

DRUGS AND CRIME PREVENTION COMMITTEE

INQUIRY INTO PEOPLE TRAFFICKING FOR SEX WORK

JUNE 2010

PARLIAMENT



OF VICTORIA



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INQUIRY INTO PEOPLE TRAFFICKING FOR SEX WORK

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Drugs and Crime Prevention Committee
Inquiry into People Trafficking For Sex Work – Final Report

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Drugs and Crime Prevention Committee

Parliament House, Spring Street

Melbourne Vic 3002

Phone: (03) 8682 2810

Fax (03) 8682 2808

Email: sandy.cook@parliament.vic.gov.au

Website: www.parliament.vic.gov.au/dcpc

Drugs and Crime Prevention Committee – 56th Parliament

Members

Mrs Judy Maddigan M.L.A. *Essendon* – Chair

Mr David Morris M.L.A. *Mornington* – Deputy Chairman

Ms Liz Beattie M.L.A. *Yuroke*

Ms Andrea Coote M.L.C. *Southern Metropolitan*

Mr Hugh Delahunty M.L.A. *Lowan*

Mr Shaun Leane M.L.C. *Eastern Metropolitan*

Ms Jenny Mikakos M.L.C. *Northern Metropolitan*

Staff

Ms Sandy Cook – *Executive Officer*

Mr Peter Johnston – *Senior Legal Research Officer*

Dr Cheryl Hercus – *Research Officer*

Ms Stephanie Amir – *Committee Administrative Officer*

Functions of the Drugs and Crime Prevention Committee

The Victorian Drugs and Crime Prevention Committee is constituted under the *Parliamentary Committees Act 2003 (Vic)* as amended.

Section 7

The functions of the Drugs and Crime Prevention Committee are, if so required or permitted under this Act, to inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with:

- (a) the use of drugs including the manufacture, supply or distribution of drugs;
- (b) the level or causes of crime or violent behaviour.

Terms of Reference

Under s 33 of the *Parliamentary Committees Act 2003*, the Drugs and Crime Prevention Committee, inquire into, consider and report to the Parliament no later than 30 June 2010 on people trafficking for sex work including:

- (i) the extent and nature of trafficking people for the purposes of sex work into Victoria from overseas;
- (ii) the inter-relationship (if any) between the unlicensed and licensed prostitution sectors in Victoria, and trafficking for the purposes of sex work;
- (iii) the current and proposed intergovernmental and international strategies and initiatives in relation to dealing with trafficking for the purposes of sex work; and
- (iv) the need for policy and legislative reform to combat trafficking for the purposes of sex work, in Victoria.

Acknowledgements

The Committee wishes to acknowledge the valuable contribution of Mignon Turpin for her editing work, Matt Clare at Mono Design for the cover design and Karen Taylor for laying out the report.

Chair's Foreword

The majority of Victorians would be horrified if they knew that women are trafficked to Australia for sexual purposes. However, little investigation has been done in this area; evidence in this field is scanty and the victims are often unwilling to speak because of fear of deportation.

This report is perhaps an early step in making the community aware of this crime and instituting a better regime to protect these vulnerable women. Whilst immigration is covered by the Federal jurisdiction, the women are employed in Victoria and rely on the support of the Victorian community and Government for protection.

The fact that some of the practices described in this report are occurring in Melbourne highlights the difficulty these women have in receiving the level of support they require. In this Report we recommend a special unit in the Department of Justice to work in the sex industry area and particularly with trafficked women.

Our work for this Inquiry demonstrated very clearly that people have to be 'specialists' in this area; firstly to know what to look for, and secondly to know how to deal with women who are frightened by authority and bullied by their traffickers.

The Committee is very grateful for the contribution from the many government and non government organisations, support groups and individuals including public servants, who made submissions to the Committee or who appeared before the Committee.

We also thank our staff, particularly Pete Johnston, for their work.

We trust that the report will be the start of a pathway that will lead to a halt in the crime of trafficking women for sexual purposes, and provide an alternative route for trafficked women.



Judy Maddigan
Chair

Recommendations

The Drugs and Crime Prevention Committee makes the following recommendations:

Coordination and service delivery

Whole of government Unit

- 1. The Committee recommends that the Government should establish a whole of government Sex Industry Regulation, Policy and Coordination Unit. The Office should be located under the responsibility of the Attorney-General in the Department of Justice.**

(Chapter 16)

There is a clear and close connection between sex trafficking and the legal and unregulated sex industry. As such, it is recommended that the Sex Industry Regulation, Policy and Coordination Unit has the responsibility for monitoring sex trafficking as part of its wider oversight role of the Victorian sex industry.

- 2. The Committee recommends that the role of the Sex Industry Regulation, Policy and Coordination Unit should include:**
 - the regulation and monitoring of all aspects of Victoria's sex industry (brothels, escort services and all other registered sexual service providers).**

Specifically with regard to sex trafficking the Unit's responsibilities should include:

- developing and implementing comprehensive sex trafficking policy advice for the Victorian Government;
- developing a community engagement strategy to indicate how the public, community organisations and sex industry members can have ongoing input into trafficking policy;
- liaising with federal and state agencies, sex industry NGO support and advocacy groups, professionals in the field, community agencies and media;
- disseminating information with regard to sex trafficking;
- developing and coordinating training programs on sex trafficking;
- developing and coordinating a research agenda and commissioning research on trafficking;
- developing in liaison with senior media representatives a protocol on the reporting of trafficking issues;
- liaising with and supporting local government and community agencies to develop responses to trafficking;
- implementing the advice and recommendations of the Trafficking Policy Advisory Group;
- identifying available resources and gaps in service delivery in order to plan a response to trafficking at both state and local levels;

- identifying key personnel and agencies in the community who have expertise in dealing with trafficking in order to establish a comprehensive referral and resource network;
- ensuring that trafficking in persons is also addressed within other state government policies, such as the State Plan to Prevent Violence Against Women; and the
- monitoring of sex trafficking exit programs.

(Chapter 16)

Relevant government agencies and department representatives that could be included in this Unit include Consumer Affairs, Human Services, Health, Women's Policy, Planning and Community Development, Victoria Police, Education, and representatives of local government such as the City of Melbourne, members of the Victorian Local Governance Association (VLGA) and the Municipal Association of Victoria (MAV). It is envisaged, as in the Commonwealth body, that the Department of Justice would take the lead role in coordinating and chairing the group.

Advisory Group

- 3. The Committee recommends that the Sex Industry Regulation, Policy and Coordination Unit should establish and support an expert Sex Trafficking Advisory Group to provide ongoing formal consultation with government and non-government organisations, representatives from the sex industry, and other community groups.**

(Chapter 16)

NGOs to be represented in the Advisory Group could include specialist organisations such as Project Respect, The Salvation Army and/or ACRATH, RhED/Scarlet Alliance as well as sexual assault centres, community health centres, community legal centres, housing service providers, migrants' services, etc.

Protocols

- 4. The Committee recommends that clear protocols outlining areas of responsibilities and methods of collaboration and communication be developed between relevant State agencies. This includes local councils, police, Consumer Affairs, and health inspectors. Protocols should be reviewed on a yearly basis to ensure that staff maintain awareness about trafficking and sexual servitude.**

(Chapter 12)

Law and criminal justice issues

- 5. The Committee recommends that an offence of debt bondage similar to that found in the Commonwealth Criminal Code be enacted in Victoria.**

(Chapter 6)

The Committee believes a debt bondage offence is needed to accompany the offence of sexual servitude already in the Victorian Crimes Act. This offence should mirror its counterpart in the Commonwealth Criminal Code. It is acknowledged that in a great majority of the cases matters pertaining to sex trafficking are referred to the AFP and

dealt with as offences against the Commonwealth. Nonetheless, by creating a state offence the educative message is sent out that trafficking is a matter that is taken seriously by the Victorian community.

- 6. The Committee recommends that intentionally, knowingly or recklessly obtaining sexual services from trafficked women is criminalised in Victoria.**

(Chapter 13)

The Committee believes that such a ‘demand focused’ recommendation whilst not criminalising the purchase of sexual services per se will act as a deterrent to men who may be tempted to knowingly purchase sex from trafficked women. On balance the Committee does not believe a reverse onus of proof should apply. In other words the Crown will still need to prove that the defendant obtained sexual services from the woman knowing that she had been trafficked or reckless as to that fact. To do otherwise could deter men who might otherwise have voluntarily provided information about women suspected of being trafficked from doing so.

The penalty for such a provision should be severe, acknowledging the criminality of the conduct.

- 7. The Committee recommends that sanctions against brothel owners who have intentionally, knowingly or recklessly allowed trafficked women to work in their premises be introduced in Victoria. Such sanctions will more effectively act as a deterrent to the conduct of servitude and trafficking in the licensed sex industry. In cases where intention or recklessness is proved the owner should be liable to losing his or her permit to run a brothel or other sex service provider business and/or be liable to heavy financial penalties.**

(Chapter 12)

- 8. The Committee recommends that trafficking in persons be regarded as a higher priority policing issue. As such, dedicated officers within the Victoria Police Sexual Offences (Theme Desk) should be given responsibility to liaise with other members of Victoria Police, relevant state and Commonwealth government officials including AFP officers and the proposed Sex Regulation, Policy and Coordination Unit in operational and organisational matters pertaining to sex trafficking.**

(Chapter 12)

- 9. The Committee recommends that with regard to their role in investigating sex trafficking Victoria Police develop clear protocols regarding communication and collaboration with relevant NGOs.**

(Chapter 12)

- 10. The Committee recommends that Victoria Police have a more flexible right of entry to brothels (legal or illegal) for monitoring purposes, ie. the ability to do spot-checks.**

(Chapter 12)

Such entry is currently restricted to delegation by the Chief Commissioner of Police to an officer of Senior Sergeant rank or higher. Any change to the law should be accompanied by guidelines that ensure such a measure is not used inappropriately. The right of entry should only be sought and granted when there are reasonable grounds to support it.

Greater access to brothels for support agencies

- 11. The Committee recommends that licence conditions for sex work service providers include granting access to gazetted or nominated support agencies.**

(Chapter 12)

The Committee believes it is essential that recognised support groups for sex workers and/or trafficked women be allowed reasonable access to licensed sex service providers to do their work. A possible way of achieving this aim is for the proposed Sex Industry, Regulation, Policy and Coordination Unit to maintain a register of approved support agencies to be granted access to all brothels. A balance should be struck between allowing such support groups unfettered access and not unduly hindering or interfering in the rights of legal sex service providers to conduct their business.

Education, training and awareness

The Committee acknowledges that strategies of primary prevention must be adopted, including broad social education campaigns that address demand for trafficked women as recognised in Article 9 of the Palermo Trafficking Protocol. Explicit in this public education must be the promotion of equal and respectful relationships between women and men.

Training and awareness campaigns

- 12. The Committee recommends that the Victorian Government develop a comprehensive, best practice public education campaign to increase public awareness about sex trafficking; including its nature, extent, causes, myths and consequences. Such a campaign should be coordinated by the Sex Industry Regulation, Policy and Coordination Unit and targeted to a wide range of audiences.**

(Chapter 14)

The Blue Blindfold Awareness Campaign (UK) discussed in Chapter 14 may serve as a suitable model for such a campaign.

- 13. The Committee recommends that such a campaign be accompanied by an appropriate dedicated website with suitable educational materials.**

(Chapter 14)

- 14. The Committee recommends that the Sex Industry Regulation, Policy and Coordination Unit place advertisements warning prospective customers of sexual services as to the existence of the crime of sex trafficking. Such notices should be placed prominently in the Personal or Adult Services sections of state, territory and local newspapers and any websites advertising sexual service providers, as appropriate.**

(Chapter 14)

- 15. The Committee recommends that training on sex trafficking and its consequences be made an essential and recurring part of the vocational training programs of generalist and specialist groups likely to encounter people who have been trafficked. The Sex Industry, Regulation, Policy and Coordination Unit should**

coordinate this training. Groups that would particularly benefit from such training include:

- **primary health care workers (including general practitioners, practice nurses, community health workers);**
- **sex industry personnel including sex workers, brothel managers and owners;**
- **social service workers;**
- **mental health workers (including psychiatrists, mental health nurses and mental health support workers);**
- **general police (ie. not from the dedicated unit) and emergency services;**
- **immigration officials (in conjunction with the Commonwealth); and**
- **journalists.**

(Chapter 14)

The Committee recognises the role the media plays in disseminating information on important issues and its contribution to social policy debates. It is therefore essential that the media be included in any training or information sessions pertaining to the sexual trafficking in human beings.

- 16. The Committee recommends that police, the City of Melbourne, local councils through the VLGA and/or MAV, health inspectors and Sex Industry Regulation, Policy and Coordination Unit inspectors are given specialised training to recognise sexual slavery, to refer such a matter to appropriate authorities and services, and to respond adequately to victims of trafficking, servitude and debt bondage.**

(Chapter 14)

It is particularly important that local councils ensure relevant workers are trained to recognise the signs of sexual slavery. This is especially crucial given municipal officers often may be the only people to have access to legal (and illegal) brothels through their planning powers etc. The proposed Sex Industry, Regulation, Policy and Coordination Unit could assist the VLGA/MAV in organising this training. NGOs on the Trafficking Advisory body such as Project Respect would be suitable organisations to conduct such training.

- 17. The Committee recommends that appropriate NGOs who support trafficked women be provided with additional resources to continue and extend their involvement in the training of police, municipal officers, sex industry regulators and other relevant persons.**

(Chapter 14)

- 18. The Committee recommends that members of the magistracy, judiciary and legal profession be given appropriate training on the issue of trafficking where it is reasonable to expect such professionals may become involved with trafficking cases. Such training could be provided by NGOs with relevant experience working in conjunction with representative legal bodies such as the Victorian Judicial College (judges and magistrates), the Victorian Law Institute (solicitors and legal workers), the Victorian Bar Council and/or the Commonwealth Office of Public Prosecutions [Victoria] (Prosecutors).**

(Chapter 14)

Victim support and support services

- 19. The Committee recommends NGOs be encouraged and resourced to establish and further develop (in cases where already happening) exit strategies to support trafficked women wanting to leave the sex industry. Such a program would be aimed at providing such women with alternative skills and employment.**

(Chapter 15)

- 20. The Committee recommends that the proposed Sex Industry, Regulation, Policy Coordination Unit encourages and resources the development of exit strategies and programs for women who wish to leave the sex industry, particularly trafficked women.**

(Chapter 15)

It is envisaged the Sex Industry, Regulation, Policy Coordination Unit would perform this role in conjunction with sex industry advocacy organisations and relevant NGOs that support trafficked women.

- 21. The Committee recommends that the Sex Industry, Regulation, Policy Coordination Unit assesses and monitors these exit programs to ensure best-practice models are followed.**

(Chapter 15)

- 22. The Committee recommends that the Victorian Government establish appropriately funded refuges for trafficked women in Victoria.**

(Chapter 15)

The Committee believes that The Salvation Army Safe House in Sydney could serve as an appropriate model.

- 23. The Committee recognises that victims of trafficking need comprehensive assistance and support. Therefore the Committee recommends that relevant NGOs working with trafficked women be further resourced to provide appropriate services to trafficked women including but not restricted to:**

- **free legal assistance to be able to assist trafficking victims in acknowledgement of the complexity and seriousness of legal issues that a trafficking victim faces;**
- **counselling;**
- **safe and appropriate accommodation;**
- **medical, psychological and allied health assistance;**
- **material support;**
- **education and training opportunities; and**
- **outreach services, including those of a culturally appropriate nature.**

Such assistance should take into consideration where appropriate the victim's age, gender, educational level, English language proficiency and any special needs.

(Chapter 15)

Compensation for victims

- 24. The Committee recommends that any person found to have been a victim of trafficking in Australia be eligible for crimes compensation under the relevant state compensation scheme.**

(Chapter 15)

The Committee believes that a person's 'character' not be a crucial reason to disqualify a victim from receiving crimes compensation if this relates to criminal misconduct as a result of the trafficking experience. For example, that a person's status as a sex worker per se or behaviour such as drug taking as a result of her experience should not be a sufficient a priori reason to disqualify her from receiving compensation.

Research

- 25. The Committee recommends that a Research Advisory Panel on sex trafficking issues be established within the proposed Sex Industry Regulation, Policy and Coordination Unit. Such a panel should include relevant experts in the area from academic, government and community sectors.**

(Chapter 17)

- 26. The Committee recommends that a research agenda and program be established to address sex trafficking into Victoria. This should be coordinated by the Sex Trafficking Policy and Coordination Unit and include input from the Research Advisory Panel as outlined in Recommendation 24. The research agenda should prioritise the research issues that have been identified in the practice and academic literature and also reflected in the expert opinion of those who gave evidence to this Inquiry. These include:**

- the development of an independent, empirical evidence base to measure the extent of trafficking in Australia;
- community attitudes in Australia to trafficking in persons;
- trafficking in children;
- examination of the physical and mental health outcomes to determine the effects of the experience on victims and best practice responses;
- examination of the reasons for which some victims of trafficking decline assistance to determine the precise needs of victims in these situations;
- examination of the national precursors to becoming a source country for trafficking in persons, with a focus on the Pacific region;
- trafficking for the purposes of marriage and sexual servitude;
- the extent and circumstances of trafficking in women for sexual exploitation to and within Australia, and on women's experiences of trafficking; and
- evaluation of programs and policies developed to address (sex) trafficking.

(Chapter 17)

- 27. The Committee recommends that the Drugs and Crime Prevention Committee of the 57th Parliament of Victoria undertake an Inquiry into Human Trafficking for reasons other than sexual servitude.**

It has come to the attention of the Drugs and Crime Prevention Committee during the course of the current Inquiry that there is growing concern with regard to the nature and extent of other forms of human trafficking into Victoria, especially labour trafficking and trafficking for the purpose of marriage. Such concern has been expressed by witnesses to the Committee and is noted in the academic literature. As such, this Committee believes it is an area that warrants further consideration in the next session of the Victorian Parliament.

(Chapter 17)

Commonwealth responsibilities

The Committee acknowledges that due to constitutional and legal considerations much of the responsibility for law and policy as it pertains to trafficking of human beings belongs to the Commonwealth Government. The Committee recognises the comprehensive reforms enacted by the Commonwealth in this area, particularly those implemented in June 2009. Nonetheless, there are a number of areas in which on the basis of the evidence received by this Committee further change could be instituted. The Committee therefore advises the relevant state government Minister that he or she raise the following recommendations for reform at an appropriate joint forum of Commonwealth–State ministers.

- 1 The Committee recommends that the use of victim impact statements in all cases of sentencing be adopted in Commonwealth crimes involving sex trafficking.**

(Chapter 15)

- 2 The Committee recommends that the Commonwealth produce relevant educational and information materials informing visitors to Australia on the risks and consequences of sex trafficking be developed for dissemination at points of disembarkation on arrival to Australia (airports, sea ports etc).**

(Chapter 14)

- 3 The Committee recommends that the Commonwealth Government in conjunction with NGOs liaise with relevant ‘source countries’ to extend and further develop information packages with regard to the sex industry (including its legal status in most Australian states), sex trafficking and its consequences to deter women in the country of origin from being trafficked to Australia.**

(Chapter 14)

Contents

Drugs and Crime Prevention Committee – 56th Parliament	i
Functions of the Drugs and Crime Prevention Committee	ii
Terms of Reference	ii
Chair's Foreword	iii
Recommendations	v
Part 1 – Introduction	1
1. The Inquiry	1
A crime against humanity	1
Background to the Inquiry	2
A role for Victoria?	3
The current Inquiry	4
Challenges to developing strategies	4
The Inquiry process	5
Definitions and terminology	7
Part 2 – Contextualising Sex Trafficking	11
2. Putting Trafficking in its Historical Context	11
A history of trafficking and responses to address it	11
White slavers and global traffickers – a continuum?	15
3. The Extent of Sex Trafficking – How big a problem is it?	17
International data	17
Domestic data – The extent of the problem in Australia	27
Future directions	31
4. The Nature and Stages of Sex Trafficking	35
The core features of trafficking	37
Recruitment of victims	37
Facilitating entry to Australia – use and abuse of process	40
Exploitation – the chains of economic bondage	45
The issue of consent	49
5. Trafficking: Its Causes, Impact and Consequences	51
Introduction	51
The causes of trafficking	51
Sex trafficking: Its impact and effects on women	57
6. Sex Trafficking: Law and Legal Issues	63
Introduction	63
International law	63
Australian national law	69
The law in Victoria	77
Conclusion	84

Part 3 – National Approaches to Address Trafficking	85
7. Commonwealth Strategies to Address Sex Trafficking	85
Introduction	85
International aid and development	86
Regional support strategies	88
Policing sex trafficking	91
Communication Awareness Strategy	92
Visa regimes	93
8. The Investigation and Prosecution of Sex Trafficking Offences in Australia	97
Introduction	97
Investigating sex trafficking offences	97
Prosecuting people trafficking for sexual servitude	104
Conclusion	113
9. Conceptualising Sex Trafficking and Critiquing Trafficking Policy	115
Trafficking as a law and order issue	115
Trafficking as a migration/border control issue	117
Trafficking as a human rights issue	118
Human rights as gendered rights	120
Part 4 – The Nature, Oversight And Regulation of the Sex Industry	121
10. Sex Trafficking: Debates and Divisions	121
Trafficking in women: Polarised perspectives	121
The neo abolitionist view on sex trafficking	122
The views of sex work advocates on trafficking and its relationship to the sex industry	124
Conclusion	128
11. The Sex Industry in Victoria: Nature, Oversight and Regulation	129
Introduction	129
Regulating sex work in Victoria	129
The nature of the industry	130
Criticisms of the Victorian model of regulation	136
Part 5 – Strategies at a Local Level	141
12. Monitoring the Sex Industry in Victoria with specific reference to Sex Trafficking	141
Introduction	141
The legal framework	141
Compliance inspections	142
Right of entry	147
The role of local government	148
Liaison and cooperation between the states and the Commonwealth	150
A separate and specialist agency to regulate the sex industry and monitor trafficking?	152
Conclusion	153
13. Demand Side Strategies: Addressing the Purchasers	157
Introduction	157
Legal penalties for men who purchase sexual services from trafficked women	158
Other (non-criminal) strategies to penalise men who purchase sex from (trafficked) women	165
Conclusion	166

14.	Awareness of Sex Trafficking: The Need for Information, Education and Training	167
	Introduction	167
	Educating the purchasers of commercial sex services	167
	Making information available for trafficked women	172
	Sex workers and people associated with the sex industry	174
	The general public	175
	Prosecutors, judges, lawyers and jurors	181
	Police, immigration and state regulatory officers	183
	NGOs, service providers and other professionals	184
	Conclusion	185
	Part 6 – Cross-jurisdictional Responsibilities	189
15.	Victim Support	189
	Introduction	189
	Criticisms of victim support approaches	189
	Commonwealth support for trafficked women	191
	Victims as witnesses – The need for protection and support	194
	Repatriation, reintegration and resettlement	197
	Supporting victims of trafficking in Victoria	200
	Conclusion	209
16.	Sex Trafficking: The Need for Coordination of Policy and Services	213
	Introduction	213
	Global and regional coordination	213
	National coordination	215
	State and local coordination	217
	Coordination issues at operational level	218
	Conclusion	220
	Part 7 – The Way Forward	225
17.	Concluding Remarks: Future Directions for Addressing Sex Trafficking – The need for targeted research	225
	Introduction	225
	Researching human trafficking: The need for a better knowledge base	225
	Current challenges in researching trafficking	228
	Future research	229
	Evaluation	231
	Trafficked women’s stories	232
	Conclusion	233
Appendix 1:	List of submissions	235
Appendix 2:	Witnesses appearing at public hearings	239
Appendix 3:	Interstate meetings	241
Appendix 4:	Forums and conferences	243
Appendix 5:	Women’s statements: An open message of thanks to the Justices of the High Court of Australia	245
	Bibliography	249

List of Tables and Figures

Table 3.1:	Prosecutions for the specific offence of trafficking in persons, number of countries by region 2007–November 2008	20
Table 3.2:	Convictions for the specific offence of trafficking in persons, number of countries by region 2007–November 2008	21
Figure 3.1:	Persons arrested and charged with trafficking and related offences by gender 2003 – November 2008, Australia	22
Figure 3.2:	Persons placed on the Australian Government’s victim support program by gender 2004–November 2008	22
Table 3.3:	Global law enforcement data 2003–2008	24
Table 3.4:	Law Enforcement Data 2003-2008 (East Asia–Pacific Region)	25
Table 5.1:	Push and pull factors for inter-country trafficking in persons	52
Table 5.2:	Summary of the health risks and consequences of being trafficked	60
Table 6.1:	Criminal Code – Division 270 (Slavery and Slavery related offences)	70
Table 6.2:	Criminal Code – Division 271 (Trafficking and Trafficking Related Offences)	73
Figure 14.1:	Australian Federal Police hotline advertisement	170

List of Abbreviations

ACC	Australian Crime Commission
ACCF	Australian Crime Commissioners Forum
ACRATH	Australian Catholic Religious Against Trafficking in Humans
AFP	Australian Federal Police
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
ANAO	Australian National Audit Office
APSCTWSS	Australian Policing Strategy to Combat Trafficking in Women for Sexual Servitude
ARCPPT	Asia Regional Cooperation to Prevent People Trafficking
ARTIP	Asia Regional Trafficking in Persons Project
ASEAN	Association of South-East Asian Nations
AUSAID	Australian Agency for International Development
BLA	Business Licensing Authority
CAS	Communication Awareness Strategy
CASA	Centre Against Sexual Assault
CATWA	Coalition Against Trafficking in Women (Australia)
CAV	Consumer Affairs Victoria
CDPP	Commonwealth Director of Public Prosecutions
CDR	Central Data Repository
COFW	Commonwealth Office For Women
COMMIT	The Co-ordinated Mekong Ministerial Initiative against Trafficking
DEEWR	Department of Education, Employment and Workplace Relations
DFAT	Department of Foreign Affairs And Trade
DIAC	Department of Immigration and Citizenship
DPMC	Department of Prime Minister and Cabinet
DPP	Director of Public Prosecutions
FBI	Federal Bureau of Investigation
FCLC	Federation of Community Legal Centres
FLS	Fitzroy Legal Service
ICE	Immigration and Customs Enforcement (US)
ICMPD	International Centre for Migration Policy Development
IDC	Interdepartmental Committee
IOM	International Organisation for Migration
LGAs	Local government areas

MAV	Municipal Association of Victoria
MDGs	Millennium Development Goals
MOUs	memoranda of understanding
NGO	Non-government organisation
NRMs	national referral mechanisms
NRPT	National Roundtable on People Trafficking
OSCE	Organisation for Security and Cooperation and the Council of Europe
OWG	Operational Working Group
PCA	Prostitution Control Act
PJCACC	Parliamentary Joint Committee on the Australian Crime Commission
PRA	Prostitution Reform Act (NZ)
PTCN	Pacific Transnational Crime Network
RCPs	Regional Consultative Processes
RhED	Resourcing Health and Education
SMOCT	Senior Migration Officer Compliance (Trafficking)
SWOP	Sex Workers Outreach Project
TIP	Trafficking in Persons
TSETT	Transnational Sexual Exploitation and Trafficking Team
TVPA	Trafficking Victims Protection Act (US)
TVRA	Trafficking Victims Reauthorization Act (US)
UKHTC	United Kingdom Human Trafficking Centre
UN	United Nations
UNAA	United Nations Association of Australia
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNHCR	United Nations High Commissioner for Refugees
UNIAP	United Nations Inter Agency Project on Human Trafficking
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office of Drugs and Crime
UNOHCHR	United Nations Office of the High Commissioner on Human Rights
VCAT	Victorian Civil and Administrative Tribunal
VOCAT	Victims Of Crime Assistance Tribunal (Victoria)

Part 1 – Introduction

1. The Inquiry

The victims themselves, the contract girls live in a twilight world. They were foreign nationals, did not speak English, did not know their way around, did not know where to go for help and sometimes were not really sure where Australia was. All they knew was that they had to serve a fixed number of clients before they could start earning for themselves and perhaps send money home to their families. A contract girl could disappear without a trace in this country, nobody would miss her except perhaps her family in a rural village in Asia, and what could they do about it? (Payne 2003, p.5).¹

A crime against humanity

Trafficking in human beings is an internationally recognised human rights violation which can result in a chain of other human rights abuses such as forced labour, sexual servitude, debt bondage, imprisonment, rape, torture and even murder (Fergus 2005). Whilst not all or even many cases may result in the more extreme of these consequences, the essential core of trafficking – *exploitation* and disregard for human worth and dignity – is present in every case.

The United Nations Office of Drugs and Crime (UNODC) considers people trafficking, including sexual slavery to be one of the most serious of all human rights violations infringing the rights of people to freedom, autonomy and human dignity (UNODC 2009).

While little was known and even less understood about human trafficking until relatively recently, current research, albeit limited, and anecdotal evidence suggest it is a growing problem, globally, regionally and locally.

Consigned to being a ‘women’s issue’ in the 1980s, human trafficking and particularly sex trafficking has now ‘entered the global agenda of high politics, eliciting in recent years significant legislative and other action from the United States Congress, the European Union and the United Nations...’ (Piper 2005, p.203).

Closer to home, regional responses in the Asia-Pacific (brokered and led for the most part by Australia) have grown significantly. Nonetheless, despite the efforts being devoted to the issue of global trafficking our understanding of the dynamics, processes and underlying causes of this complex phenomenon ‘remains largely fragmented’ (Piper 2005, p.205).

¹ The above quote by former frontline Australian Federal Police (AFP) officer Chris Payne, offers an insight into the world of trafficking women and children for sexual purposes. Chris Payne was one of the first Australian law enforcement officers to investigate sex trafficking to Australia. In 1992 he instigated and oversaw *Operation Paper Tiger*, the first comprehensive effort by federal police to combat trafficking operations in Sydney. Since retiring he has been active in addressing trafficking into Australia, including assisting film makers to bring public attention to the plight of women ensnared into sexual servitude, such as in Luigi Acquisito’s acclaimed film *Trafficked*.

Whilst at international and domestic levels the crime of trafficking and associated offences are couched in gender-neutral terms, the victims, at least with regard to trafficking for *sexual* purposes, are overwhelmingly women. In other forms of trafficking such as forced labour there is a more equal representation of men and women as victims.

Sex trafficking fundamentally involves the treatment of women as commodities – products to be bought and sold in the marketplace either directly or through brokers. And it appears that the profits to be made in the trading of human beings outweigh the risk. Trafficking in women for sex work has been estimated as the second most lucrative international or transnational crime, equal to illegal arms trading and second only to drug trafficking (Fergus 2005).² Like any other illicit commodity, programs and interventions to address trafficking have, both at international and national levels, been couched in terms of *supply*, *demand* and *harm reduction* approaches. Supply solutions (prevention strategies, prosecution and punishment of traffickers) are mainly addressed at the countries of origin, whereas demand approaches target the (overwhelmingly male) customers who seek sexual services. Harm reduction approaches address the needs of women and children once they are in the ‘trade’.

Whilst on one level such a policy framework can be viewed as a convenient three-pronged strategy to address the various components of sex trafficking, the Committee acknowledges that in doing so policymakers also run the risk of *reinforcing* the perception and treatment of women as commodities or chattels. The Committee takes this opportunity to affirm that sex trafficking *is* a crime against humanity and for this reason is distinguishable from trafficking in non-human objects such as guns or drugs.

Background to the Inquiry

Whilst it is difficult to ascertain firm data on the extent of trafficking, the research that has been undertaken together with anecdotal evidence suggests that trafficking is a growing problem both internationally and at a local level. Whilst much of the research on trafficking to Australia has focused on the origin countries in South-East Asia, the Australian Institute of Criminology (AIC) has speculated that there is increasing potential over coming years for trafficking into, within, and between, the Pacific Islands, Australia and New Zealand (Putt 2009). Certainly it is thought that Australia could be viewed as an attractive destination country for trafficked persons given its wealth, stable economy and geographical proximity to countries of the Asian–Pacific region (Schloenhardt 2001). Conversely, it has also been suggested to the Committee that due to Australia’s strong migration controls and geographic isolation, opportunities to traffic people to this country are low and overall numbers of trafficked women found here are few,³ relative to other areas of the Asia–Pacific region.⁴

² As McSherry and Cullen state there are ‘obvious economic incentives’ for criminal syndicates and others to engage in sex trafficking over and above other crimes such as drugs or arms dealing:

‘People – unlike drugs for instance – can be used more than once and therefore provide a greater potential for ongoing profit. Moreover, people can be transported across international borders without arousing the same level of suspicion as drugs or arms’ (2007, p.208). For further discussion of the varying and sometimes inconsistent accounts of the monetary value of trafficking, see Segrave, Milivojevic and Pickering 2009, pp.13ff.

³ Piper argues that without minimising or dismissing the concerns with which trafficking is viewed in our region: ‘[t]he relative insignificance of trafficking in numerical terms [in Oceania] is largely due to its geographic remoteness and inaccessibility but also its different migration policies...and ‘demand structure’. But even

Until recently, knowledge on sex trafficking in Australia and the development of policy responses has also been limited. As late as 1999 there was still no internationally agreed upon definition or legal framework on trafficking. However, since the promulgation of the United Nations Trafficking Protocol at Palermo, Italy in 2000⁵ much has changed.

Australia has ratified the Protocol, agreed to a uniform definition as to what constitutes trafficking, formulated a suite of national laws to combat trafficking and, most importantly, devised a comprehensive package to address trafficking into this country and support the victims of these crimes.⁶ Moreover, the Counter Trafficking Response is being constantly updated, refined and approved as circumstances and the nature of trafficking changes (David 2008a).

A role for Victoria?

In recent years there have been growing concerns expressed at state level that the illicit trade in women for sexual purposes is increasing in Victoria, most noticeably in Melbourne based brothels and other areas of the sex industry. Evidence also suggests that Melbourne is second only to Sydney as a destination for victims of sex traffickers, with the majority of cases of sexual servitude and trafficking being heard in Victorian criminal courts. These cases have followed Department of Immigration and Citizenship (DIAC) compliance raids on Victorian brothels and/or local investigations by Australian Federal Police (AFP) based in Melbourne.

In addition, a number of Melbourne based non-government and community organisations, such as Project Respect, which play a major role in addressing issues of concern resulting from sex trafficking believe the number of women now being trafficked into this state is underestimated and growing.

Whilst the investigation and prosecution of trafficking crimes is primarily a federal responsibility, states can play an important role in addressing sex trafficking through their regulatory oversight of brothels and sex work. Clearly even in jurisdictions where sex work has been decriminalised there is a potential for trafficked women to be found in both licensed and illegal parts of the industry. Strategies therefore need to be devised that minimise the ability for traffickers to operate their trade within Victoria. One of the key aims of this Report is to investigate and recommend ways in which Victoria can assist and support the Commonwealth in addressing this crime and the abuse that occurs as a result.

Whilst there have been federal government inquiries into sex trafficking, given the concerns expressed with regard to trafficking on the local scene it is timely that an Inquiry into sex trafficking be held at state level.

within Oceania there are variations. Australia appears to experience larger incidences of trafficking than New Zealand' (Piper 2005, p.208).

⁴ Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, October 2009. See also discussion in Chapter 3 of this Report.

⁵ The United Nations *Protocol to Prevent, Suppress and Punish Trafficking In Persons Especially Women and Children* was supplementary to a new United Nations *Convention Against Transnational Organised Crime* (the Convention). Protocols on *People Smuggling* and *Trafficking in Illicit Firearms* were also adopted supplementary to the Convention. The People Trafficking Protocol was adopted by resolution A/RES/55/25 at the 55th Session of the United Nations General Assembly and opened for signature at Palermo, Italy on 13 December 2000. Australia signed the Convention on this date and the People Trafficking Protocol on 11 December 2002.

⁶ See Chapter 15 for a comprehensive discussion of this package.

The current Inquiry

On 13 August 2009 the Parliament of Victoria requested that the Drugs and Crime Prevention is to:

Inquire into, consider and report to the Parliament no later than 30 June 2010 on people trafficking for sex work including:

- (i) the extent and nature of trafficking people for the purposes of sex work into Victoria from overseas;
- (ii) the inter-relationship (if any) between the unlicensed and licensed prostitution sectors in Victoria, and trafficking for the purposes of sex work;
- (iii) the current and proposed intergovernmental and international strategies and initiatives in relation to dealing with trafficking for the purposes of sex work; and
- (iv) the need for policy and legislative reform to combat trafficking for the purposes of sex work, in Victoria.

Challenges to developing strategies

Persistent and ongoing challenges face Australia and the world community in addressing people trafficking for sex work. These include limited understanding of what it entails, differing definitions on trafficking, polarised views on sex work, and difficulty in collecting accurate data.

General understanding of sex trafficking is limited

General understanding of what constitutes sex trafficking is limited – the reality is far more complex than the traditional stereotypes of slavery. For example, few cases investigated by the AFP involve women kidnapped from their countries of origin, held at gunpoint and chained to beds when not servicing customers (David 2008a).⁷ The behaviour of suspected trafficking victims, for example women who may choose to continue working in the sex industry after they have been ‘rescued’, may not always be explicable to members of the Australian public and particularly to members of juries sitting on trafficking cases.

Contrary to popular belief, trafficking does not necessarily require the movement of people across borders, although in most cases it does. Nor is it to be confused with people smuggling and more broadly illegal migration,⁸ although sometimes it may also involve this. The issue has been further confounded with stories surrounding refugees, entry of illegal migrants and ‘mail order brides.’

Polarisation of philosophical approaches to sex trafficking?

Notwithstanding the universal condemnation of trafficking as a crime against humanity, there is deep division as to what in fact constitutes sex trafficking. Perhaps this is hardly

⁷ For a discussion of the nature of trafficking in contemporary circumstances, see Chapter 4.

⁸ For a discussion of the difference between the two crimes, see Chapter 6.

surprising given trafficking is ‘intimately connected with two heavily politicised issues: immigration and prostitution’ (Tyldum, Tveit & Brunovskis 2005, p.10).

Indeed, the political and ideological nature of the trafficking debates results in an unhelpful polarisation of opinion between approaches that seek to link sex trafficking with legal and illegal sex work generally (whether it crosses national borders or not) and those that restrict it to the illicit and cross-border *trade* in women.

Sex work itself is viewed as an entrenched form of violence against women by the former approach. This view brings together alliances with moral crusaders, religious groups and some feminists, not always with compatible agendas.

The counter-view is that sex work is legitimate work that should be recompensed and regulated like any other legal industry.⁹ According to this view a majority of women, including migrant women, *choose* to work in this industry. Reforms should centre on buttressing the human rights, safety and wellbeing of sex workers through appropriate regulation and support. Such views are not merely philosophical; they have practical policy implications. Sweden and the Netherlands are the most representative examples of the policy positions that can result from the abolitionist and legalisation perspectives respectively.¹⁰

Lack of data and research

One of the most notable challenges is the lack of data and research. Collecting accurate data on the extent of trafficking or the number of victims involved at an international, regional or national level is extremely difficult, in part due to the clandestine nature of trafficking operations. Challenges related to data collection, as noted by the AIC, include:

- Few systematic data collections and varying data collection methods
- A focus on the exploitation of women and children to the neglect of other aspects of trafficking and its victims
- Little capacity to collect data in source countries
- Estimates not representative of all trafficking victims
- Little current research focus on perpetrators
- Definitions of trafficking differing between data collections (AIC 2009c, pp.xi–xii).

The Inquiry process

The Committee has embarked upon an extensive research process in order to canvass the issues and receive input and information from as many individuals, agencies and organisations as possible that have an interest in the issues raised in the Terms of Reference.

In conducting the Inquiry the Committee employed a variety of processes and methodologies in order to gain a comprehensive understanding of people trafficking for

⁹ The vexed issue of nomenclature and terminology in this area is discussed later in this chapter.

¹⁰ For further discussion of these debates and an understanding of the Swedish and Dutch approaches to sex work (and trafficking) policy see Chapter 10.

sex work in Victoria and the current strategies that are currently employed or are needed to combat the problem. These processes are detailed below.

Literature review, background briefings and visits

The Committee commenced the Inquiry by undertaking a comprehensive review of the literature on sex trafficking and the initiatives that have been undertaken in Victoria, Australia and overseas. This review was constantly updated throughout the Inquiry.

Written submissions

Calls for written submissions were published on 5 September 2009 in the *Herald Sun* and *The Age*. Letters inviting submissions to the Inquiry were sent to all local councils and shires and key government and non-government agencies in Victoria. The Committee received 18 written submissions, which came from a range of individuals and organisations.¹¹

Public hearings

Public hearings were conducted in Melbourne on 14 September 2009, 5, 6 and 9 November 2009, 7 December 2009, 1 February 2009 and 22 March 2010.¹²

Interstate visits

During the Inquiry the Committee travelled to Canberra and Sydney.

Canberra

As the crime of sex trafficking is a federal offence under the Criminal Code and most policy development pertaining to sex trafficking is international or national the Committee believed it was essential to meet with officers from international agencies that have their national offices in Canberra and relevant Commonwealth government departments. These meetings provided the Committee with valuable knowledge of policy development and the challenges faced in implementing strategies. The Committee also met researchers from the AIC.¹³ Whilst very little research has been undertaken into sex trafficking into Australia, the AIC has conducted the most concerted and sustained efforts to date.

Sydney

The evidence received by the Committee revealed that the first port of call for many women who are trafficked into Australia, particularly from South-East Asia, is Sydney. As such, many of the agencies that work on the ground with trafficked women have been established in that city. The Committee decided it would be most useful to meet with representatives from these agencies to discuss the strategies that have been developed and delivered in New South Wales to assist trafficked women and to see whether these could be replicated in the Victorian context. In addition, one of the key projects that

¹¹ For a list of the submissions received by the Committee see Appendix 1.

¹² For a list of witnesses appearing at Public Hearings see Appendix 2.

¹³ For a list of interstate meetings held in Canberra and Sydney see Appendix 3.

combat the trafficking of women into Australia is the Anti Slavery Project based at the University of Technology, Sydney. The Committee believed it was essential to meet with its Founder and Director, Professor Jennifer Burn, an expert on sex trafficking in Australia.

Additional activities

In addition, Committee Members and staff attended a conference and meetings relating directly to the Inquiry's terms of reference.¹⁴

The Committee is most appreciative of the time, effort and valuable contribution that all the individuals and organisations made during the progress of this Inquiry. The submissions, public hearings and interstate meetings have provided valuable insights into the excellent work of various community and government organisations and provided significant knowledge into what has turned out to be an extremely complex and challenging issue.

Definitions and terminology

Trafficking and associated crimes

The starting point for any discussion of trafficking (of any type) is the definition in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime* (the Protocol). Article 3(a) defines trafficking in persons as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Protocol and by implication the definition has been ratified by Australia and incorporated into domestic law through the passage of a number of laws, most importantly the *Criminal Code (Trafficking in Persons Offences) Act 2005*.¹⁵ These laws in turn establish a number of trafficking crimes such as slavery, sexual servitude and debt bondage.¹⁶ These crimes of trafficking are to be distinguished from *people trafficking related offences*, which the Australian National Audit Office (ANAO) distinguishes as offences under the *Migration Act* or federal criminal offences such as money laundering (ANAO 2009).

¹⁴ For a list of the forums and conference attended by the Committee see Appendix 4.

¹⁵ See Chapter 6 for further discussion of the Protocol and the Australian law introduced subsequent to its ratification.

¹⁶ See discussion in Chapter 6.

The advantage of this internationally agreed upon definition adopted by 117 countries is that it promotes consistency in international counter-trafficking efforts.¹⁷ Moreover, it now makes trafficking in persons a criminal offence in countries which may have had limited or non-existent ways of dealing with trafficking. Nonetheless, whilst the definition of trafficking is comprehensive there have been criticisms that the term ‘trafficking in persons’ is misleading in a number of aspects.¹⁸ Zimmerman and Watts, for example, argue that: as trafficking is such a ‘complex, diverse and controversial phenomenon [it has made] the search for a definition a “terminological minefield”’ (in United States Department of State 2009, p.15).¹⁹ For example, some critics have argued that a number of countries drawing from the Protocol have mistakenly placed emphasis on the *transaction* aspects of the definition in their domestic legislation. In other words, rather than concentrating on the process of *exploitation* or *enslavement* the focus has been on the need for the trafficking to take place across national borders. In fact, whilst in many instances this will be the case it is not a requirement of sustaining a trafficking charge. This is recognised in Australian law, which provides for an offence of domestic trafficking.²⁰

Another problem relates to the definition of trafficking in the Protocol being reduced by some commentators and policymakers to trafficking in sex work alone when it is abundantly clear that the definition includes all other forms of trafficking including forced labour and trafficking of men and boys as well as women and girls (Piper 2005).²¹ Whilst the focus of this Inquiry is indeed on sex work, the Committee acknowledges that other forms of trafficking including forced labour is a serious and growing problem, one that has been occurring in this country and one that needs more attention paid to it in the future.

The misconceptions discussed above show there is a clear need for ‘an international standardisation of definitions along the lines suggested by the Protocol’ (UNODC 2009, p.11). Whilst misconceptions and misunderstandings continue to arise as to how the Protocol should be incorporated and applied in national jurisdictions, the Committee agrees with Fergus’ claim that despite some weaknesses the definition of trafficking in the Protocol ‘provides a good benchmark to which commentators, legislators and policymakers can refer’ (2005, p.4). Human trafficking, trafficking in persons and people trafficking are terms that will be used interchangeably throughout this Report.

¹⁷ Submission of the Human Trafficking Working Group, University of Queensland Law School, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

¹⁸ For an extensive debate on the semantic, historical, legal and ideological debates concerning the definitions and concepts associated with trafficking see *Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway* (Gallagher 2009a).

¹⁹ Certainly the various names in translation around the globe for the concept of trafficking seem to focus on the ‘trade’ of slaves rather than the servitude itself. In nearly all languages the word ‘trafficking’ translates to something akin to trade. As the most recent US State Department Trafficking in Persons Report states, ‘the word trafficking in English may not adequately capture the most important aspect of the practice: exploitation’ (United States State Department 2009, p.15).

²⁰ See Section 271(5–7) *Criminal Code* (Cth).

²¹ For example, what data there are however suggests that far more children are trafficked for labour than sexual exploitation. Piper argues that for some countries there is a reluctance to define trafficking in terms of men and women for non-sex work. To do so:

‘[w]ould in law enforcement terms mean that larger numbers than currently acknowledged or assumed would be involved, potentially creating a bigger administrative and budgetary burden than at present. It is highly unlikely that destination countries would agree to this’ (2005, p.221).

People trafficking and people smuggling

Whilst people trafficking and people smuggling are often treated as one crime in both public and professional discourse they are two distinct offences. Both crimes, however, are aspects of transnational organised crime associated with 'irregular' international migration and to a certain degree there may be some overlap between the two (McSherry & Kneebone 2008, p.68). Fergus (2005) describes the difference between these crimes as follows:

Smuggling is the receipt of some form of payment to transfer a person from one country to another illegally. It is not for the purpose of exploiting that person once they arrive in the destination country. Importantly, particularly in the Australian context, the payment made to the smuggler is final (Fergus 2005, p.3).

Whilst people trafficking usually will involve some transference of the victim across borders it does not necessarily require it. Moreover, trafficking in comparison to smuggling always requires some form of coercion or deception although it is often contested as to what form that must take. Rarely are the victims of people smuggling deceived or coerced into taking their journeys to the destination country. The issue of people trafficking and people smuggling will be discussed in greater detail in Chapter 9 in the context of how trafficking is conceptualised. Clearly however, both actions are viewed as crimes both internationally and in Australian law.

Prostitutes, sex workers and victims

Defining trafficking and its associated concepts has also been 'fraught with difficulties', partly because of the continuing debates about whether women trafficked into the sex industry should be seen as victims or independent agents acting in their own interests or some combination of these two approaches (Simm in McSherry 2007, p.388). For example the issue of whether a trafficked woman has 'consented' to her treatment raises many difficult issues both conceptually and in practical terms such as during a court case. Juries, for example, may not necessarily appreciate that trafficking can incorporate 'slavery without locks' (David 2008b, p.4).²²

This is an area where emphatically the terminology can 'reflect the ideological position of the speaker' (Brown 2007, p.3). Definitions and constructions in this area are both highly contested and emotionally charged.

The Committee endorses neither position in the various debates as to whether commercial sex work is of itself violence. It is not the purpose of this Inquiry nor is it appropriate to take a stand on this issue. Both arguments have their sincere adherents and both have their merits. It does however follow academics such as Piper (2005) Surtees (2006) and Segrave (2009a) in choosing to speak of sex workers rather than prostitutes, unless the context otherwise requires, thus:

avoid[ing] projecting any negative associations on individuals associated in this type of income generating activity, and also to make the comparison, in terms of trafficking, with other forms of forced labour (Piper 2005, p.206).

²² For example, a woman may appear to an average Australian (juror) to be compliant with her situation and therefore her behaviour in not seeking to escape or worse still continuing to 'prostitute herself' once she has left the environment in which she was working may be inexplicable. For further discussion of the complicated issue of what counts as 'consent' see Chapter 4.

Similarly consistent with accepted international human rights terminology (Fergus 2005) the Committee employs the term ‘victim’ for a person who has been trafficked. The Committee however takes heed of Fergus’ comments that this ‘does not mean that we see that person’s identity as being solely defined by the fact that she is a victim of the human rights abuse of trafficking, but it [merely] serves to acknowledge that such an abuse has occurred’ (2005, p.34).²³

²³ Certainly such a term is far preferable to stereotypical portrayals of such women as ‘sex slaves’ – a construct used often in a sensationalist way by the media. Not only is such a term offensive it does as Schloenhardt suggests ignore the complexities of issues such as consent, exploitation, employment and debt bondage associated with trafficking: ‘This is symptomatic of the general trend to stereotype trafficked women as naive victims tricked into working in the sex industry – a portrayal which conflicts with the accounts of those women who actively pursue a career in this field in Australia but are exploited by their employers’ (2008, p.17).

Part 2 – Contextualising Sex Trafficking

2. Putting Trafficking in its Historical Context

Trafficking in persons for the purpose of sexual exploitation is by no means a new phenomenon even if it has not been a major focus of both international law and policy and public consciousness until very recently. Certainly concerted and comprehensive attempts to address the issue through international, regional and local agreements, initiatives and programs were not in evidence until the Palermo Protocol was signed after much work behind the scenes by government and non-government agencies and particularly feminist and human rights advocates.

A history of trafficking and responses to address it

A hundred years of agitation

International efforts to suppress and eradicate all forms of slavery in men, women and children including labour and sexual services, have been common since the late 19th century. Certainly debates and legislative efforts to abolish forms of slavery were common in individual countries prior to that time – the emancipation of slaves in the United States during the American civil war being the most notable example. By the 19th century a new wave of feminist advocacy was instrumental in agitating for action against trafficking of women and children (Segrave 2009a; Williams & Masika 2002; Doezema 2000).

Fears of rising numbers of women being exploited for the ‘white slave trade’ resulted in international discussions about the specific issue of women being abducted and ‘sold’ into forced sexual services for profit. The term ‘white slave’ trade was used to distinguish it from other forms of slavery, most notably the forcible use of (usually non-white) people for the exploitation of their labour.²⁴ These concerns were raised at the Brussels International Conference of 1889–1890 and later at the Convention of St Germain en Laye in France in 1919. Both gatherings made commitments to end the traffic in African slavery and the latter noted the need to work towards an international agreement to end slavery in all its forms.

The first major international legal agreement to define and proscribe slavery was that of the 1926 *International Convention to Suppress the Slave Trade and Slavery* sponsored through the League of Nations (the 1926 Convention).

²⁴ For a history of the ‘white slave trade’ and the moral panics it engendered, particularly at the turn of the 20th century, see Doezema, J 2000, ‘Loose women or lost women? The re-emergence of the myth of white slavery in contemporary discourses of trafficking in women’.

Article 1 of the 1926 Slavery Convention states:

For the purpose of the present Convention, the following definitions are agreed upon:

- (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
- (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.²⁵

This basic definition, although supplemented and expanded by subsequent documents,²⁶ for the most part remains the yardstick by which slavery is defined in international instruments and in domestic legislation that has incorporated the international protocols into national law.

In 1956 a supplementary convention was entered into under the auspices of the United Nations (UN) (*Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery* ('the 1956 Supplementary Convention')) that adopted the definition of the 1926 convention but also extended the definition to cover institutions and practices similar to slavery 'where they still exist and whether or not they are covered by the definition of slavery contained in Article 1 of the [1926] Slavery Convention'.

The combined effect of these conventions was to make a distinction between *de jure* and *de facto* slavery. By 1926 in most countries including Australia *de jure* slavery was illegal, that is, the *legal status* of being a slave had been abolished. However, Article 1 also refers to slavery as covering the '*condition of a person*' – in effect *de facto* slavery. As the Chief Justice of the High Court of Australia recently remarked in the context of a modern sexual servitude case:

This is hardly surprising. The declared aim of the parties to the Convention was to secure the complete suppression of slavery in all its forms, and to prevent forced labour from developing into conditions analogous to slavery. They undertook to bring about "the complete abolition of slavery in all its forms". It would have been a pitiful effort towards the achievement of those ends to construct a Convention that dealt only with questions of legal status. The slave trade was not, and is not, something that could be suppressed merely by withdrawal of legal recognition of the incidents of slavery. It is one thing to withdraw legal recognition of slavery; it is another thing to suppress it. The Convention aimed to do both.²⁷

In 1953 the UN Secretary General listed a number of ways in which it could be said that a person had become in effect a *de facto* slave through having the powers of ownership exercised over him or her. Such methods include:

²⁵ For the full text of the Convention, see <http://www2.ohchr.org/english/law/slavery.htm>

²⁶ See for example the *Statute of Rome* establishing the International Criminal Court in 2002, which defines 'enslavement' as 'the exercise of any or all of the powers attaching to the right of ownership over a person...including the exercise of such power in the course of trafficking in persons'. See Rome Statute of the International Criminal Court, Effective 1 July 2002. United Nations Treaty Collection at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en Accessed 12 February 2010.

²⁷ *The Queen v Tang* [2008] HCA 39 at para 25 per Gleeson CJ.

[t]he capacity to make a person an object of purchase, the capacity to use a person and a person's labour in a substantially unrestricted manner, and an entitlement to the fruits of the person's labour without compensation commensurate to the value of the labour (United Nations Economic and Social Council 1953, p.28).

Such a definition later became important in determining what counts for trafficking at international (and national) law.

Modern developments – the Protocol and its consequences

In the late 1980s, as a result of concerted work by feminist and other human rights advocates, the issue of sex trafficking became part of the international legal and policy agenda again.²⁸ Segrave comments that this resurgence of interest:

[f]ollowed the expansion of feminist inquiry and advocacy that had galvanised around First World/Third World issues arising under conditions of globalisation, such as 'mail order brides' and 'sex tourism'. The subjects of the feminist anti-trafficking campaign subsequently shifted from the 'white' Anglo-Saxon women around whom campaigns for protection revolved in the late 1800s, to focus on victims of trafficking as migrant 'Others' – most often...characterised as "passive?" unemancipated women from the developing world (2009a, p.74).

Such advocacy was buttressed by a number of independent research reports by bodies such as the International Organisation for Migration (IOM) in the early and mid 1990s. An IOM Report in 1995 for example detailed the growing expansion of trafficking from Central and Eastern Europe to Western Europe and Britain after the break-up of the former Soviet Union (IOM 1995). By the mid 2000s with many nations having adopted and/or ratified the Convention Against Transnational Organised Crime and the supplementary Protocols, a clear signal was sent that human trafficking was a global problem that required international responses and cooperation to work towards its eradication.²⁹

The Australian response

Since the founding of the Commonwealth in 1901 Australia has been a signatory to all the International Conventions and Protocols pertaining to human trafficking.³⁰ But it has not been until recently that concentrated efforts to address the issues of sexual and other forms of trafficking across and within Australia's borders have been made. These efforts

²⁸ One needs to be careful however of making too many overarching claims in the name of feminist advocacy. Whilst undoubtedly the impetus for putting the trafficking issue on the international human rights agenda came from a large body of the feminist movement, there were other strands of feminism that whilst condemnatory of forced sexual servitude did not necessarily share the same agenda as those advocating for the Palermo Protocol. As will be discussed in Chapter 10, the debates between 'anti prostitution' and 'liberationist' feminists who support the right of women to work in the sex industry could be at times quite polarised.

²⁹ The Convention and its protocols strengthen the earlier United Nations initiatives to eradicate trafficking (both general labour and sex trafficking). Earlier, important efforts at international level included inter alia the 1949 Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others; the *Convention on the Elimination of all Forms of Discrimination Against Women*; the *Convention on the Rights of the Child (CRC)*; *Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Pornography*; *European Convention on Action Against Trafficking in Human Beings*; and the *Inter-American Convention on International Traffic in Minors*.

³⁰ Prior to this the colonies of Australia were subject to various Imperial anti-slavery statutes in force in the United Kingdom and by extension to the colonies.

were intensified as it became apparent that Australia is viewed as a destination country for the trafficking of women for sexual purposes.³¹

In 1998 the Commonwealth Model Criminal Code Committee delivered a report on *Offences Against Humanity: Slavery* recommending a new section be introduced into the Commonwealth Criminal Code (the Code) criminalising slavery and sexual servitude. As a consequence the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth)* added a new Division 270 into the Code introducing inter alia offences pertaining to deceptive recruitment into sexual services (270.7), causing another person to enter into or remaining sexual servitude (270.6) and slavery (270.3).

A major impetus for further reform was the death in 2001 of Ms Puangthong Simaplee in Villawood Detention Centre, Sydney. Ms Simaplee was found by immigration officers during a compliance raid on a brothel in September of that year and taken to Villawood where she died three days after admission. During interviews with immigration officers she reported that at 12 years of age she had been 'sold' by her parents and trafficked from Thailand to Australia to work in brothels at the age of 14. She continued to work in Australian brothels from that time intermittently until her death at the age of 27. At the inquest into her death³² the Deputy Coroner urged law enforcement authorities to investigate the trafficking of women with 'vigour and appropriate resources' (McSherry 2007, p.386).

In December 2002 more than a year after the Palermo Protocol was passed, Australia formally became a signatory. However amendments to the Criminal Code were not made at that time to ratify the protocol completely. In 2003 a Parliamentary Joint Committee on the Australian Crime Commission held the *Inquiry into the Trafficking of Women for Sexual Servitude*. The Inquiry Report found that existing offences under the Code 'did not adequately reflect the realities of the trafficking trade' (2004, p.54) nor adequately meet the requirements of the UN Protocol.

Consequently, in 2004 the first Commonwealth Action Plan to Eradicate Trafficking was established. This plan comprised a wide range of investigatory and law enforcement measures including the establishment of a specialised anti-trafficking unit within the Australian Federal Police, new visa arrangements for those people prepared to testify against their traffickers and a raft of victim support measures, including repatriation particularly skewed to those victims prepared to be witnesses in court against their alleged traffickers. The Action Plan was comprehensively revamped in 2009 with significant amendments. One of the key changes introduced was that to a large degree the issue of victim support for trafficked women was de-linked from the necessity of giving evidence in criminal proceedings.

As a result of the Commonwealth Report and other interventions at Commonwealth level, the *Criminal Code Amendment (Trafficking in Persons) Act 2005* was passed in July 2005 and the UN Protocol finally ratified on 14 September of that year. The 2005 Act added a new Division 271 to the Code dealing with trafficking and debt bondage.³³

³¹ For a comprehensive account of the legislative history and background pertaining to Australia's efforts to address trafficking, see Fergus 2005; McSherry 2007.

³² The autopsy indicated she had died of a combination of heroin withdrawal, malnutrition and pneumonia.

³³ For a detailed discussion of the law pertaining to trafficking, see Chapter 6.

White slavers and global traffickers – a continuum?

It is not the purpose of this Report to provide an exhaustive retelling of the social, political and legal dynamics pertaining to the history of trafficking and counter-trafficking measures.³⁴ An appreciation of the history of trafficking is nonetheless important in understanding the context of the contemporary trade in women and children. In many respects the nature of enslavement and the movement of women across borders to satisfy the sexual gratification of male customers is the same in 2010 as in 1910, even if the strategies to address it have changed.

Cultural analysts, theorists and historians have also drawn parallels with the striking similarities in which trafficking is conducted today compared to the early 20th century. For example, Doezema argues that whilst the locus or geographical direction of trafficking may have changed (for example from the Middle East, Africa or the ‘Orient’ to South East Asia or Eastern Europe), much of the rhetoric associated with counter-trafficking campaigns is remarkably similar:

Then, as now, the paradigmatic image is that of the young and naïve innocent lured or deceived by evil traffickers into a life of sordid horror from which escape is nearly impossible (Doezema 2000, p.24.)

According to this line of argument the ‘white slave trade’ and its modern reincarnation produces cultural myths that reflect anxieties about race and female sexuality. The migrant woman (prostitute) is constructed as ‘other’ – a subject for moral concern, surveillance and control. Whilst counter-trafficking/slavery measures are ostensibly about protecting women, the proponents of this view argue that in effect they deny migrant sex workers agency, further marginalise them and compromise their human rights:

[R]ecent research indicates that today’s stereotypical “trafficking victim” bears as little resemblance to women migrating for work in the sex industry as did her historical counterpart the “white slave”. The majority of “trafficking” victims are aware that the jobs offered them are in the sex industry, but are lied to about the conditions they will work under. Yet policies to eradicate “trafficking” continue to be based on the notion of the “innocent”, unwilling victim, and often combine efforts designed to protect “innocent” women with those designed to punish “bad” women, ie: prostitutes (Doezema 2000, p.24).

Such theories and interpretations, whilst interesting, can run the risk of stretching historical analogies too far. The fact remains that women *are* currently being trafficked into appalling conditions of sexual servitude and whether they are aware of the conditions of their ‘employment’ or not prior to engaging in a debt bondage contract or even ‘consenting’ to such conditions is in one sense irrelevant. The whole point of the anti-trafficking laws is that such women cannot consent to being treated as a slave or chattel.

There are definite weaknesses in the international, regional and national approaches to trafficking, not the least of which is arguably an over-reliance on criminal justice approaches to the detriment of the individual woman’s human rights. Nonetheless, it is

³⁴ For a comprehensive account of the legislative history of counter-trafficking initiatives in Australia see Chapter 6 and McSherry 2007. For a timeline giving the key milestones in the Australian response to trafficking in human beings up until the establishment of the Commonwealth Anti Trafficking Action Plan, see Fergus 2005 at pp.32–33.

equally arguable that modern counter-trafficking responses are less about punishing women than providing a framework of international cooperation that can more effectively combat the trade in human beings in ways that individual countries are unable to do. Efforts to combat trafficking in all its forms is not served by an ideological impasse on competing views on (migrant) sex work (Segrave 2009b).

Given that (sex) trafficking is now firmly on the international legal and political agenda, the issue is not so much whether it should be addressed but rather how the problem is to be conceptualised – as an issue of criminal justice, a migration or border control problem or a question of fundamental human rights? More importantly, how does such a conceptualisation frame the most appropriate counter-trafficking responses and strategies? These are important issues to grapple with,³⁵ but before that can be undertaken it is first necessary to examine the extent to which trafficking is a problem internationally and to and within Australia.

³⁵ See discussion in Chapter 9.

3. The Extent of Sex Trafficking – How big a problem is it?

There is universal agreement that accurate figures and data with regard to sex trafficking, at international, regional and local levels, are ‘impossible to come by’ (Piper 2005, p.218). A number of reasons have been given for this – the clandestine nature of sex trafficking, a paucity of systematic research and a lack of ‘precise, consistent and unambiguous definition of the phenomenon’ (Piper 2005, p.19).

It is also difficult to get an overview of the extent of sex trafficking, as much of the international data does not discriminate between the different forms of trafficking, most notably between forced labour and sexual servitude, or form a coordinated data set. For example, the International Labour Organisation (ILO) keeps good statistics on forced labour, the International Organisation for Migration (IOM) on forced migration patterns and the United Nations Children’s Fund (UNICEF) on some trafficking flows of children for sexual exploitation. Until recently, however, there have been few instances where such information has been merged into one coordinated data set or where separate statistics on sex trafficking have been collected (United Nations General Assembly 2009).

There is also a great reluctance by people who have been trafficked to report it. This may be due to fear of repercussions from their traffickers, mistrust of the authorities in the source and destination countries, unwillingness to return to the country of origin and the conditions from which they have escaped such as poverty or violence, or a combination of all these factors (Global Programme Against Trafficking in Human Beings 2003). Another difficulty is that governments may lack the budgetary means and/or the infrastructure needed to collate and analyse good statistical data, particularly in countries of origin. Finally, until recently there was little awareness or understanding of the issue of sex trafficking and thus many investigatory personnel simply did not know what to look for (Kneebone 2009).

Recently, however, there have been attempts to remedy this situation, with international and regional databases being developed to address the lack of information in this area.³⁶ Nonetheless, the overall picture is still one of haphazard and inconsistent data collection and dissemination on trafficking. Given this absence of reliable data, figures on the number of people being trafficked can be only ‘guesstimates’. Even in these, figures collated by governments and non-government organisations (NGOs) across regions, and even between agencies and organisations within the same country, often differ greatly.³⁷

International data

Estimates of the annual numbers of people trafficked across international borders vary from 700,000 to four million (IOM 2008; Attorney-General’s Department 2009c; Australian Institute of Criminology (AIC) 2009c). There seems to be great disparity between estimates and known or documented cases (Putt 2007; Gallagher & Holmes 2008).³⁸

³⁶ See discussion later in this chapter.

³⁷ For example, Piper (2005) argues that many governments may take their lead from the United Nations and base their estimates on a definition of trafficking based on the notion of initial intention whereas NGOs often will collate their figures on the basis of outcomes only.

³⁸ This may be because many estimates are not replicable as the methods through which the estimates are derived have not been documented or reported by researchers (AIC 2009c).

Underreporting of trafficking means few cases will end up being investigated.³⁹ Prosecution data collated in the United States Department of State *Trafficking in Persons (TIP) Report* indicates there were 1321 trafficking prosecutions in 2006 securing 726 convictions (US Department of State 2009). However, as McSherry and Cullen argue, prosecution/conviction figures are not necessarily commensurate with the amount of trafficking in a given year (2007).⁴⁰

Whilst these figures are not broken down into the type of trafficking taking place, reports indicate in general terms that 80 per cent of trafficked victims are believed to be female and 98 per cent of those trafficked into commercial sexual exploitation are women and girls (ILO 2005 in Fergus 2005; Putt 2007; US Department of State 2009). Despite difficulties in accurately quantifying extent, it has been agreed generally that the problem is growing, becoming more profitable and involving most countries, whether as a source, transit or destination country (Gallagher & Holmes 2008; IOM 2008; United Nations Office of Drugs and Crime (UNODC) 2009). There is also concern that the increase in displaced persons and refugees in the 1990s may result in a ready source of vulnerable women available for recruitment into the global sex industry (Carrington & Hearn 2003).

Problems with estimates

A criticism of estimates produced at both national and international levels is that too often they are without cited or verified sources, or are produced from a shaky methodological base. As a result, 'vaguely defined numbers are repeated, reinforcing themselves' (Jahic & Frickenauer 2005 in Putt 2007, p.3; David 2008a). As trafficking expert Dr Anne Gallagher stated to a federal Parliamentary Inquiry on Sex Trafficking:

There is very little quality trend evidence available and almost no cross-referencing or external verification of data...Rather than acknowledging or confronting these inadequacies, much contemporary trafficking research unquestionably accepts and promulgates unverified data (Parliamentary Joint Committee on the Australian Crime Commission 2004, p.20).

However, over the last five years there have been concerted efforts at international and regional level to at least attempt to improve data collection, reporting and analysis with regard to trafficking in persons. The major databases/collection systems undertaking this important work are:

- The United Nations Global Initiative to Fight Human Trafficking – UN.GIFT
- The Trafficking in Persons (TIP) Database (US Department of State)
- International Organisation for Migration (IOM) – Counter Trafficking Module Database.

³⁹ Indeed some reports have estimated that as few as five per cent of victims come to the attention of the authorities (AIC 2009c and the sources cited therein).

⁴⁰ There are also major definitional, technical and methodological problems associated with gathering data on prosecutions around the world for trafficking crimes, including a lack of cooperation between investigatory and prosecution bodies. Moreover, there is a significant selective filtering process that takes place from the investigatory to the prosecution phases – with few cases making it through to final disposition. As a result, any criminal justice data produced is partial and incomplete and certainly does not take into account the 'dark figure' of trafficking cases that are either not reported to the authorities or not investigated (Segrave 2008, p.327). This area is beyond the scope of this Inquiry – see Moskowitz 2008 for further discussion of this issue. The general issues and problems associated with prosecuting trafficking cases are discussed in Chapter 8 of this Report.

The United Nations Special Rapporteur on Trafficking has also proposed a comprehensive universal database that will disaggregate trafficking (of all types) according to a number of variables such as age and gender.

United Nations Global Initiative to Fight Human Trafficking – UN.GIFT

The UN.GIFT, begun in 2007–2008, is a pilot study of the global response to human trafficking conducted under the auspices of the UNODC. It covers all forms of trafficking including sexual servitude. The project gathers information from 155 countries on their governmental and non-governmental legal, policy and program responses to trafficking. Such information includes the numbers of investigations started, prosecutions launched and convictions recorded. Information on victims' support services available in the host country is also sought.

UNDOC believes that even in its infancy the project has provided some valuable data and insights into global trafficking. For example, the 2009 UNODC Report stated that 91 countries had reported at least one human trafficking prosecution and 73 countries at least one conviction. A total of 21,400 victims were identified among the 111 countries who reported victim data for 2007–2008, demonstrating that '[s]haring human trafficking data on a global basis is possible and can yield valuable insights, despite the inherent limitations of criminal justice figures' (UNODC 2009, p.8).

Recent trends

The Report indicates that the number of people being trafficked and the number of prosecutions launched have increased between 2003 and 2007. Yet there was still 32 per cent of countries that had not recorded a prosecution and 40 per cent of countries that had not recorded a conviction in that period (UNODC 2009). (See tables 3.1 and 3.2).

At a regional level, Europe and the Americas saw a rise in prosecutions and investigations, as did South and South-West Asia. Table 3.1 shows that during the reporting period 50 countries of 32 per cent of those covered by the UNODC report recorded no prosecutions. Africa provided little credible data; this is because few countries in the region have specific trafficking offences as part of their legal systems. Many African countries also have ineffective criminal justice systems and few have reliable statistical or data reporting methods.

Table 3.1: Prosecutions for the specific offence of trafficking in persons, number of countries by region 2007–November 2008

Regions	Number of countries with no recorded prosecutions for the specific offence of trafficking in persons (TIP)		Number of countries with at least one recorded prosecution of trafficking in persons	Number of countries where information on prosecutions was unavailable
	Countries with no TIP offence	Countries with TIP offence		
Middle East and North Africa	2 countries	2 countries	3 countries	3 countries
West and Central Africa	4 countries	2 countries	8 countries	2 countries
East Africa	3 countries	2 countries	2 countries	2 countries
Southern Africa	8 countries	1 country	1 country	1 country
North America			3 countries	
Central America and the Caribbean	5 countries	1 country	6 countries	
South America		1 country	7 countries	1 country
East Asia and the Pacific	4 countries	7 countries	13 countries	3 countries
South and South-West Asia	2 countries	1 country	5 countries	
Eastern Europe and Central Asia	1 country		11 countries	
Western and Central Europe	1 country	3 countries	32 countries	2 countries
Total	30	20	91	14 (9% of all countries)

Source: United Nations Office on Drugs and Crime 2009, p.38.

Table 3.2: Convictions for the specific offence of trafficking in persons, number of countries by region 2007–November 2008

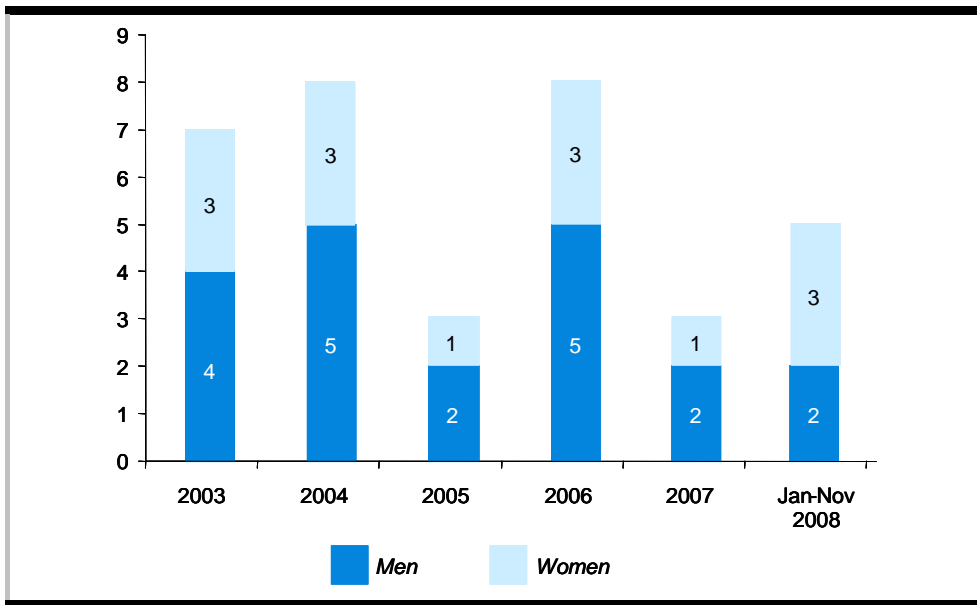
Regions	Number of countries with no recorded convictions for the specific offence of trafficking in persons (TIP)		Number of countries with at least one recorded conviction of trafficking in persons	Number of countries where information on convictions was unavailable
	Countries with no TIP offence	Countries with TIP offence		
Middle East and North Africa	2 countries	2 countries	3 countries	3 countries
West and Central Africa	4 countries	5 countries	5 countries	2 countries
East Africa	3 countries	3 countries	1 country	2 countries
Southern Africa	8 countries	2 countries		1 country
North America		2 countries	1 country	
Central America and the Caribbean	5 countries	2 countries	4 countries	1 country
South America		1 country	7 countries	1 country
East Asia and the Pacific	5 countries	8 countries	11 countries	3 countries
South and South-West Asia	2 countries	2 countries	4 countries	
Eastern Europe and Central Asia	1 country		11 countries	
Western and Central Europe	1 country	3 countries	26 countries	8 countries
Total	31	30	73	21 (14% of all countries)

Source: United Nations Office on Drugs and Crime 2009, p.39.

Whilst tables 3.1 and 3.2 do not break down their data into country units, an analysis of the East Asia and Pacific Region by UNODC revealed an increase in reported trafficking cases in Indonesia, Thailand and the Mekong Delta countries. Australia and New Zealand have both shown stable to decreasing trends (UNODC 2009; see also Figure 3.1 below).

The UN.GIFT does give brief profiles on each country that supplies data to the Report. The Commonwealth Trans-national Sexual Exploitation and Trafficking Team (TSETT) and the Commonwealth Office for Women supply information on Australia with regard to trafficking investigations/arrests and victim support respectively. Figure 3.1 shows the number of persons charged with trafficking and related charges (sexual servitude, slavery and debt bondage) under the Commonwealth *Criminal Code* has remained low and relatively stable. Figure 3.2 shows that the number of victims placed on the Australian Government Victim Support Program is also relatively low, with 32 persons in 2004 receiving assistance, 16 in 2006 and 23 by November 2008. In this five-year period only two male victims of (forced labour) trafficking received victim support, strengthening the premise that women are overwhelmingly, even exclusively, the victims of sex trafficking in Australia.

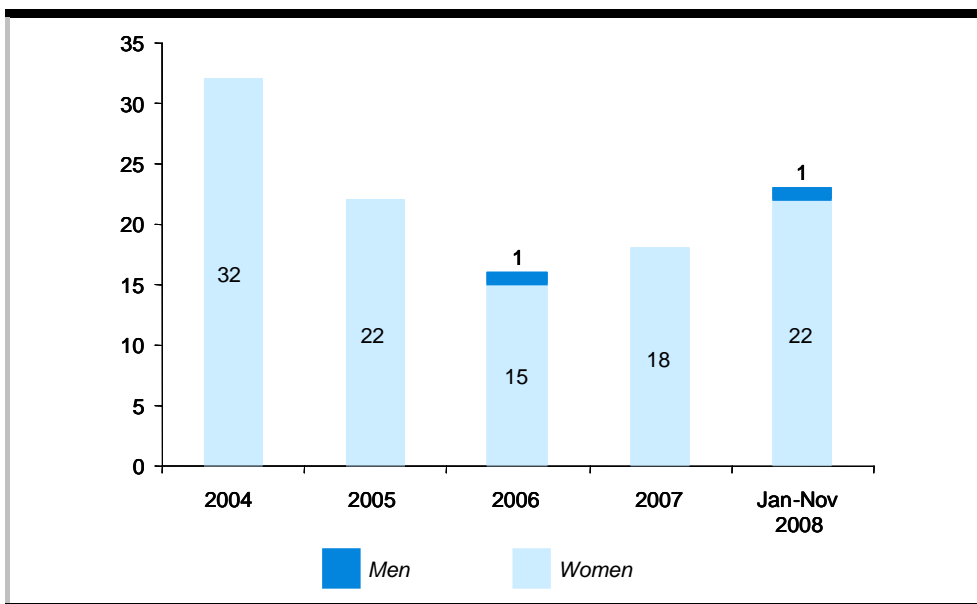
Figure 3.1: Persons arrested and charged with trafficking and related offences by gender 2003 – November 2008, Australia



Source: Adapted from United Nations Office on Drugs and Crime 2009, p.166.

The above figure includes information only with regard to arrest and charges laid – *not* prosecutions or convictions.⁴¹

Figure 3.2: Persons placed on the Australian Government’s victim support program by gender 2004–November 2008



Source: Adapted from United Nations Office on Drugs and Crime 2009, p.167.

⁴¹ For an account of trafficking prosecutions in Australia, see Chapter 8 of this Report.

Domestic trafficking represents a significant share of recorded trafficking cases. In the reporting period at least one case of domestic trafficking was found in 32 countries. In India, for example, a majority of all reported trafficking cases were from one Indian state to another (UNODC 2009). Even in smaller countries such as Holland or Germany domestic trafficking was reported to make up one-quarter of all recorded cases (UNODC 2009). UN.GIFT speculates that the numbers of domestic trafficking cases could be even higher as some countries may record trafficking offences under domestic prostitution or pandering laws (UNODC 2009).

Limitations of UN.GIFT

UN.GIFT is a valuable addition in increasing the understanding of trafficking at a global level. Nonetheless, the United Nations acknowledges that UN.GIFT's methodology has its problems. For example, countries such as Australia or the United States with relatively well-resourced criminal justice agencies may show considerable activity even where human trafficking is relatively rare in or to those countries. Conversely, countries that are thought to have a large problem with trafficking may not have the resources or capacity to respond effectively and accurately (UNODC 2009).

Moreover, as UN.GIFT relies on the voluntary reporting of data by individual countries its reports can only be as good as the data provided to them. Some countries do not collect even basic data and some do not collect data in such a way that allows for international comparisons. Definitional inconsistencies and variation between countries also give rise to problems – when for example does a case of exploitation cross over into the domain of trafficking? (AIC 2009c). Some countries do not have the appropriate legislative frameworks in place subsequent to the Palermo Protocol. Even countries that do have such a framework may vary in the resources available for enforcement (UNODC 2009). UN.GIFT is not able to aggregate statistics together either at the geographic or thematic level⁴² and it identifies a clear need for an international standardisation of definitions, reporting mechanisms and data collection: 'Too often even similarly situated countries with compatible legal systems are counting different things' (UNODC 2009, p.11).⁴³

The UNODC has recommended that this pilot study be expanded into an ongoing data gathering exercise. It has also recommended that a standardised international mechanism for monitoring trends and patterns in human trafficking be established. The resulting collective information systems could then acquire the necessary knowledge to inform strategic interventions.

⁴² For example, gender or citizenship of victim, forms of victimisation or the market context of the crimes – such as price and demand (UNODC 2009, pp.11–13).

⁴³ For example, UN.GIFT states in this regard:

'Many [governments] will find that the information they need (to report to UNGIFT) is generated by multiple agencies, is segmented and scattered, and that even actors within the country may apply different methods, counting rules and processes. For example, in most states units of accounting vary across the criminal justice sectors. While the police often count the number of investigations into human trafficking, the prosecutor's offices and the court systems are more likely to report on the number of persons prosecuted and convicted. Harmonising these differences for the purposes of national statistics may be a useful exercise in domestic stocktaking and may contribute to international understanding' (UNODC 2009, p.72).

US State Department's Trafficking In Persons report (TIP)

Similar to UN.GIFT, TIP relies on countries providing data voluntarily. It uses the responses to rank those countries according to their level of activities around prevention, protection and prosecution of trafficking in persons. American embassies around the world collect national data from immigration, law enforcement and other government agencies, NGOs and victims. It also collects data from international organisations such as Amnesty International, IOM, UNICEF and the United Nations High Commissioner for Refugees (UNHCR). This information is published in an annual report to the United States Congress, and has been since 2001.

Unlike UN.GIFT, TIP uses the ranking system to penalise (or reward) countries according to their status on a three-tiered model. TIP evaluates whether countries have fully complied with the American Congress' standards for the elimination of trafficking. Governments that are fully compliant, such as Australia, are placed on Tier 1. Countries 'making significant efforts to meet minimum standards' are placed on Tier 2. Countries whose governments do not comply with the minimum standards and are showing no progress or inclination to do so are placed on Tier 3. Tier 3 governments/countries may be subject to sanctions such as the withdrawal of non-humanitarian foreign assistance (US Department of State 2009).

The United States 2003 *Trafficking Victims Reauthorization Act* (TVRA) requires foreign governments to provide the Department of State with data on trafficking investigations, prosecutions, convictions, and sentences in order to be considered in full compliance with the TVRA's minimum standards for the elimination of trafficking (Tier 1). The 2004 TIP Report collected this data for the first time. The 2007 TIP Report data showed for the first time a breakdown of the number of total prosecutions and convictions that related to labour trafficking (placed in parentheses). Table 3.3 provides the most recent global data for prosecutions and convictions.

Table 3.3: Global law enforcement data 2003–2008

Year	Prosecutions	Convictions	No. of countries that have passed new or amended legislation
2003	7,992	2,815	24
2004	6,885	3,025	39
2005	6,178	4,379	40
2006	5,808	3,160	21
2007	5,682 (490)	3,427 (326)	28
2008	5,212 (312)	2,983 (104)	26

Source: US Department of State 2009, p.47.

The TIP categorisation of global regions has Australia placed in the East Asia–Pacific Region. A breakdown of prosecution and conviction data for this Region is given in table 3.4. Unfortunately the data is not disaggregated further into individual national units.⁴⁴

Table 3.4: Law Enforcement Data 2003-2008 (East Asia–Pacific Region)

Year	Prosecutions	Convictions	New or amended legislation
2003	1,727	583	1
2004	438	348	3
2005	2,580	2,347	5
2006	1,321	763	3
2007	1,047 (7)	651 (7)	4
2008	1,083 (106)	643 (35)	2

Source: US Department of State 2009, p.52.

The proclaimed objects of TIP are primarily to increase global awareness of the human trafficking phenomenon, encourage governments to take effective actions against all forms of trafficking, collect reliable data on trafficking in individual countries and regions and highlight the efforts countries have used to combat it (US Department of State 2009).⁴⁵ It has been argued that the TIP process is an important incentive for governments to develop effective responses to trafficking whether as source, transit or destination countries (AIC 2009c).

International Organisation for Migration (IOM) – Counter Trafficking Module Database

The IOM is an intergovernmental organisation offering migration management assistance to governments and migrants worldwide.⁴⁶ In the area of trafficking, IOM is associated mainly with the repatriation and reintegration assistance it gives victims of trafficking. In 1999, as an adjunct to its trafficking work, IOM developed a database to manage its Return and Reintegration Program. IOM staff interview victims it has assisted using a standardised questionnaire covering the victim's experience of trafficking. Such information includes the victim's:

⁴⁴ The TIP does however contain a section on 'Country Narratives', which describes briefly the efforts of nation states to address trafficking in their countries and region. For the most recent TIP profile of Australia, see US Department of State 2009, p.52.

⁴⁵ Despite such laudable objects, some commentators have criticised this role of the United States as 'global sheriff'. For example, Segrave (2009a) suggests that countries skew their anti-trafficking policies in a law and order/prosecution model that does little to support or serve the interests of trafficked women. To do otherwise would potentially result in countries being placed on a lower tier. For further discussion of law and order versus human rights conceptions of counter-trafficking strategies see Chapter 9.

⁴⁶ Founded in 1952, IOM currently has more than 100 member states, maintaining more than 100 offices worldwide and has more than 3700 staff under contract. IOM headquarters is in Geneva, Switzerland. As the leading international organisation for migration, IOM with its partners in the international community, addresses the growing operational challenges of migration management, advances understanding of migration issues, encourages social and economic development through migration, and upholds the human dignity and wellbeing of migrants.

[s]ocio-economic and family background, their experience of migration, their recruitment by traffickers, the route taken, the violence and exploitation suffered, their current condition, and their needs in terms of health, protection, return and reintegration (Laczko & Gramegna 2003, p.187).

The interviews also generate demographic reports covering gender, age and education background (Bonneau 2009).

From 1999 until July 2009 the database captured primary data on 13,463 registered cases of victims of trafficking assisted by IOM. The dataset represents people of 80 different nationalities trafficked to over 90 destination countries (IOM 2009c).

The Module facilitates the management of the IOM's counter-trafficking, repatriation and reintegration processes through a centrally managed system that maps the victim's trafficking experience:

In return, it strengthens the research capacity and understanding of the causes, processes, trends and consequences of trafficking. It serves as a knowledge bank, from which statistics and detailed reports can be drawn, informing research, programme development and policy making on counter trafficking.⁴⁷

IOM operational statistics and qualitative data, however, are essentially an internal data collection, collated for operational, administrative, project development, evaluation and management purposes for IOM staff, and where relevant shared between the IOM and member states. Public access is restricted, although public users such as researchers can make web applications to query data through a Central Data Repository (CDR). Nothing that could compromise the privacy or identity of trafficked individuals is released, as strict controls have been established to ensure confidentiality and security of all data.⁴⁸

The database also has its limitations, as it is restricted to information from only those victims who are identified and assisted in any given country. Nonetheless, as the largest global database holding primary data on trafficking it is an invaluable asset in determining the level of trafficking worldwide, understanding the nature of trafficking and consequently developing appropriate responses (AIC 2009c).⁴⁹ The standardised nature of the questionnaires and the mixed qualitative and quantitative methodologies used provide valuable background to supplement the other data collection tools mentioned above.

United Nations Special Rapporteur on Trafficking – proposed initiative

In 2004 in response to the growing awareness of the global trafficking in human beings, the United Nations appointed a Special Rapporteur on Trafficking in Persons (Especially Women and Children). In her most recent annual report Ms Joy Ngozi Ezeilo, the current Rapporteur, notes the need for better monitoring and collection systems to gauge the extent of trafficking at international, national and regional levels. Ms Ezeilo has

⁴⁷ *Counter-Trafficking* accessed at <http://www.iom.int/jahia/Jahia/counter-trafficking> 22 February 2009.

⁴⁸ The IOM is currently looking at further action to facilitate dissemination and analysis of its internal data for policy planning and research. In particular it aims to produce a regular statistical report on areas of IOM data for public use. See *IOM's Activities on Migration Data: An Overview* accessed at <http://www.iom.int/jahia/Jahia/ensuring-protection-of-human-rights> 22 February 2009.

⁴⁹ There are also a number of smaller national and regional databases, particularly in Europe, that to some extent attempt to gauge the extent of trafficking to and from their countries and regions. A full account of these is beyond the scope of this Report but for further details see AIC 2009c.

committed her office to work towards the facilitation of a '[d]atabase disaggregated by gender, age, sector and region' that will collect and disseminate statistics, share information and produce analysis with regard to the extent of global trafficking in human beings (United Nations General Assembly 2009, p.9).

Domestic data – The extent of the problem in Australia

Official sources

Trafficking in persons to Australia does not feature prominently in international reports on the phenomenon. Nor is much information available in the global surveys from UN.GIFT, IOM or TIP on trafficking flows to, from and within this country (Schloenhardt 2008).

However, whilst the number of persons trafficked to Australia is unknown, what can be stated according to the UNODC is that Australia is primarily a destination country for trafficked women, most of whom appear to come from Thailand, South Korea and to a lesser extent China. There is no evidence of women being trafficked to Australia from Europe in any significant numbers (UNODC 2009). The US TIP Report comments that it seems the overwhelming number of trafficking cases in Australia are women brought to the major cities to work in the sex industry. Most enter Australia initially voluntarily and with the knowledge that they will work in that industry.⁵⁰ It is only later that they are subjected to debt bondage and sexual servitude (US Department of State 2009).

In Australia there are no comprehensive records kept of persons brought to Australia legally or illegally for the purposes of exploitation:

There are also no complete statistics about cases reported to police, the number of trafficking and trafficking related investigations, prosecutions of traffickers, and apprehensions of victims of trafficking. Consequently, any published figures on the level of trafficking in persons in Australia are at best estimates and are usually the result of guesswork rather than systematic data collection or comprehensive quantitative research (Schloenhardt 2008, p.3).

This is a situation that has given rise to comment and concern from several agencies, organisations and individual witnesses who gave evidence to this Inquiry. Nonetheless there is a number of academic and non-academic reports that *speculate* about the problem of trafficking in Australia, although there is little consensus about the size and extent of the problem. 'Where statistics on trafficking cases do exist, their value has been seriously undermined by the lack of a consistent definition of trafficking and the absence of uniform data collection methods' (Schloenhardt 2008, p.3).

A Commonwealth Joint Parliamentary *Inquiry into Trafficking of Women for Sexual Servitude*, echoed these concerns stating that the real extent of the problem in Australia was largely unknown and that evidence supporting estimates was anecdotal, non-statistical and/or based on indirect indicators (Parliamentary Joint Committee on the Australian Crime Commission 2004).

⁵⁰ Although evidence has been given to the Committee from several witnesses that the level of labour trafficking to Australia is much greater than hitherto thought.

Since 2004, however, some efforts have been made to get a better, more evidence based picture of the scale of trafficking in Australia. Ms Fiona David has conducted some of the more comprehensive research in this area for the AIC, giving at least an overview of the possible extent of the problem. In a report published in 2008 Ms David summarised the statistical information available from key federal government agencies as follows:

- Between 1999 and 31 December 2007, the Department of Immigration and Citizenship (DIAC) referred 221 matters (relating to 208 people) about trafficking in persons to the Australian Federal Police (AFP). 196 of these referrals (relating to 174 persons) related specifically to the sex industry. As the threshold for referral is low, not all ‘matters’ referred result in an investigation but may instead feed into overall intelligence gathering processes.
- From January 2004 to 29 February 2008, the Transnational Sexual Exploitation and Trafficking Teams (TSETT) within the AFP had undertaken over 150 investigations and assessments of allegations of trafficking-related offences. The majority involved suspected victims of trafficking who are female and allegations of sexual servitude.
- From 20 May 2004 to 31 January 2008, 88 victims of trafficking (87 of whom were women) had been provided with assistance through the government’s victim support program. This includes 62 Thai nationals.
- As at 30 January 2008, the CDPP had received 29 briefs of evidence from the AFP concerning trafficking offences involving 29 defendants. In relation to 28 of these defendants, the alleged victims were women who had allegedly been subjected to exploitation either in the sex industry (26 defendants) or in a domestic setting (two defendants) (David 2008a, p.6).

Yet as David comments, these statistics should be interpreted with caution: ‘[w]hile they present information about the level of government activity on trafficking in persons in Australia, they provide limited insight into the incidence of trafficking in Australia’ (2008a, p.6).

A joint submission from legal academics at the University of Queensland specialising in trafficking also makes the following observations:

At the national level, in 2007, the Office of the Commonwealth Attorney-General’s Department drew on information from the Australian Crime Commission (ACC) and other law enforcement bodies to suggest that around 100 instances of trafficking have occurred nationally in the previous five years. A recent review of the Federal Government’s response to human trafficking also noted that between January 2004 and April 2009, 34 persons were charged with human trafficking and seven of these individuals were convicted. This report also revealed that by April 2009, of the 119 suspected victims of trafficking who had received an Australian visa as a part of the trafficking victims’ support scheme, 31 of these persons were located in Victoria (compared to 79 visa recipients from New South Wales). Additionally, since 2004, 131 victims of trafficking have been assisted by the Commonwealth’s Support for Victims of People Trafficking Program, with 41 of these clients located in Victoria (compared to 83 in New South Wales).

All prosecutions of sexual servitude and trafficking in persons in Australia detected thus far occurred in Sydney and Melbourne, in addition to two recent cases in Queensland. The available data and other information suggest that the level of trafficking (in absolute figures) is lower in Victoria than in New South Wales. While this may be reflective of the population concentration in Australia's main urban centres along the east coast – and the size of their local sex industries – it is possible that trafficking in persons also occurs in other parts of Australia, albeit on a smaller scale which, in turn, makes it more difficult to detect.⁵¹

Despite such speculation about levels of local trafficking to and from Victoria, it is difficult to determine with any certainty the extent of trafficking in this State. Any official estimates are nationwide only and not analysed or broken down into specifically Victorian figures. Estimates of the possible scale of trafficking in Victoria have come largely from NGOs and agencies.

Non-government and community sources

There is much debate amongst NGOs working in the area of sex work and/or trafficking as to the true extent of sexual servitude in Victoria (Piper 2005; Putt 2007). Disagreements and discrepancies on estimates with regard to trafficking often reflect the different views such bodies have with regard to prostitution or sex work. For example, the NGO Project Respect, which advocates on behalf of trafficked women, gave evidence to the Commonwealth Parliamentary Inquiry in 2004 that up to 1000 women in Australia may have been trafficked at any given time (Parliamentary Joint Committee on the Australian Crime Commission 2004). More recently in a submission to this Inquiry, Project Respect reported that:

The number of women trafficked for sexual servitude/prostitution to Victoria is difficult to estimate for a number of reasons. Firstly, trafficking is illegal and therefore largely occurs undetected. Secondly, victims of trafficking may not identify themselves as having been trafficked because they fear retribution from traffickers or are traumatised by the experience. Thirdly, many organisations which probably come into contact with victims of trafficking lack the knowledge or resources to identify victims, and/or are reluctant to make a definitive identification. Lastly, there is no centralised body to coordinate the collection of data and statistics should trafficking be detected and victims identified.

In the last year, Project Respect has documented approximately 104 trafficked women in Victoria. Of these, we had direct contact with 17 women and were made aware of the further 87 women through sex industry sources. This does not include the number of women other community organisations told us they had supported but who were not referred to Project Respect. This kind of data does not allow reliable extrapolation as to the total number of trafficked women in Victoria, but without doubt this represents a fraction of all trafficked women.⁵²

⁵¹ Submission of the Human Trafficking Working Group, University of Queensland, TC Beirne School of Law, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁵² Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

Ms Vicki Di Mayo a support worker with Project Respect gave evidence to the Committee that in the three months to date that she had been working with the organisation she had personally met 25 women whilst visiting brothels who had most likely been trafficked. (Evidence of Ms Vicki Di Mayo, Outreach Worker, Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009).

These views are for the most part shared by other organisations that view ‘prostitution’ as inherent violence against women. Groups such as the Coalition Against Trafficking in Women (CATWA), for example, view official estimates on trafficking as merely the ‘tip of the iceberg’ and a gross underestimation of what really is happening.⁵³ Professor Sheila Jeffreys of the University of Melbourne, a key member of CATWA, likens sex trafficking to sexual assault crimes generally – as with rape and sexual assault many trafficked women are reluctant to report what has happened to them due to a combination of fear and shame.⁵⁴ In the context of trafficking, not understanding the Australian legal system, a mistrust and even fear of police and other government authorities, an inability to speak English and anxiety about being deported to their country of origin may all contribute to their reluctance to come forward.⁵⁵

Conversely, sex worker advocacy and support work organisations such as Scarlet Alliance and RhED (Resourcing Health and Education, a program auspiced by the Inner South Community Health Service), believe the number of women trafficked into sexual servitude in Australia and Victoria is much lower, and that the numbers proposed by Project Respect cannot be validated without more reliable data.⁵⁶

In a submission to this Inquiry, Scarlet Alliance stated that the number of sex workers on debt-contract in Australia at any one time is less than 400.⁵⁷ However Scarlet Alliance argues that debt-contracts and the crimes of trafficking and/or sexual servitude are distinctly separate. It claims that:

In Australia there is a recent trend towards making a distinction between trafficking and migrant sex work per se. In contrast, anti-sex work approaches to trafficking conflate definitions and therefore numbers of sex workers, sex slaves, trafficking victims and people who may be working in trafficking-like conditions. The result is unsubstantiated claims that trafficking is a huge problem and is always rising.⁵⁸

⁵³ See Submission of Coalition Against Trafficking in Women Australia (CATWA) to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

⁵⁴ In evidence to the Committee Professor Jeffreys noted that whilst in terms of sexual assault probably no more than one in five women would report the offence, in terms of trafficking according to some scholars it is more likely to be one in 10 or one in 20. (Evidence of Professor Sheila Jeffreys, School of Social and Political Sciences, University of Melbourne, Public Hearing, Melbourne, 6 November 2009).

As noted in the international context, research has suggested that approximately 90 per cent of trafficked women go undetected by immigration and other law enforcement authorities, although how the research tabulated such a figure is also open to question (Maltzahn in Fergus 2005, p.18).

⁵⁵ Submission from Professor Sheila Jeffreys to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, November 2009.

⁵⁶ Submission from Inner South Community Health Service (Resourcing Health and Education – RhED) to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

⁵⁷ Submission from the Scarlet Alliance to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

At the time of the Commonwealth Parliamentary Inquiry into Sex Trafficking in 2004, Project Respect estimated 1000 women were being trafficked into Australia in the period under review. Scarlet Alliance would have put the numbers at no more than 10. See Parliamentary Joint Committee on the Australian Crime Commission 2004, p.21.

⁵⁸ Submission of Scarlet Alliance to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

What accounts for such discrepancies?⁵⁹ In part, as the last point indicates, they may arise by differing definitions of ‘trafficking’. Scarlet Alliance does not necessarily equate cases of debt-contracts as indicative of trafficking. Project Respect, however, argues that notwithstanding that these women have willingly come to Australia to work in the sex industry, if they are deceived as to the conditions under which they are working and the size of their (exorbitant) debts they have essentially been trafficked.⁶⁰

Caution is also advised in the recent inaugural report produced by the Anti People Trafficking Interdepartmental Committee chaired by the Commonwealth Attorney-General’s Department. The report suggests one reason why there may be (often noticeable) discrepancies between estimates and reported cases is that:

Data is often collected for specific programs and/or institutions and focuses on the needs of individual agencies. Some NGOs may record suspected victims on first contact, regardless of whether they later meet the specified criteria for receiving assistance, whilst others record only those who do (Attorney-General’s Department 2009c, p.45).

The true position according to some commentators is probably somewhere in the middle. For example, Carrington and Hearn argue that in the absence of reliable data it is not surprising that these ‘wildly varying estimates’ have been propounded. Rough estimates extrapolated from secondary sources such as NGO surveys and estimates given by sex workers or police may inflate the extent of the problem whereas reliance on formal complaints made to government agencies or the number of prosecutions launched may significantly underestimate the problem (2003, p.5).

Future directions

In its Review of the Commonwealth Anti-Trafficking Action Plan the Australian National Audit Office (ANAO) stated that as of 2009, Commonwealth agencies were still not able to provide accurate data on the size of trafficking into Australia:

No method to produce reasonable estimates of the approximate number of victims of trafficking or a range that could be revised in light of better information over time has been developed. Arriving at such estimates is challenging but achievable and is important for assessing the success of anti trafficking methods (ANAO 2009, p.17).⁶¹

Nonetheless, whilst critical of the lack of reliable data in the area, the ANAO was encouraged that the Commonwealth government had supported the AIC in developing a research program to investigate trafficking into Australia, including its incidence and extent. The AIC has also acknowledged that a paucity of reliable statistics presents a significant challenge for the development of evidence-based responses to trafficking in persons. The first stage of the AIC’s Trafficking in Persons Research Program is

⁵⁹ Such differences of opinion are not restricted to NGOs. In a forum held with brothel owners, evidence given to the Committee varied from some owners who did not believe sex trafficking was an issue in Victoria at all, to owners who stated that it was indeed quite prevalent.

⁶⁰ See also Submission of Associate Professor Sharon Pickering, Monash University, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009, as to how differences in defining the problem of trafficking can lead to widely varying estimates on the scale of the problem.

⁶¹ A submission to this Inquiry by the Commonwealth Government supported this finding arguing that: ‘Without accurate estimates of the scope of human trafficking to use as baselines in project locations, it is very difficult to determine where interventions are most needed or where interventions would have the greatest impact’ (Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, October 2009).

therefore concentrating on building a data set of all relevant information from government agencies – both quantitative and qualitative.

The data monitoring component of the AIC's research program seeks to:

- Source and identify data sets that will provide relevant and reliable data for research on trafficking in persons
- Negotiate access to this data
- Undertake in-depth analysis of the data gathered (AIC 2009c, p.3).

An audit of current available data sources is also being undertaken.⁶² In addition to statistical data the AIC will seek other information from government and non-government agencies in order to build 'the most complete and accurate picture of the nature and extent of trafficking in persons in Australia' (AIC 2009c, p.3). In doing so, data will be drawn from the following sources:

- Data published in Commonwealth agencies' annual reports
- Surveys of relevant service providers and the wider community
- Court transcripts
- Other de-identified administrative data provided by Commonwealth departments
- Data from large scale programs in the region (eg. the IOM Counter Trafficking Module (CTM) database) (AIC 2009c, pp.2–3).

This data will be recorded and analysed on an ongoing basis and will add to knowledge of various aspects of trafficking in persons including awareness, attitudes, investigations, prosecutions and emerging issues.⁶³

Clearly the work of the AIC will go some way to addressing the gaps identified by the ANAO. The Committee commends the work the AIC is currently undertaking and encourages its ongoing support and funding through the Commonwealth Counter-Trafficking Action Plan.

Despite the ANAO supporting the AIC's work, a key recommendation of its Report was that the Anti People Trafficking Interdepartmental Committee of the Commonwealth Government develop a whole-of-government performance framework to address trafficking. Such a strategy it was recommended should include as a priority a method to establish reasonable estimates of the approximate number of victims of trafficking in Australia (ANAO 2009).

Whilst clearly the collection of data and the development of a monitoring framework would fall largely within the ambit of the federal government, given the number of federal agencies that would need to provide statistics and information, this Committee supports such a proposal.

⁶² See AIC Report *Trafficking in persons monitoring report July 2007–December 2008* for further details of the monitoring and audit programs (AIC 2009c).

⁶³ Ms Fiona David, a research consultant working in this area, stated that raising awareness of trafficking is a crucial part of gaining further information with regard to the scale of the problem. She likened the issue to that of domestic violence or sexual harassment. In her view it was not until these social problems became recognised as offences against the person in the public consciousness that the numbers of reported cases became more prevalent (Meeting with Ms Fiona David, Research Consultant with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009).

Wherever practicable state agencies such as Victoria Police or the Department of Consumer Affairs and relevant NGOs based in Victoria should also have input into such a whole-of-government framework.⁶⁴

⁶⁴ The Committee recommends the establishment of an independent, empirical evidence base to measure the extend of trafficking as part of its general recommendations with regard to research issues. See recommendation 26 in Chapter 17.

4. The Nature and Stages of Sex Trafficking

In Australia, as in most countries, acts of trafficking rarely come to the attention of the authorities until after the woman arrives at the destination country. Unlike people smuggling, trafficking is usually only apparent once the exploitation has occurred (Gallagher & Holmes 2008). Segrave explains this as follows:

While it is referred to as an organised cross-border crime, the act of crossing the border rarely involves force or kidnapping, as much as this appeals to imaginative and dramatic representations. Indeed, trafficking is in many ways a crime that comes into being retrospectively, as it is only in what happens after the border crossing that elements of deceit may be identified. Thus, it is within the country of destination that individuals come to the attention of authorities – often, in Australia, within the context of an immigration raid – and in the ‘moment’ they are found there is a decision made as to whether an individual is a legal or illegal non-citizen and/or whether he or she may potentially be a victim of trafficking (2009a, p.83).

At this stage it is rare for investigators to discover women in extreme forms of slavery. More often they will be in exploitative situations:

[w]here individuals are working under unacceptable conditions they did not agree to; where they are undertaking different employment from which they agreed to; and there they are being underpaid or working in conditions of debt bondage, in which significantly inflated repayment fees are being deducted from their wage to repay those who facilitated their immigration and/or employment (Segrave 2009a, p.83).

The key features of trafficking can be examined at different stages of the process: the original contract making; the entry to Australia; the exploitation, deceit and use of fraud and fear to keep a woman with her ‘captors’; and eventually how the trafficked victim comes to the attention of the authorities.

Before doing so however it is important to acknowledge the experience of trafficking from those most affected by that experience – trafficked women themselves. The following illustrative account is drawn from ‘*An open message of thanks to the Justices of the High Court of Australia*’.⁶⁵ It is a heartfelt statement from trafficked women in response to the High Court decision in the *Queen v Tang* [the *Wei Tang* case] the leading Australian case on sex slavery and sexual servitude.⁶⁶ The message of these women affirms the importance of how research into trafficking must wherever possible pay heed to the many women’s voices that have hitherto remained silent with regard to their experiences of trafficking.⁶⁷

⁶⁵ Reproduced with the kind permission of Project Respect. See www.projectrespect.org.au – See Appendix 4 for full statement.

⁶⁶ See discussion in Chapter 6 of this Report

⁶⁷ This issue and the understandable difficulties associated with accessing the stories of trafficked women is discussed in Chapter 17 of this Report.

An open message of thanks to the Justices of the High Court of Australia

What happened to us was a nightmare. We can never forget. It comes back to us in dreams. This will affect us til we die. It has changed us.

We were treated very badly. We worked from 11am to 3 or 4 am. We slept only three or four hours a night. Sometimes some of us worked for 24 hours. For four or five months, all we did was prostitution. Even when we had our period, we had to work. Sometimes we worked until we couldn't walk. We had to work until we were very very sick and the customers refused to take us. Only then were we allowed to rest, for one day.

Some owners were not so cruel, but even when they were friendly, they still treated us as slaves.

We were made to feel like animals. Customers were violent. Some of the customers were crazy. They treated us like animals. We were sexually abused, we were dragged, we were hit. Some of us were given drugs so we could work all the time. Some of the women we know have become drug addicts and now they have to keep doing prostitution to pay for drugs.

It was like we were in jail – we had no free time, we couldn't go anywhere, we never had freedom. The traffickers treated us as slaves. We didn't have anywhere to go.

It felt like we survived and died at the same time. We had to keep doing what the traffickers said, for ourselves, and for the people we loved. The traffickers threatened us – we were scared they would hurt us and our families. Some of us thought we could be killed. We blamed ourselves for what happened, because we had wanted to come to Australia.

This changed our lives.

After we had been trafficked, if we met a good man, some of us thought we didn't deserve to be with him, that he deserved someone better. Some of us knew we deserved better, than to be trafficked, but men we loved treated us badly and told us we were dirty and couldn't expect anything better. It was hard to speak when we were treated like that.

Before this High Court decision, we felt the public didn't know what happened to women like us and that they would judge us, and we felt that people like us didn't deserve anything better.

But just because we have been prostitutes doesn't mean we are not good people – we had no choice. We did this to survive.

One trafficked woman decided to make an additional statement that supplements the previous message, which she however contributed to and endorsed:

It is important that people understand that the experience of being trafficked is absolutely the worst thing you can ever imagine. I want people to know that this is happening in Australia.

Before I came, I had a nice life in Thailand, a nice job. I was tricked by a family member to come here, who sold me.

I experienced the most extreme brutality. I was in a 24-hour brothel, where I was woken at any time to see customers. They didn't wake me up by speaking to me - they kicked me. They made me take speed, so I could keep working. I had a gun pointed at my head.

The people who brought us here are so bad, they damaged not just one but so many lives. It never goes away. They have made it hard for me to trust anyone again.

When someone treats you like a dog for a long time, you start to believe you are a dog. You never get your voice back. You lose your confidence. You feel like you are an animal.

Afterwards, sometimes I felt like I was too dirty to touch my own son. That kind of experience made me feel like I'm not human, makes me feel so dirty, even too dirty to touch my own baby.

Thanks to the Judges, they help so much, they can help people to understand what we have been through.⁶⁸

⁶⁸ The full text of these documents can be read in Appendix 4 of this Report.

The core features of trafficking

In looking at the stages of trafficking it is useful to repeat the UN Protocol's definition of trafficking:

Trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction of fraud, or deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (United Nations Trafficking Protocol 2000: Article 3b).

The essential defining feature of the crime of trafficking however is not transportation of victims but the enslavement and exploitation of human beings 'day after day, for years on end' (United Nations Office of Drugs and Crime (UNODC) 2009, p.6). As such, the term 'trafficking' can be misleading, as it tends to place emphasis on the transaction or movement aspects of the crime. Trafficking, however, does not require such movement although usually this will be a key feature. As pointed out in Chapter 3, domestic trafficking within the same city, state or country is of growing concern. Whilst it is still largely a hidden aspect of the trafficking problem, the UNODC suspects that domestic trafficking is increasing in many countries (UNODC 2009).

Recruitment of victims

There are four basic ways in which traffickers recruit a person into sex work:

- Complete coercion through abduction or kidnapping [relatively rare];
- Deception by promises of legitimate employment;
- Deception through half truths, such as their employment will be in entertainment, dancing or stripping;
- Although being aware they are going to work in prostitution, they are not made aware of the extent to which they will be indebted, intimidated, exploited and controlled (Ford 2001, p.31).

In Australia the fourth type of recruitment seems to be the most prevalent.⁶⁹ As Ford states: 'Women know that they will be working in prostitution, the deception is usually in terms of remuneration or working conditions' (2001, p.31). The United Nations' Protocol clearly encompasses this form of deception as to the *conditions* of work not just the *type* of work entered into: 'That is, a woman may understand that she is being recruited into prostitution, but not that she will be denied freedom of movement, have her passport confiscated and be debt bonded' (in Fergus 2005, p.6).

Whilst each case needs to be approached on its own terms some generalities about recruitment to Australia can be made on the basis of Australia Federal Police (AFP) investigations, case law prosecutions and the reports of non-government organisations (NGOs) such as Project Respect. For example, evidence from these sources indicates that the majority of women recruited to Australia for the purposes of sex trafficking are from South-East Asia and particularly Thailand, with South Korea, Indonesia and Malaysia also featuring prominently. China and the Philippines are also mentioned as

⁶⁹ See for example *DPP v Glazner* [2001] VSCA 204 [6] and the other reported cases on sex trafficking in Australia listed later in this chapter.

source countries but there is little evidence of trafficking from non-Asian countries (AFP 2008c; Schloenhardt 2008; UNODC 2009).

Methods of recruitment

There are three basic forms of recruitment that can be used to traffic women. These could be termed:

- Recruitment through ‘spotting’ or active recruitment
- Recruitment in transit or secondary recruitment
- ‘Self recruitment’.

There is also some evidence that increasingly information technology such as the Internet is used as a tool for recruitment of women already in the sex industry,⁷⁰ although this has not been thoroughly investigated (United Nations General Assembly 2009).

Recruitment through ‘spotting’ or active recruitment

A typical example of this recruitment process occurs in rural villages throughout South East Asia, particularly Thailand. A recruiter sometimes called a ‘spotter’ or his agent contacts a local woman or girl directly or visits that woman’s family or relatives. In many cases the recruiter may know the woman or her family. The family may be paid a ‘spotting’ fee to ‘persuade’ the woman to enter a contract to work either domestically (for example in Bangkok) or overseas.⁷¹ In some cases, particularly if the victim is a child, she can be ‘sold’ to the traffickers by a parent or family member (Attorney General’s Department 2009c, p.4). Often in these cases the parents are deceived as to the nature of the work the child will be doing once she has left home (Parliamentary Joint Committee on the Australian Crime Commission (PJCACC) 2004).

There can be a great deal of emotional pressure put on the prospective trafficking victim at this stage of the process. For example, the woman may feel a great sense of duty and obligation to agree to the family’s wishes for her to work in order to improve their standard of living. O’Connor and Healy argue there are also other emotional and cultural ploys used by traffickers to attract, recruit and coerce victims. These may include young men (the trafficker or more often his agent) ‘ensnaring’ his victim by:

- Impressing the young woman
- Winning her trust and confidence
- Making her think he is the only one who truly understands her
- Ensuring she falls in love with him, giving her presents, usually including a ring
- Claiming the status of her boyfriend (2006, p.8).

It might often be this ‘boyfriend’ who accompanies her to Australia only to reveal his ‘true colours’ once she has been placed in a brothel in the destination country.

⁷⁰ Ms Shirley Woods, Outreach Coordinator, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

⁷¹ In the context of Cambodia, studies have identified several key recruitment networks including household, village and ‘friendship networks’ comprised of former trafficked women and girls. ‘All of these networks were found to take advantage of dysfunction within the household, gender based norms that support violence against women and patterns of social shame to perpetuate trafficking practices’ (Brown 2007, p.9).

Recruitment in transit or secondary recruitment

An alternative method of recruitment occurs when women who have already left a rural village background to work in a large city are approached. They could be working in the hospitality, entertainment or sex work industries in a country such as Japan, Singapore or Macau when they are approached to come to Australia (Schloenhardt 2008).

Each region may have its own particular methods of recruitment and traffic routes/flows although much of the knowledge in this area is speculative and anecdotal. For example, there is some evidence of Chinese women being exploited for sexual purposes through the Pacific region fishing industries. Other anecdotal evidence suggests that taxi drivers in Fiji may be used as ‘middlemen’ for tourists to engage with sex workers in Port Vila. There simply has not been enough investigation or research to substantiate these or other examples of trafficking practices (D Evans 2009).

‘Self-recruitment’

Thirdly, there is some evidence that a victim may approach the traffickers with the aim of being recruited to work in Australia (or elsewhere). In these circumstances, however, it is unlikely that she would be aware of the conditions she would be working under (Attorney General’s Department 2009c).

Entering contracts

If the woman is promised work in Australia, a country of which she may have little knowledge, she may be expected to enter a ‘contract’, the true nature and terms of which may not be apparent until after arrival in Australia.⁷² Passports and visas will then be organised on her behalf by the recruiter, often on the basis of fraudulent information. She will often be required to surrender that passport to an accompanying minder. If a victim tries to pull out of her ‘contractual obligations’ at any time prior to departure, force may be used or she may be made to feel guilty ‘that the trafficker has gone to a great deal of trouble or spent a lot of money on her behalf’ (Fergus 2005, p.22). The woman may then wait several months between the first contact and her departure to Australia (Schloenhardt 2008).

Women as recruiters and traffickers

There is some evidence to suggest that women are involved in trafficking as perpetrators, particularly during the recruitment stage. This can be deduced from the relatively high number of women who are defendants in trafficking cases prosecuted in Australia and from UNODC data suggesting a disproportionate number of women are involved as traffickers compared to women charged with other criminal offences. There have also been a surprising number of women charged with trafficking offences who may have once been trafficked themselves⁷³ (UNODC 2009; Attorney General’s Department

⁷² Evidence was given to the Committee by Commonwealth lawyers who prosecute trafficking crimes that recruiters, particularly in Thailand, buy blank standard contracts in large amounts, tear off the format pages, fill in the details but neglect to state an amount that the woman must pay back, and get a family member or friend to co-sign as a guarantor. Quite apart from the fact that these contracts are of dubious legality, in many cases, particularly in developing countries, the women who sign them may have only minimal reading and writing skills (A Senior Legal Officer, Commonwealth Department of Public Prosecutions (NSW), Meeting with Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009).

⁷³ See for example, *Sieders v R and Somsri v R* [2008] NSWCCA 187 [13]; *The Queen v Tang* [2008] HCA 39 *DPP v Ho and Leech* [2009] VSC 495; *R v Kovacs* [2008] QCA 417 [12].

2009c). The UNODC has commented that one of the pressing research issues in this area is to understand why female offenders have a more prominent role in trafficking than in other forms of crime and in particular why former victims may become perpetrators (2009). However one of the reasons why women may take a prominent role at the recruiting stage might be that these women (sometimes called ‘mama sans’) can seem more trustworthy than males (Fergus 2005).

Facilitating entry to Australia – use and abuse of process

Trafficking can occur whether women arrive through legal means (valid visas and documentation) or illegal means. There is little evidence of trafficked women being brought out on Section 457 or skilled migration visas.⁷⁴ However it is not unusual for traffickers to arrange documentation such as student, visitor/tourist or working holiday visas on the basis of incorrect, forged or otherwise fraudulent applications in the source country.⁷⁵ At this stage of the recruitment process money may also be deposited in an account opened in the victim’s name to give veracity to her application for a visa. This may be particularly the case if the ‘woman’ has made an application for a tourist visa. She will then be able to show she has sufficient means to support herself in Australia even though it is highly unlikely that she will have access to or control over those monies once she has reached her destination. There is also some evidence that traffickers may arrange for sham marriages to a ‘mule’ or other person in order to strengthen their visa applications (PJCACC 2004, p.11).

The use of student visas

The PJCACC’S Inquiry on sex trafficking found that the most common basis for entry of trafficked victims is either on a student or tourist visa.

Data released by the Commonwealth Department of Immigration and Citizenship (DIAC) and cited in a recent Report by the Australian Institute of Criminology (AIC) showed that of the 159 suspected cases of trafficking referred to the AFP in 2004–2005:

- 122 were related to persons who arrived in Australia on visitor [tourist] visas
- 12 were related to persons who had been issued business visas
- 7 were related to persons who had been issued working holiday visas
- 4 were related to persons who had been issued student visas (AIC 2009c, p.38).⁷⁶

These figures indicate that whilst the PJCACC’s concern with regard to visitor visas were valid, its concern with regard to student visas may not be as justified. However, although recently published, these figures are rather outdated. Anecdotal evidence given to the Committee suggests that the numbers of trafficked women on student visas is quite large and growing. Certainly Commonwealth prosecutors working on trafficking cases

⁷⁴ One proposal that has been put forward by some sex worker advocacy groups is that women from overseas, particularly Asia, be allowed to migrate to Australia on a special class of skilled migration visa for sex workers – similar to the current Section 457 visas.

⁷⁵ The Parliamentary Joint Committee on the Australian Crime Commission’s Report, ‘Inquiry into the trafficking of women for sexual servitude’ expressed concern at ‘the ease with which traffickers appear to obtain entry visa for the hundreds of women they bring into Australia each year for the purpose of sex work’. It recommended the Australian Crime Commission investigate how traffickers are able to circumvent immigration barriers through visa fraud (PJCACC 2004, p.viii).

⁷⁶ No indication was given in the source material as to the type of visa the other 14 suspected cases had.

have seen evidence of trafficked women entering Australia on student visas. Moreover, being on a student visa did not exclude them from working legitimately in the sex industry. These prosecutors told the Committee the problem is that in such cases it is very difficult to prove these women were working more than the 20 hours permitted on such a visa or that they had been brought to Australia to be exploited as trafficking victims.⁷⁷

Concern has also been expressed to the Committee about the role played by some colleges that accept overseas students, particularly in Sydney and Melbourne. Although no categorical evidence has been presented that these private education providers are complicit with trafficking activities, there have been suggestions that this 'under regulated' sector may unwittingly be used to provide a cover for traffickers and their operations. In particular, it has been observed that some colleges have been less than vigilant in monitoring attendance rates of people on student visas when obliged to do so.⁷⁸

Evidence given to this Inquiry by trafficking victim support workers also indicates that in some instances women are even paid to attend college or at least make an appearance as substitutes for the enrolled victim. For example, Ms Nina Vallins, Executive Director of Project Respect, stated:

We are aware of cases where women have come in on student visas and they never set foot in the school. The school is in on it. The school is paid off or whatever it is to tick the women off on their roll, or there have been cases where someone else would go to the school on behalf of that woman and pretend to be her. But clearly there are these very dodgy schools which are assisting traffickers in their operations. It is a frustration for us that there does not appear to be monitoring of the schools.⁷⁹

Captain Danielle Strickland of The Salvation Army gave a different perspective on how bona fide students may get caught up in trafficking once in Australia. In her view many young women who are legitimately here as students and finding it hard to make ends meet are susceptible to being recruited for sex work whilst in Melbourne – that is, they are subjected to a form of domestic trafficking.⁸⁰

Corruption and the granting of visas

Sometimes visas sought for trafficking victims may be granted through bribing corrupt officials or using dishonest migration agents in the home or source country. Therefore corrupt government officials '[m]ay be key conduits in the facilitation of sex trafficking' (McSherry & Cullen 2007, p.209; see also Moskowitz 2008; AIC 2009c).

⁷⁷ See evidence of Ms Mary Lagana, Principal Legal Officer, Commonwealth Department of Public Prosecutions (NSW), Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

⁷⁸ See, for example, Submission of United Nations Association of Australia (UNAA), Status of Women Network, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009. See also Ford 2001.

⁷⁹ Ms Nina Vallins, Executive Director of Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009. See also: Professor Jennifer Burn, Anti-Slavery Project, University of Technology Sydney, Meeting with Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 30 November 2009.

⁸⁰ Captain Danielle Strickland, Social Justice Director, The Salvation Army (Australian Southern Territory), Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 7 December 2009.

Dr Anne Gallagher has observed that in some cases not only do public sector employees such as police and immigration officials turn a blind eye to evidence of trafficking, they may actually play a key role in facilitating illegal entry and provide protection to trafficking operations.⁸¹ The AIC has noted instances of high levels of complicity between traffickers and immigration officials in Malaysia. Such cases have allegedly included immigration officers handing over illegal immigrants at the Thai border to traffickers for a fee. These people are then sold to the fishing industry if they are men or into sex work if they are women (AIC 2009c).

Even in Australia it has been speculated that corrupt immigration agents may have been used to assist when the trafficker seeks a change in visa status on behalf of the trafficked person. For example, the trafficker may seek permanent residency or refugee status for the victim for a period long enough to pay off her debt.⁸² In the case of *DPP v Ho and Leech* the Thai victim was brought to Australia on a tourist visa but her trafficker later made an application for a protection visa to extend her stay. The victim was coached to say that she had converted from Buddhism to Mormonism and would therefore be persecuted if she returned to Thailand.⁸³ Sometimes, however, fraudulent applications for a change in visa are done without the knowledge of the victim (Ford 2001).⁸⁴

Evidence of organised crime?

Currently, there is insufficient knowledge to confidently make a claim about the involvement of organised crime syndicates in sex trafficking operations in Australia (Schloenhardt 2008).⁸⁵ The discussion in the previous section suggests there may be a high level of *corruption*, particularly at the source country, in arranging for a trafficked woman to come to Australia, but this is not to say there are high level organised crime syndicates involved in the process.

Raymond argues that part of the problem is how concepts such as organised crime are defined. She states that it is a mistake to conclude that transnational organised traffickers always operate in large syndicates:

As the *Convention Against Transnational Organised Crime* recognises [Art. 2] an organised criminal group means a structured group of three or more persons. For example research has shown that husbands and boyfriends of women often recruit, traffic and pimp their female partners into prostitution. They may engage a small group of friends or others to assist in the crime (2003, pp.2–3).

⁸¹ Dr Anne Gallagher, Evidence given to the Parliamentary Joint Committee on the Australian Crime Commission *Inquiry into the trafficking of women for sexual servitude* 2004, Parliament of the Commonwealth of Australia, Canberra.

⁸² Mr Charnderev Singh, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009. See also the case of *DPP v Ho and Leech* [2009] VSC 495.

⁸³ *DPP v Ho and Leech* [2009] VSC 495 at p.498.

⁸⁴ There has been some evidence given to the Committee that once their victims have almost finished paying off their contract debts, and are therefore of little pecuniary 'worth', traffickers have sought to have those women deported back to the country of origin and have even colluded with corrupt migration agents or immigration agents to do so. (Mr Charnderev Singh, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.)

⁸⁵ Certainly this Inquiry received suggestions from a number of individuals and organisations that organised crime networks were rife in the sex industry in Australia and by extension so was sex trafficking. However little hard evidence was supplied to support (or negate) such a proposition.

The International Organisation for Migration (IOM) notes that the role of criminal networks in sex trafficking varies depending on where it takes place and the scale of the operations. The IOM distinguishes between *large scale* (networks with contacts in different countries of origin, transit countries and destination countries); *medium scale* (specialising in trafficking from one particular country); and *small scale* (trafficking of one or two women at a time) networks (IOM in Segrave, Milivojevic & Pickering 2009).⁸⁶

In the Australian context, AFP investigators have noted that whilst the groups and individuals trafficking women into Australia certainly exhibit a high degree of organisation:

[t]hey are not at the 'high end' of major organised crime. Those involved have tended to include small business owners with business or family links to those involved in the other parts of the trafficking process, such as recruitment or document fraud. In particular, the groups involved in human trafficking do not appear to have the same high levels of organisation and sophistication as drug traffickers (David 2008a, p.34).

Similar characteristics of smaller scale trafficking enterprises in Australia were commented on in the Inaugural Report of the Commonwealth Inter-Departmental Anti Trafficking Committee (Attorney-General's Department 2009c).

Representatives of Project Respect note that their experience reveals a variety of players are involved in trafficking women to Australia although evidence of large-scale criminal syndicate involvement is yet to be substantiated:

[W]omen are commonly trafficked here through a network which starts with recruiters in the origin country who are paid to source women for brokers who then sell the women to traffickers in Victoria. This can operate as a 'pre-order' arrangement and traffickers may view the women before deciding to buy them, rather like a sale at a cattle auction (see, for example, the case *DPP v. Leech* and *DPP v. Ho*, 2009). Traffickers in Australia may also operate organised chains, recruiting women in source countries then prostituting them into their own brothels in Australia. There are also very small-scale traffickers, with one or two people bringing out a couple of women (see, for example, *DPP v. Dobie*, 2008), or traffickers who may have a share in a woman. Traffickers may traffic a number of women and have an entire brothel with only trafficked women, though they may not be the licensees of the brothel (Wei Tang, [*R v. Wei Tang*, 2005, 2006] was the licensee; Kam Tin Ho and Ho Kam Ho [*DPP v. Ho, Ho, Hoo and Rahardjo*, 2009] were not). Traffickers may also place a single trafficked woman in a brothel owned by an associate, and split the extortionate profits made from prostituting this woman with the licensee.⁸⁷

⁸⁶ For example, Piper suggests that at a regional level the extent to which organised crime is involved in people trafficking is 'questionable'; 'At least within the Mekong sub-region, trafficking appears to resemble more of a cottage industry rather than organised crime, with local recruiters being seen as providing a service to the community' (2005, p.212).

⁸⁷ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

Trafficking in this context is ‘crime that is organised rather than organised crime’ (Finckenauer 2001, p.172). But according to some senior Australian investigators this distinction may be somewhat beside the point. At a Roundtable of Commonwealth government officials it was acknowledged that there might not be evidence of sophisticated organised syndicates involved in trafficking similar to the Russian mafia in the European trafficking context. It was also acknowledged, however, that a lack of conclusive evidence linking organised crime networks to trafficking in Australia does not mean the link does not exist.

People, unlike drugs, can be trafficked again and again and are therefore more profitable for the trafficker. Moreover people can be transported across international borders without arousing the same level of suspicion as drugs or arms. These factors and the clandestine nature of trafficking make the trade potentially very lucrative for organised crime networks (McSherry & Cullen 2007).

Transport to and arrival in Australia⁸⁸

During the transport stage the victim may be accompanied by a ‘mule’, someone to ‘guard’ her on the flight to Australia and through the immigration and customs process. This may be the trafficker or his agent or assistant. Sometimes the ‘mule’ may pose as a husband, boyfriend or family member. It is not unusual for the trafficking network to be spread over a number of locations. For example, the chief trafficker may reside in Australia and have agents in the source country or vice versa. The person who initially recruits the woman may not be the same one responsible for her during the transport stage and the person who ‘manages’ her when set up in the brothel may be different again (Fergus 2005, p.22).

Project Respect representatives state that in their experience:

[w]omen are accompanied from the airport in their home country and dropped off in Australia to the person who is last chain in the trafficking network and will do the real exploitation. The ‘chaperone’ takes the woman’s passport and speaks to all immigration and customs officials on behalf of the woman. Sydney is often the city of arrival for victims of trafficking in Australia, and women may then be brought directly to Melbourne. Many women are also moved to and from brothels in Sydney and Melbourne.⁸⁹

On arrival in Australia the victim may believe she has entered legally and legitimately⁹⁰ or alternatively she may have been ‘primed’ to give a fictional account of the reasons for her journey. This will particularly be the case if she is on a tourist or short-term visa. If she has lied about her reasons for entering the country ‘she will be very reluctant to go to the authorities later, and threats to report her to immigration authorities can be used by her traffickers’ (Fergus 2005, p.22).

⁸⁸ The discussion in this section is premised on the woman being ‘moved’ to Australia from overseas. As discussed earlier, there are certainly cases of domestic trafficking whereby trafficking occurs without any form of movement or transportation.

⁸⁹ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁹⁰ Indeed research with regard to Asian sex workers (mostly Thai and Chinese speaking) in Sydney indicated that many sex workers thought they were working on legitimate visas. See Pell et al 2006.

Exploitation – the chains of economic bondage⁹¹

The aspect that distinguishes trafficking from smuggling is exploitation of some type, which is also the core of the Palermo Protocol (McSherry 2007). Yet the threshold for what counts as exploitation is actually quite low. As long as there is some level of ‘abuse of vulnerability’ the requirement will be met (Kneebone 2009, p.16). The phrase ‘abuse of a position of vulnerability’ takes into account ‘[t]he fact that trafficking does not always occur by force, but often involves close family members pressuring or convincing the victim to partake in the activity’.⁹²

Usually this abuse first becomes apparent on arrival in Australia. It is then that a trafficked woman first realises she may have been duped with regard to the type of work she will be performing and/or the conditions under which she will be working. This may be when she is first told she is to be a sex worker. It is also usually when she is made aware of the terms of her ‘contract’ and the grossly inflated debts she has ‘incurred’. For example, the worker might be expected to pay anywhere between \$AUD 40,000–60,000 for expenses that are actually little more than the cost of an airline ticket.

Whilst one should bear in mind the warning that ‘women’s complex stories of victimisation are invariably simplified and reduced to manageable linear journeys’ (Segrave, Milivojevic & Pickering 2009, p.35), it is nonetheless true that there is a startling uniformity to the ‘narratives of trafficking’, at least with regard to the exploitation experienced.⁹³

For example, whilst the stereotype of women being chained to their beds or kept in dark cellars may not necessarily be true, accounts from support workers in the field or the transcripts from trafficking prosecutions leave no doubt that many trafficked women do have their freedom of movement restricted.

⁹¹ The term is that of Chris Payne, former AFP officer and trafficking investigator. He argues that whilst most trafficked women may not be physically enchained their liberty is no less curtailed for that (Payne 2003).

⁹² Submission of the Human Trafficking Working Group, University of Queensland, TC Beirne School of Law, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁹³ Although it should be borne in mind that not all observers view cases of the exploitation of Asian women in the sex industry as ‘trafficking’. For example, Segrave argues that because there are few cases of extreme or traumatic slavery, exploitation should be looked at least in some cases as an issue of poor labour conditions and addressed accordingly (2009a, p.84). In other words, the needs of some trafficked women may be better served by recompensing them for the exploitation suffered rather than through repatriating them to the country of origin after a long, traumatic and complex trafficking trial. Sex worker advocate Ms Elena Jeffreys from Scarlet Alliance similarly believes many women who are perceived to have been trafficked are in fact free agents who have chosen to come to Australia but who may be working in conditions which are unacceptable and indeed exploitative. The appropriate response is not to remove them from brothels as trafficked women but to address the exploitative conditions under which they were working:

‘Now the word “exploitation” is crucial to our understanding of what trafficking is in Australia because it has different meanings to different people with different philosophies about whether or not sex work is exploitation per se. When we talk about exploitation, we talk about work conditions that are exploitative. Some people believe that all sex work is exploitation and that, therefore, all movement of sex workers and all migrant sex work is exploitation and all migrant sex work therefore is trafficking.

In other words whilst sex workers may be working in conditions in which they are exploited not all cases of exploitation particularly of Asian sex workers equals trafficking’ (Ms Elena Jeffreys, President, Scarlet Alliance, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009).

Further discussion with regard to differing views on what counts as trafficking is found in Chapter 10.

The ‘breaking-in’ stage

This restriction of movement is a common feature of what is termed in the literature as the ‘breaking-in’ stage when women have first arrived in Australia. This process can include:

- Removal of the woman’s passport;
- Being escorted to and from the brothel to a place of accommodation usually shared with other trafficked women;
- Being locked in room at night or having bars placed on windows;
- Sub-standard food, facilities and other provisions;
- General isolation from anyone other than fellow workers such as other trafficked women, their minders and the clients; and/or
- Having their earnings deducted for accommodation, food, toiletries and medical care.

The realisation that they have been deceived comes as a great shock to the women. This is when they may experience the most violence. Project Respect gives a graphic account of the experiences of women during the ‘breaking in period’:

The traffickers need to “break their resistance”, show them that they are essentially the “property” of the trafficker, in no position to make choices or decisions about their lives. