



Australian Government Attorney-General's Department

**Targeted Review of
Divisions 270 and 271 of the
Criminal Code Act
1995 (Cth)**

7 March 2023

Targeted Slavery Reviews
Attorney General's Department
Canberra ACT 2600

By Email: targetedslaveryreviews@ag.gov.au

Destiny Rescue Limited (Australia) - Response to Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth).

Thank you for your invitation for stakeholders, such as Destiny Rescue Ltd, to provide their views regarding Divisions 270 and 271 of the Criminal Code Act 1995 (Cth).

Destiny Rescue Ltd is an Australian-based international NGO with more than 20 years' experience in countering child trafficking. In 2022, we celebrated 11,000 rescues of individuals from human trafficking and child sexual exploitation.

Launched on the Sunshine Coast in 2001, Destiny Rescue focuses solely on the child sex trafficking aspect of modern slavery. We work with governments, law enforcement agencies and NGOs in 12 countries. And we are one of the few organisations internationally to conduct direct rescues via a network of trained rescue agents.

We are pleased to provide Destiny Rescue's input into the Targeted Review of these very significant provisions. We are happy to meet to discuss our experience and insights.

Yours sincerely,



A stylized, handwritten signature in black ink, appearing to read 'Paul Mergard'.

Paul Mergard
CEO Destiny Rescue Australia

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Who is Destiny Rescue?



Destiny Rescue Background

Overview

Destiny Rescue is an international non-profit organisation whose mission is to rescue children from sexual exploitation and human trafficking and help them stay free. Founded in 2001, and in operation for over 20 years, Destiny Rescue has rescued more children year-on-year (since 2011). We recently celebrated our 11,000th rescue and are driven by our strategic goal to rescue 100,000 children by 2032.

Objectives

Our vision is to play a leading role in ending the sexual exploitation and trafficking of children in our lifetime.

Aims

We aim to continue to expand our work:

- Rescuing individuals enslaved around the world;
- Keeping others from entering the sex trade through border intervention and trafficking awareness counselling;
- Ensuring justice for those who have been wronged; and
- Raising awareness globally.

Who we are

With more than 200 staff worldwide, Destiny Rescue is currently operating in Thailand, Cambodia, the Philippines, Nepal, Uganda, Kenya, Zimbabwe, the

Dominican Republic and four undisclosed countries in Asia, Central and Latin America.

In each nation, we partner with a network of international Border Force, local law enforcement, government agencies, NGOs, and other like-minded organisations who add their on-the-ground expertise in local communities and culture.

Focusing solely on the child sex trafficking aspect of modern slavery, we are one of the few organisations internationally to conduct direct rescues via a network of trained rescue agents to support the fight against child sexual exploitation.

We collaborate with prominent NGOs and local law enforcement agencies on large scale raids.

Destiny Rescue empowers rescued girls to develop agency and remain free through its Aftercare Programs and on-the-ground partners. Survivors are supported to become community leaders, journeying with the next generation of girls to ensure they are never again sold or kidnapped into child sex tourism and trafficking.

See the Destiny Rescue Australia Annual Report for 2021, at Appendix 1.



Our structure

Because of the international scope of our work and worldwide partnerships, Destiny Rescue has a multinational organisational structure that gives us the ability to operate more effectively around the world.

Destiny Rescue International¹ is the central operating arm, providing support and logistics for rescues, program management, new pilots, and learning and evaluation.

Destiny Rescue Limited (Australia)², Destiny Rescue USA³ and Child Rescue New Zealand⁴ each provide essential strategic support for different regions of the world, and also assist with fundraising, strategic partnerships, and marketing and communications in their respective nations.

Destiny Rescue Limited Australia is made up of a team of 30 Australian-based staff. Destiny Rescue Limited is a registered charity in Australia⁵. The Australian Board is composed of 5 dedicated professionals with international leadership expertise in the NGO and corporate sectors, finance, business development and human resources⁶. Destiny Rescue Limited is a member of the Australian Council for International Development (ACFID) and adheres to the ACFID Code of Conduct, which defines minimum standards of governance, management and accountability of development for non-government organisations (NGO's).

