, whether it's you lose hours or you get given different, more difficult work.

Furthermore, the different languages spoken by workers of different nationalities also reduces their ability to communicate with each other, and if the migrant workers communicate in English with local workers the employee may become suspicious and 'monitor' the conversation.

In some cases, different groups of workers are deliberately separated by the employer to prevent them from comparing their salary and work conditions. As the SA Unions representative pointed out:

[temporary visa] people come in as part of a contracted arrangement with some sub-contractor who may be a Chinese national, Vietnamese, Indian, and so there are language barriers in talking to [other] workers. They're deliberately kept apart from other workers; the [salary] range is just beyond the minimum award payments, rarely do they receive proper superannuation entitlements and there are almost certainly breaches of safety conditions.

In addition, temporary visa holders are openly discouraged from lodging a workers' compensation claim in the case of injury. On this, the SA Unions representative explained:

there is pressure put on workers when they're injured not to attempt to claim workers compensation payments, they'll be paid some cash, sent to the doctors ... because these labour hire contractors often misreport the number of employees they have, the size of the wage bills, they'll do everything they can to avoid the other regulatory costs that flow.

Temporary visa holders are thus rendered voiceless in many ways.

Agencies who monitor these situations say that, typically, these migrants do not want to be seen as whistle-blowers, because there is no incentive to speak up as the Australian system does not offer adequate protections in these situations. At stake is not just the possibility of losing one's job; there have also been cases where the employee raises a complaint and the employer or contractor then informs the authorities of their migration status, leading to the employee's deportation (because they were in breach of their visa conditions or did not have the correct working rights). The SA Unions representative reflected on this point:

there's a tendency to do people in who cause a bit of trouble and then have the Australian authorities whisk them out of the country, gone ... because it's immaterial to them who it is. It's just another one in a long chain [of people who can be exploited].

The legal case collapses because the person isn't there anymore to follow it through.

[..]

the tales are many, people are scared to talk. Often confronted with a mixture of language barriers, threats to their economic wellbeing, deportation, all of these things operate against people complaining about their exploitation. You need to have the forces of the state operating anyway just as good practice, not relying on some poor sucker coming forward, putting their hand up and getting bumped back to Mainland China.

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Seasonal workers are not as voiceless, since their living and working conditions are currently scrutinised more closely. Nevertheless, their voicelessness is inherently linked to their plan to come back to Australia multiple times (see case study in Box 15). Their vulnerability stems from a number of factors, but two in particular: their desire to come back to Australia and continue the seasonal work for economic reasons; and that their main point of contact for securing work – the intermediate agency – is also their point of reference for visa, flight, accommodation, transport, medical information and other assistance. In Port Augusta, it was noted that the concern was not so much migrant workers' lack of information regarding unions but their unwillingness to seek the assistance of unions. As a religious service provider highlighted:

they just want to work, get some money for their families and support them. So that's their main concern. So, they're not too worried about making things difficult ... they don't have that voice themselves, or they're hesitant to raise that voice because there may be repercussions for them. So, that's a concern.

#### **Box 15: Case study – insidious nature of silencing techniques**

Through the empirical data collection carried out in rural SA for this study, the case of a seasonal worker who found herself pregnant upon arrival was identified. At her workplace some discussion occurred around removing her from heavy-working duties in extremely hot conditions; yet days had passed and nothing had changed. While very stressed about the risks to the pregnancy, this woman was also concerned not to be seen as a troublemaker, as her priority was to be able to return to Australia in future.

#### **Accommodation racket and salary deductions**

The key service providers raised the exploitative issues related to accommodation in SA that, in some cases, lead to debt bondage. The National Union of Workers representative pointed out:

many of them [in the horticulture sector] are living on the farm or living in accommodation that's provided by the contractor.

[to say they are] overcrowded is putting it politely. The contractor not only underpays them at work, but also charges them exorbitant prices for their housing and related things. They pay \$150 a week for a room that they share with three other people, for a house that would, on the open market, get \$250 or \$300 a week, and they've got three rooms full of people, basically \$600 a room. And then [they are] charging them for other things as well ... if you want the internet then you have to pay \$25 a week [per person].

This account was confirmed by another service provider, who spoke of a 'little cottage industry':

people have to lay down a deposit, they've had to hand over their passport and in some cases even like their laptop was taken as security. And then they have to give notice, even though it's a hostel.

In some cases the farmer's involved; in plenty of cases the labour hire [contractor] is involved and then they've got some kind of mate that's running an accommodation, like a caravan park or a hostel, and then they all collude to get people into these accommodations to keep the beds full when they would not otherwise be full in these regional areas, so there's definitely a **little cottage industry** there, that often results in coercion and controlling techniques that are directly connected.

The **working hostel model** is so engrained into the temporary migrant labour force in horticulture and viticulture as well, there needs to be some new mechanism to intervene there.

I've seen that pour over a bit into the seasonal worker program, but not nearly as much as I've seen it in the backpacker space.

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Seasonal worker accommodation and deductions from seasonal workers' salary, in comparison, are more regulated and every year show signs of improvement. The issue of deductions was brought to the public's attention in 2017 by a federal court case concerning a fairly large tomato farm (Perfection Fresh) in Two Wells, SA, with the case discussed in a news article by McKenzie and Toscano (2017).<sup>7</sup>

After initial concern regarding salary deductions in 2017 and 2018 was expressed collected in an interview with a service provider in Port Augusta, this and another service provider shared the opinion that things are looking better in terms of the quality of accommodation overall but that there remain issues of overcrowding and excessive deductions from the wages of seasonal workers. The National Union of Workers representative recounted the following:

a lot of [seasonal] workers have [recently] moved into what we call 'the village', [where there] is a better standard of accommodation, but certainly more crowded. And the cost of it is still significant for the workers. I mean between their accommodation and their transport, it's \$180 a week.

The workers need to take a bus back to the accommodation each day, which is not only expensive if they finish two hours early at work, then they have to sit at work for two hours and wait for the transport, because not every worker is finished two hours early. So it's not particularly fit-for-purpose either.

This interviewee also cited cases, not only in Port Augusta but in regional SA more broadly, in which transport-related deductions were made for weeks in which workers had not actually worked.

### **Debt bondage to a 'middle man'**

The case of labour hire contractors was discussed at length at the 2016 SA Inquiry into the Labour Hire Industry; and in mid-2019, after a period of uncertainty, the SA *Labour Hire Licensing Act 2017* has resumed its operation (Business and Trade SA 2019). It is hoped that this will increase the level of regulation in the sector, which has been identified as problematic, as a representative of SA Unions observed:

Labour hire in many cases is just exploitation on an industrial scale.

The evidence provided to this study by the National Union of Workers is that, in rural SA, some contractors play a big part in labour exploitation that is akin to slavery. As the following extract reveals, employers are also often secretly aware of the exploitation:

[some] contractors aren't employing people properly in any way, shape or form. They're just, what we phrase as, just dodgy contractors that are being used by employers to source labour that they can't otherwise source, because they know they don't want to do it directly because it's not proper to do so.

the farmers will pay the minimum wage or close to the minimum wage to the contractor, which means that the worker's got no prospect of actually getting the minimum wage, because the contractor's taking a big slice of that. So, there's significant underpayment for these workers, but that's [only] one problem for them: **it's how they're treated as well. [For example,] people have their passports confiscated.**

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<sup>7</sup> Central to this case was that the workers had been asked to renounce their right to representation by the union. A service provider interviewed in Port Augusta suggested that, as a result of the federal court case, the clause 'employer should offer the opportunity to an employee to join a union' now takes shape in the form of a leaflet added to the seasonal program package given to new employees. So, it is left to the goodwill and human / financial resources of the union to come and talk to workers since it was observed that workers tend not to reach out and seek help from a union.

Of interest, it should also be noted that the same company mentioned above, Perfection Fresh, when it was operating under the name D'Vine in 2015, sacked its labour hire company after revelations of underpayment of staff emerged through ABC TV's Four Corners investigation into worker exploitation (Meldrum-Hanna 2015). The Four Corners program revealed the existence of slavery-like practices in SA as well as black or gray market labour hire groups operating in farms and factories that supplied goods to Australia's biggest supermarkets and fast food chains. Following the Four Corners program the then SA premier, Jay Weatherill, announced a parliamentary inquiry into the labour hire industry (ABC 2015).

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Other contractors, such as migration agencies, also need to be scrutinised more closely. Some migration agents create the conditions for **debt bondage** with their own clients, who become their victims through different mechanisms. As one of the service providers commented:

Not just necessarily victims of human trafficking or forced labour or forced marriage [are our clients]. But it's people that find themselves being assisted by migration agents, for example, who are not, sometimes, not properly registered. [Migration agents] would tell [their client], oh it's 10s and 10s of thousands of dollars for us to help you with processing the applications. And they would end up having this huge debt.

In terms of the nationalities of contractors, it is again difficult to establish definitive data. From the evidence collected in this study, a range of nationalities are involved. On this, the National Union of Workers representative said:

Cambodian, Vietnamese, Chinese, certainly Australian [nationals]. They're probably the four biggest communities that we've dealt with, but there are certainly many others as well.

Another element to consider is that **contractors move their workers around**. The National Union of Workers representative described how migrant workers move around quite a lot, sometimes voluntarily to follow the seasonal work. Sometimes, however, the choice is not theirs and they are moved by their contractor: 'they're certainly not all trapped on the farm', but sometimes contractors 'are moving people around as well'. This also serves the purpose of minimising co-worker bonding.

### Gender violence and sexual assault

A few service providers observed that female temporary migrants were all too often subjected to gender violence, including sexual assault. Two such case studies are discussed in Box 16 below.

#### Box 16

**Case 1.** The National Union of Workers representative recounted a case that was never reported anywhere (in the media or otherwise):

NUW: [In] 2013 [and] 2014, we had workers that were working in Adelaide that we had a lot of people talking to us about the fact that they were working in a poultry facility, but at the same time were getting used to work in the sex industry.

*Interviewer: What nationality were they?*

Um, Chinese. Um, they were pretty much exclusively Chinese. So, well, sort of backpackers that were on 417 visas. So Taiwanese and from Hong Kong as well.

*Were they all women?*

Yes.

*Young?*

Yes. I mean just by definition they had to be young to get the visa. So like they had to be under 30 I think ... but yeah they were all young.

*How many cases like that have you heard about?*

At the time, that was probably about 20 people. But that was a very short window that we had some exposure to those workers, because once that sort of [complaint] was made, not public, but it [became] common knowledge among some of the workforce and particularly the

Taiwanese community, then those workers just disappeared. We didn't ever see them again. We didn't get a whole lot of evidence of it, but the circumstantial evidence was [there]: it was happening, [and] who it was [the contractor]. And then once we got told, very, very quickly we just didn't see them again.

I think [the contractor] was from Mainland China.

**Case 2.** The National Union of Workers representative also reported a 2018 story where labour underpayment, an accommodation racket, sexual harassment and violence in the Riverland horticultural area were all intrinsically linked and formed a debt bondage type scenario.

a group of Taiwanese female backpackers [on a 417 visa], working regularly more than 40 hours per week paid \$16 per hour, were all living in a house ... eight of them living in a three-bedroom house. The house was very basic but clean and would have been, probably being generous, \$350 a week [in total] it would have got for rent. They were eight women paying \$120 a week each. The [male, from the Indian subcontinent] contractor for the workplace that they were working [for] owned the property. And they not only had to pay him \$120 a week for the property, they paid him an extra amount of money for better internet, \$20 [each] a week for better internet. Now, I mean my own experience is I think you get pretty good internet for \$160 a week; you get good internet for \$160 a month!

They also pay him to access transport to get to work, they had to pay him money to access cars, \$25 a week roughly each, that was to purchase a car that was probably worth \$1000. It wasn't a new car. It was an old bomb. But also that they were expected to, if they wanted to get to work, so they could afford to pay for all these other things, perform sexual favours to get more hours. You know, and those women were in that environment for quite some time before they were able to speak up, for six months.

*How did it change?*

Well, essentially, they exposed it to the [Australian] host employer. And the threat of the media ... so, they didn't actually ever go to the media, but they had made a pretty credible threat that they were going to [the media] and that got the host employer to cease using that contractor and also assist them in finding alternate housing and other transport as well.

*And they didn't overstay their visa? At the time?*

I think the answer is probably yes ... because I don't think that they would have done their paperwork. I would assume that the employer didn't do the paperwork for them to extend their stay under the visa conditions.

*Do you know if they're still in Australia?*

No, they're not. Yeah, they've gone. They went not long after.

*Gosh, you'd get traumatised for the rest of your life...*

Yes, yeah, absolutely, yeah, yeah. I don't blame them for never wanting to come back.

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## **Final remarks**

The precarious situation facing temporary migrants in SA, including their vulnerability and silencing, need to be investigated further. Adopting solutions that simply criminalise certain acts (such as wage theft) may risk silencing the workers even more, especially when the testimony of the worker is necessary to secure a conviction. A solution that starts and finishes with the worker is limiting.

From the point of view of consumers, it is quite disheartening to become aware that anywhere, from the cinema to our office, from the supermarket to rural SA, we may encounter the exploitation of our fellow human beings, yet we cannot 'see' it.

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## CONCLUDING REMARKS

This study was a scoping exercise to collect some evidence on slavery and slavery-like practices in SA. While some quantitative data have confirmed that some people have been identified as victims of these offences, service providers indicate that they have observed much higher numbers. Indeed, as pointed out by the Australian Institute of Criminology (Lyneham et al 2019) and discussed in this report at the end of the section titled 'Analysis of data on suspected victims in SA', many victims are unidentified and unassisted.

### Social and institutional visibility

The aim of this report was not to cause a moral panic, and certainly not to single out communities, by focusing attention on this matter. Rather, the intention was to shed some light on the level of exploitation to which some temporary visa holders find themselves subjected. The aim was also to increase the level of visibility of this issue, especially at the institutional and social level. While service providers are aware of the situation in their fields and that some of the issues they are observing have increased in prevalence in the past three years, it is uncertain whether there is awareness about **recurrent patterns across different fields of exploitation**.

In this regard, the study identified some key recurrent themes shaping the experience of temporary visa holders:

- vulnerability due to migration status;
- voicelessness and fear of repercussions;
- an inability or unwillingness to 'walk away' from the exploitation, though others might fail to see this;
- a lack of sufficient knowledge of the Australian legal system and a lack of trust in the Australian authorities.

These elements add to the **cycle of vulnerability**.

The task ahead is to bring further **social and institutional visibility** to this area in which there is such a high rate of hidden victimisation.

A **position statement** by the SA Parliament followed by the **recommended Parliamentary Inquiry** will increase the social and institutional visibility of these issues. The position statement could also be used to encourage SA private and public companies that meet the AUD\$100 million consolidated revenue threshold set by the Modern Slavery Act 2018 (Cth) to take a 'step further' in their annual reporting of slavery risks, in both their operations and their supply chains.

In the meantime, suggestions for action include:

- development of a targeted soft awareness raising campaign;
- further network-building among service providers (Red Cross SA already runs bi-annual meetings, and may be contacted for further information);
- production of a directory of services;
- coordination of data input and sharing across service providers and researchers.

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## APPENDIX A

### Methodological notes and list of participants

The statistical data from the section titled 'Analysis of data on suspected victims in SA admitted into the Support for Trafficked People Program' come from the following sources: the Australian Federal Police, a combination of data from the Department of Home Affairs and the Department of Social Services obtained via two separate FOIs, and data provided by Red Cross, which is the designated support agency for the Commonwealth Support for Trafficked People Program.

The triangulation of the data brings a degree of legitimacy to the statistics provided.

Some quantitative data obtained through interviews with the Red Cross and Anti-Slavery Australia support the information provided in this section.

The remaining sections of the report draw on:

- some background data from an FWO report (2018a) kindly prepared for this study on commercial labour underpayment in SA from 2013 to 2018;
- qualitative interviews with service providers, the data from which is thematically analysed. These service providers are listed below.

#### **Service providers** who participated in the qualitative interviews are:

- Anti-Slavery Australia
- Catholic Parish of Port Augusta
- Centacare Catholic Family Services (Berri; Whyalla)
- International Organization for Migration
- Migrant Health Service (SA)
- Multicultural Communities Council of SA
- National Union of Workers
- Red Cross (national and SA)
- Refugee Health Service (SA)
- SA Unions
- Salvation Army
- St Vincent de Paul (Port Augusta and Port Pirie)
- United Voice SA
- Womens Health Service, Women's and Children's Health Network
- Women's Safety Services SA
- Young Christian Workers

#### ***Request for confidentiality and anonymity***

A handful of service providers preferred to participate without having their name disclosed or their statements and cases attributed to them.

This preference for anonymity has been a consistent issue when collecting data in the area of commercial sexual exploitation, as the service providers approached tended to either request to participate anonymously or decline to participate altogether.



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