Destiny Rescue Limited acknowledges the Australian Government's Guidelines for NGO's: Working with trafficked people (Third Edition, 2015)⁷.

For further information, see the Destiny Rescue Limited (Australia) Annual Report for 2021, at Appendix 1.

¹ Destiny Rescue International, PO Box 25684 Fort Wayne, IN 46825 | Tax-Exempt since May 2015; EIN: 47-2864435; www.destinyrescue.org

² Destiny Rescue Limited is a company limited by guarantee incorporated under the *Corporations Act*.

³ www.destinyrescue.org; Non-profit organization in Fort Wayne, Indiana. Address: 10339 Dawsons Creek Blvd suite c, Fort Wayne, IN 46825, United States

⁴ <https://www.childrescue.org.nz> Child Rescue Charitable Trust registration number: CC 50592; Child Rescue Charitable Aid Trust registration number: CC 50751

⁵ Registered charity with the Australian Charities and Not-for-profits Commission (ACNC) – ABN: 16 394 284 169

⁶ Destiny Rescue Limited Annual Report, 2021, pg 28.

⁷ <https://www.homeaffairs.gov.au/criminal-justice/files/guidelines-ngos-working-with-trafficked-people.PDF>

Our Human Trafficking Rescue Efforts

Victim rescue growth:

Despite rescues falling during the pandemic, 2021 total rescues grew by 230.9% from 2020 to 2021 due to our pivots, with annual rescues growing 31.7% year-on-year over the last 10 years:

| | 2020 | 2021 | 2022 |
|---------|------|-------|-------|
| Rescued | 721 | 2,386 | 3,144 |
| Raids | 79 | 92 | 131 |
| Arrests | 139 | 147 | 168 |

Number of survivors entering our reintegration programs (Residential Care and Community Care programs):

| | 2020 | 2021 | 2022 |
|---------------------|------|-------|-------|
| New beneficiaries | 171 | 1,212 | 1,309 |
| Total beneficiaries | 353 | 1,317 | 2,411 |



Australian Offenders

The sexual exploitation of children by Australians both locally and overseas is a significant issue of concern.

World Vision report that Australians account for 9 per cent of sex tourists arriving in the ASEAN Region⁸. Indonesia (especially Bali) and the Philippines are currently amongst the most favoured destinations of Australians⁹, with almost 100,000 Australian citizens descending on Thailand alone¹⁰.

In addition, the increase in availability and access to the internet has been a contributing factor in the rise of online sexual exploitation of children (OSEC), with an estimated 750,000 predators online at any one time¹¹.

Before the internet, criminals had to physically go to a bar or brothel to sexually exploit children. Now, abusers located anywhere in the world, including Australia, can exploit children without ever leaving their homes.

Australian offenders were involved in 18% of all International Justice Mission (IJM) cases in the Philippines, and overall Australia ranks third behind the US and Sweden when it comes to cases of live-streamed child abuse¹².

⁸ <https://www.smh.com.au/national/love-thy-neighbour-australias-shameful-fetish-20081119-gdt3dh.html>

⁹ <https://ecpat.org/wp-content/uploads/2021/08/Global-Report-Offenders-on-the-Move.pdf>

¹⁰ <https://www.smh.com.au/national/love-thy-neighbour-australias-shameful-fetish-20081119-gdt3dh.html>

¹¹ <https://ijm.org.au/blog/5-things-you-need-to-know-about-osec/>

¹² <https://ijm.org.au/blog/5-things-you-need-to-know-about-osec/>



International partnerships

Destiny Rescue have strong on-the-ground partnerships with local governments and like-minded NGOs across our countries of operations. For example:

- **Thailand:** Destiny Rescue has over 45 organisations (Government, non-government and like-minded sectors) that we collaborate with;
- **Cambodia:** Our work is registered and in partnership with government authorities. Maintaining a positive relationship is key to our success and continued work, in line with Cambodia’s main anti-trafficking law (Law on Suppression of Human Trafficking and Sexual Exploitation); and
- **The Philippines:** Our relationship with the anti-trafficking authorities in the Philippines is strong and includes Philippines National Police (PNP), Philippines National Bureau of Investigation (NBI), Department of Social Welfare and Development (DSWD) and the National Government Agency Department of Labor and Employment (DOLE).

Recognised Thought Leaders

One of Destiny Rescue’s long-term objectives is to be recognised as a thought leader in the area of child sexual exploitation and child rescue¹³.

We are engaged in trafficking policy change:

- In 2023, Destiny Rescue alongside our partner, PSC, signed an MOU with the Cyber Crime Investigation Bureau (CCIB), from the Royal Thai Police enabling us to formally collaborate and empower the Police to respond to OSEC investigations;
- In 2022, Destiny Rescue was the only NGO in Thailand invited by the Thai government to collaborate on a specialist law change Working Group to develop and initiate laws that protect children from online grooming;
- Destiny Rescue directly contributes to the United States Government’s Trafficking in Persons (TIP) Report and the United Nations’ annual Trafficking in Persons Report; and
- In the Philippines, our staff have been invited to participate in anti-trafficking councils, committees and Senate hearings.

¹³ Destiny Rescue Ltd Australia, Annual Report, 2021, Pg 21.



Our People

Tony Kirwan

Destiny Rescue President & Founder



Tony Kirwan has always had a heart to see children rescued from poverty and abuse. After running his own electrical contracting company for ten years, he sold everything and began Destiny Rescue in 2001.

With over twenty years expertise in the field of Human Trafficking, Tony believes in leading from the front. Residing in Thailand, he and his teams around the globe are actively involved in the rescue of young children from the sex industry and building an organisation that combats this crime against humanity.

Paul Mergard

CEO, Destiny Rescue Australia



For two decades Paul has fought for the rights of children who are trapped in the most horrific situations. It was in the early 2000's where he saw first-hand the horrific impact human trafficking has on the lives of children, but also the sheer joy that freedom and wholeness brings once rescued.

Trained as an accountant with KPMG, and with almost two decades working for two of Australia's largest charities, The Salvation Army and Compassion, Paul joined the Destiny Rescue Team as Executive Partnerships Manager in 2019 before taking over the role of CEO in early 2021.

Paul has a Graduate Diploma in International Development and has spent many years in the developing world working with people who live in extreme poverty or have been sold into slavery.

Our People (continued)**Matthew Valentine**

OSEC Director, Destiny Rescue International



Matthew is a New Zealand Citizen with over 15 years experience in Law Enforcement, as a Detective in the New Zealand Police. Matthew was involved in investigating the country's most serious crimes of Murder, Sexual abuse, Assault and matters of National Security.

In 2018, Matthew moved to the Philippines as a consultant to one of the world's largest NGOs, the International Justice Mission (IJM). There he was embedded in the National Bureau of Investigation (NBI) Human Trafficking taskforce.

Matthew mentored the agents and developed capacity within their investigations and judicial system to combat human trafficking. During his time in the Philippines, Matthew assisted the taskforce to rescue and remove more than 50 children from harm who were actively being sexually abused. While in this role and acting in the capacity to strengthen Justice Systems there, the Philippines was upgraded in the US Department of State's Trafficking in Persons report to Tier 1, the highest status available internationally.

In 2019, Matthew moved to Thailand as an anti-trafficking consultant working with all Law Enforcement agencies, Governmental, and Non-Governmental Groups to combat human trafficking. During his time in Thailand, Matthew has trained more than 500 Law Enforcement and NGO members on various aspects of human trafficking investigation and management.

Matthew also worked directly with Law Enforcement agencies on active cases of human trafficking involving children and has contributed toward 115 children being removed from harm.

In 2021, Matthew was requested by a special Judicial workgroup sanctioned by the Thai Government to provide specialist input and advice on developing a new law within Thailand to combat the growing crime of OSEC. This law is in its final reading and has been approved by the Thai Government.

Matthew is the OSEC Director for Destiny Rescue International and leads 'The Scientia Project' which is a dedicated and collaborative programme to fight OSEC within Thailand.

Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995

Destiny Rescue has provided comment against 14 of the 42 questions addressed in the Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth) Discussion Paper¹⁴:

- **Section 2** – Global trends and practices (Q2, Q3, Q4)
- **Section 3** – Key Concepts and definitions (Q6, Q9, Q10)
- **Section 4** – Slavery and Slavery-Like Practices (Q16, Q21, Q22)
- **Section 5** – Division 271 Trafficking in Persons (Q25, Q27, Q28, Q31, Q38)

Section 2 – Global trends and practices

Question 2. To what extent have stakeholders encountered cases where technology (including devices and platforms) has been used by perpetrators to facilitate, recruit, advertise or exploit victims and survivors into trafficking in persons, slavery or slavery-like practices?

General Observations

Destiny Rescue International is encountering cases where technology is being used by perpetrators to facilitate trafficking in persons and slavery-like practices in all 12 countries in which we operate.

The extent and use of technology in trafficking and slavery-like practices is enormous. It is embedded in all forms of human trafficking activity observed by our organisation.

Technology has not only enhanced and facilitated traditional forms of human trafficking, but it has also spawned new forms and variations of this crime type.

Methodology

Technology has enabled new forms of human trafficking to evolve either partially and/or fully enveloped by technology.

Destiny Rescue International has observed that technology has been the main driver in the growth and adaptation of various forms of human trafficking, both domestically and globally. Two specific examples listed below demonstrate this influence.

1. Electronically enabled human trafficking - Live streaming

The live streaming form of human trafficking is facilitated by two co-conspirators who meet online through social media platforms. The two conspirators (who are commonly remote from each other, in different countries) form an agreement to sexually exploit a vulnerable person, commonly a child, in exchange for a fee.

The contact offender sexually exploits the victim at the direction of the 'customer' and the exploitation material is transmitted through the internet for the sexual gratification of the customer.

In exchange, the 'customer' sends payment through electronic money remittance to the contact abuser abroad. In this form of human trafficking, the recruitment, exploitation and compensation are all facilitated through electronic technology.

Technology has also dramatically enhanced the electronic connection between potential perpetrators and vulnerable communities. In non-English speaking countries, the language differences between Western-based abusers and local communities previously provided a barrier between these two groups.

¹⁴ <https://consultations.ag.gov.au/crime/modern-slavery-offences/>

Over the past 5 years, the rise in automatic electronic translation software has broken down these barriers. Within Thailand, for example, this simple development in technology has opened the door for abusers, paedophiles and potential traffickers to freely communicate with non-English speaking co-offenders and victims in vulnerable communities in rural and remote parts of Thailand.

2. Electronically-enabled cross-border trafficking

Destiny Rescue International has also observed adaptations in traditional forms of human trafficking that are now highly influenced by technology. The recruitment of vulnerable victims associated with this trafficking type is now facilitated almost exclusively through the internet.

Traditionally, recruiters would physically enter vulnerable communities in an attempt to deceive victims into the trafficking cycle. Over the past 5 years, this recruitment has migrated online through social media and communications platforms, often under the veil of online anonymity¹⁵.

Perpetrators and traffickers have become adept and proficient at utilising this technology and use these platforms to market to vulnerable persons. In almost all circumstances, the trafficker, or recruiter, will advertise seemingly legitimate work online in an attempt to lure potential victims from economically disadvantaged backgrounds.

Within the same crime type, the forced labour element of traditional human trafficking has also evolved with advancements in technology. Together with physical manual labour and sex trafficking, traffickers are also using victims of human trafficking to work in 'scamming factories' online.

In 2022, Destiny Rescue International was invited to participate in a joint working group with the Department of Special Investigations, Thailand, in an attempt to combat, prevent and mitigate the harm caused by 'scamming factories'. An analysis of this form of human trafficking shows a dramatic and alarming rise

in this crime type within South East Asia.

This form of modern slavery begins when a human trafficking recruiter advertises for seemingly legitimate employment opportunities online. Once the recruiter has lured a number of vulnerable victims into this potential employment, a 'recruitment fee' is charged.

The victims are physically collected and driven to a neighbouring country to commence this work. In transit, the victims' passports and identification documents are removed as a form of debt security until the recruitment fee is repaid.

On arrival in the third country (often through illegal border entry), the victims are driven to a secure custom-built compound where the nature of the agreement is changed. The employment that was initially agreed to is changed and the victims are forced to work online in scamming centres which are set up to defraud victims in Western countries through internet-based fraud and deception.

Within these centres, the human trafficking victims are physically abused, exploited for their labour without compensation and locked within the compound with no physical or practical way to escape. As a result of debt bondage, the confiscation of the passports and the illegal entry into a third country, the victims are bound to this form of trafficking, not only by physical means but also by logistical circumstances.

The investment by sophisticated perpetrators of human trafficking in infrastructure, technology and international coordination shows that this form of modern slavery has developed into a dedicated sub-set of human trafficking that is permanent in nature, as opposed to a 'trend' in global modern slavery.

Question 3. Are there gaps in offences in Divisions 270 and 271 that would prevent their application to cases where technology is used to facilitate, recruit, advertise or exploit victims and survivors into trafficking in persons, slavery or slavery-like practices? If so, what are the observed gaps and how might they be addressed?

¹⁵ Destiny Rescue notes that existing section 270.7 deals with Deceptive Recruiting for Labour or Services.

The use of technology and the subsequent evolution in modern slavery has migrated human trafficking to a point beyond the current provisions in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth) (the Criminal Code). (All references to section numbers and Divisions are references to sections and Divisions in the Criminal Code, unless expressed otherwise).

The examples provided in the previous section relate to modern slavery in South East Asia which are impacting countries for Destiny Rescue International. These international trends and drivers also relate to Australia, particularly in the areas of victim vulnerability through economic disadvantage and Australia's international reputation as a destination country for illegal migration.

In this regard, it is important to future-proof Australian domestic legislation against new forms of trafficking and modern slavery. The largest gaps are observed in the following areas:

- 'Criminal conspiracy', 'Party to offending', and international jurisdiction;
- Deception, exploitation, forced labour and slavery;
- Cumulative deception;
- Harbours, movement and detention; and
- Servitude and Forced labour (see Question 16).

Destiny Rescue International considers that the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, as adopted by the Interagency Working Group in Luxembourg, on 28 January 2016 (the Luxembourg Guidelines) should be taken into account when updating definitions in the Criminal Code.

'Criminal conspiracy', 'Party to offending', and international jurisdiction

As outlined in the response to Question 2, modern forms of human trafficking are facilitated by cross-border conspiracy with actions committed by perpetrators in different countries.

It is common in these forms of modern slavery that the

key elements needed to prove offences under Divisions 270 and 271 may be completed or, partially completed, by conspirators in different criminal jurisdictions.

In cases of trafficking for sexual exploitation, an Australian-based national can form a criminal agreement online with a conspirator abroad to traffic a child remotely for the purpose of sexual exploitation. In this circumstance, the criminal agreement, the initiation of financial elements of human trafficking and the consumption of the sexual exploitation is completed domestically. Internationally, the physical elements of the sexual exploitation are completed making it legally impossible for the Australian-based perpetrator to be held accountable for the full offence of human trafficking despite there being an evidential and documented conspiracy and involvement.

Destiny Rescue International has observed the involvement of Australian co-conspirators to trafficking on multiple occasions while operating in countries in South East Asia.

On all occasions that have been observed, Australian-based nationals held to account for their involvement in international human trafficking have been charged with offences under sections 272.8¹⁶ and 272.9¹⁷. It is the view of Destiny Rescue International that persons who commit crimes under sections 272.8 and 272.9, where there is a deliberate and evidential agreement to facilitate the trafficking of a victim based in a country other than Australia, should be held to account for the more substantive crimes of human trafficking as outlined in Divisions 270 and 271.

Destiny Rescue International has observed significant improvements in international coordination in the source countries involved in these forms of human trafficking that allow for a satisfactory level of evidential verification to prove the remaining elements of human trafficking committed outside of Australia.

Deception, exploitation, forced labour and slavery

As outlined above, the evolution of human trafficking in

¹⁶ Sexual intercourse with a child outside of Australia - s272.8

¹⁷ Sexual activity (other than sexual intercourse) with a child outside of Australia - s272.9

the areas of forced labour and cross-border trafficking has changed beyond the scope of Divisions 270 and 271.

The current definitions of **deceive**/'deception' (s271.1), **exploitation** (s271.1A) and **slavery** (s270.1) do not sufficiently describe the incremental, subtle forms of deception and exploitation that currently exist in the international human trafficking landscape.

Cumulative deception

Under the current Act, the definition of deception or 'to deceive'¹⁸ should be clarified to include 'cumulative deception' or a series of dishonest acts. Otherwise the existing definition leaves too much scope for interpretation.

Destiny Rescue International has observed that in over 90% of human trafficking cases in the global context, victims are lured into the crime of human trafficking by cumulative deception as opposed to tangible, violent and overt physical acts on victims.

Recommendation: To more accurately define 'deception' or 'Intent to deceive', it is suggested that terms such as: a pre-prescribed pattern of omission, distortion, half-truths, blatant lies, white lies, and altered circumstances to achieve a position substantially different from the intended agreement or promise. Et al. should be used.

Harbouring, movement and detention

In a similar context to 'cumulative deception,' in modern forms of human trafficking, the definitions of 'harbouring'¹⁹, 'detention'²⁰ and 'forced labour'²¹ are equally deceptive and subtle in the newest variants of this crime type.

In newly evolved forms of modern slavery, victims are often harboured and detained in both physical form

and in terms of overwhelming circumstances that make their detention seem voluntary and by consent. (Destiny Rescue International notes that section 270.7 creates the offence of Deceptive recruiting for labour services). As outlined above, victims are often detained by a unique series of circumstances including debt bondage, illegal migration and isolation. In some circumstances, the physical detainment and harbouring of victims is loosely applied, however, the victims have no practical means of escape.

Victims are often transported illegally to unknown, cross-border locations where they hold no passport or relevant documentation, have no financial means of escape, no knowledge of their location and no realistic ability to escape. In a large number of these cases observed by Destiny Rescue International, victims who have tried to escape these custom-built compounds are located by local authorities who arrest and prosecute the victims for immigration breaches and their (forced) involvement in financial deception and 'scamming' offences. The outcomes of their escape from these trafficking locations are often worse for the victim than the trafficking environment itself.

Recommendation: A suggested amendment to include definitions of 'harbouring' and 'detention' which reflect forms of detention by circumstances is recommended.

'Servitude' and 'Forced labour'

See response to Question 16.

Question 4. Are Divisions 270 and 271 appropriately future-proof and flexible enough to apply to the misuse of new and emerging forms of technology and online conduct? If not, why not, and are specific changes to Divisions 270 and 271 recommended?

Encompassed in the above material.

¹⁸ See Section 271.1

¹⁹ Destiny Rescue notes that there is no specific definition of **harbouring** in the Criminal Code (see sections 271.7F and 271.7G, which create offences for harbouring a victim, and which include where an offender '... **harbours, receives or conceals another person (the victim) ...'** (Emphasis added)

²⁰ Destiny Rescue notes that '**Detaining** a person includes causing the person to remain where he or she is' (Dictionary to the Criminal Code). *Coercion* is defined to include *detention* (s270.1A)

²¹ Section 270.6 sets out the definition of **forced labour**

Section 3 – Key concepts and definitions

Question 6. Should reforms be considered to broaden the application of Divisions 270 and 271 to explicitly include conduct that includes deception by omission?

Recommendation: To more accurately define ‘deception’ or ‘Intent to deceive’ it is suggested that terms such as: a pre-prescribed pattern of omission, distortion, half-truths, blatant lies, white lies, and altered circumstances to achieve a position substantially different from the intended agreement or promise. Et al. should be used.

Question 9. Are stakeholders observing serious forms of exploitative conduct that are not captured by Australia’s definition of exploitation and are appropriate for consideration as part of Australia’s response to modern slavery (i.e., involving very serious forms of exploitation that are not captured by other laws and frameworks)? If so, what is being observed?

Destiny Rescue International has observed new forms of exploitation and human trafficking not adequately captured by the Act. Presently these forms of trafficking are expanding globally, particularly through the South East Asia region.

To future-proof the Act and protect against the spread of these variants in trafficking in Australia, the above recommendations and amendments to the law are respectfully submitted.

Question 10. If the definition of exploitation were expanded, how should this be done? For example, through stipulating additional forms of exploitation, adding to the definition with a ‘catch-all’ description of exploitation, or amending the definition so that it is a non-exhaustive definition?

Recommendation: The current definition of exploitation

requires expansion to adequately respond to current global threats and evolutions in modern slavery and human trafficking.

Section 4 – Division 270 – Slavery and slavery-like practices

Question 16: Do the definitions of servitude and forced labour adequately capture the circumstances that are relevant to establishing whether a person has offered themselves voluntarily to provide labour or services? If not, why not, and are specific alternatives recommended?

Servitude and Forced labour

Through interviewing victims and survivors of modern slavery, Destiny Rescue International has noted that the strict definition of **forced labour**²² does not apply to some forms of human trafficking.

This view extends to the definition under Divisions 270 and 271. It is a common view that labour in exchange for compensation indicates consent and falls within employment and labour disputes.

It is common in newly evolved forms of human trafficking that victims are partially compensated for their labour. The compensation provided to trafficked victims is a tactic used by perpetrators to remove liability and criminality in modern forms of slavery. While evidence of compensation to the labourer may exist, the compensation is often held against far greater essential living costs needed for the victim to survive.

In a recent case, where Destiny Rescue International supported Thai Law Enforcement, victims stated that they were paid approximately AUD\$50 per week in compensation. Prima facie, this would be viewed as financial compensation for their work. However, the

²² Section 270.6 sets out the definition of **forced labour**

victims stated that they were charged AUD\$70 per week for compulsory lodging, food and amenities required for basic life. In total, the victims were falling further into debt and did not receive fair compensation for their forced labour and detainment.

Recommendation: The definition of 'forced labour' should be broadened to include circumstances where compensation is paid by perpetrators that contributes to the trafficking environment.

Question 21: Does the debt bondage offence continue to be fit-for-purpose and provide an appropriate investigation and prosecution option where more serious labour exploitation offences cannot be made out?

See response to Question 2 as it relates to the use of technology (only).

Question 22: Are the range of factors that give rise to an aggravated offence at section 270.8 appropriate and do they reflect the type of circumstances that should give rise to higher penalties against offences at Division 270?

Current aggravating criteria

There are higher maximum penalties for aggravated offences in other Divisions, such as where the offending conduct takes place on three or more occasions and involves two or more people, or where the sexual activity involves a child with a mental impairment²³ or a child who is under the care, supervision or authority of the defendant.

High maximum penalties for some offences, in other Divisions of the Criminal Code, reflect the community's abhorrence of the exploitation of children. Maximum penalties for those offences range from:

- 25 years' imprisonment for persistent sexual abuse of a child outside Australia – section 272.11;
- 15 years' imprisonment for accessing child pornography material of a person aged under 18;
- Up to 7 years' imprisonment for using a carriage service to transmit indecent communication to a person under 16 years of age.

²³ See section 272.10 (1)(b)(i)

Recommendation: The aggravating criteria should be amended to include facilitating, encouraging or compensating that contributes to persistent sexual abuse of a child outside Australia.

Section 5 – Division 271 – Trafficking in Persons

Question 25: Should the cross-border trafficking offences (including trafficking in children) be amended so that they do not require the physical movement of a person? If so, how could this be achieved through amendments to the offences?

Recommendation: The definition of movement should include the electronic transmission of images of a sexually exploited victim.

Question 27: Should the domestic trafficking offences (including trafficking in children) be amended so that they do not require the physical movement of a person? If so, how could this be achieved through amendments to the offences?

The Act should encompass the electronic transmission of images of a sexually exploited child.

To fulfil the elements of human trafficking and to ensure the integrity of the Act, there must be a nexus or direct connection between the exploitation, the movement of the child (whether physically and/or by electronic means) and financial or other benefit.

Question 28: Should the domestic trafficking offences include the same terms as the cross-border offences so that the same methods are captured? For example, should the term 'receipt' form part of Australia's domestic trafficking offences? Similarly, should the domestic trafficking in children offence mirror the domestic trafficking in persons offence and include 'proposed transportation'?

Recommendation: The domestic trafficking offences (including trafficking in children) should include the same term as the cross-border offences so that the same methods are captured.

Question 31: Is the term 'sexual services' appropriate in the context of Australia's child trafficking offences? If not, are alternate terms suggested? If the term is not appropriate in the context of child trafficking, is it appropriate in the context of trafficking involving adult victims and survivors? What might the unintended consequences be if the term was changed, noting it is used throughout offences in Division 271? Does the phrase 'provide sexual services or will otherwise be exploited' adequately capture the forms of exploitation that may be present in, or driving, child trafficking?

Sexual service means the use or display of the body of the person providing the service for the sexual gratification of others²⁴.

Destiny Rescue believes the term "sexual service" is inappropriate in the context of Australia's child trafficking offences.

Child victims who are sexually exploited and abused in these ways cannot be described as "providing a service". It has a connotation that suggests the service is being provided voluntarily and willingly and as part of a prior agreement with the recipient of the service. This is not the case in matters of child (and adult) trafficking.

Destiny Rescue International notes that there is no definition of 'sexual service' in the Luxembourg Guidelines, and therefore such a term is not considered appropriate to be used in the Criminal Code.

Modern day exploitation practices: The current legislative definition of 'sexual service' has not materially changed since 1999. However, the range and extent of exploitative practices has widened significantly, including the live streaming on the internet of sexual activities and physical abuse involving trafficked children in locations remote from those who electronically pay the trafficker to watch on their devices.

These, and other modern day sexually exploitative

activities, are far different in character from the traditional and, some might say, historical 'services' of prostitution, sex work and stripping. 'Providing sexual services' is neither victim-sensitive nor survivor-sensitive language. It is no longer fit-for-purpose in the context of child trafficking offences.

Recommendation: The alternate term 'sexual exploitation' is suggested. It is recommended that 'sexual service' be replaced with a new definition of sexual exploitation.

Destiny Rescue notes that the UN Definition of sexual exploitation, as referred to in the Luxembourg Guidelines, states:

Sexual exploitation means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.²⁵

This term is also suggested in the context of trafficking involving adult victims and survivors.

The term 'sexual exploitation' should adequately capture all and any forms of exploitation that may be present in, or driving, child trafficking.

We are not aware of any unintended consequences if the term was changed throughout the offences in Division 271.

It is also recommended that all sections which refer to 'sexual services' (e.g. section 271.4) be amended relevantly as follows:

Section 271.4(c)

- (i) Intends that the other person **will be sexually exploited** or will be otherwise exploited, ... (Emphasis added).

²⁴ Current definition (in the Dictionary at the end of Schedule 1 to the Act)

²⁵ UN Secretariat, "Secretary-General's Bulletin on Special Measures for Protection for Sexual Exploitation and Abuse"

Question 38: Is it desirable to explore amending the requirement that a person be trafficked across an Australian border so that Australia’s trafficking offences can cover offshore conduct perpetrated by Australian citizens, permanent residents and Australian bodies corporate? What might the consequences (including unintended) of this change be?

It is desirable for Australia’s trafficking offences to cover offshore conduct perpetrated by Australian

citizens, permanent residents, and Australian bodies corporate. It is therefore desirable to explore amending the requirement that a person be trafficked across an Australian border.

As an alternative, the offshore conduct physically or electronically should be included in the aggravated features that are currently outlined in the Act.

Appendix 1:
Destiny Rescue Limited
(Australia) Annual Report, 2021

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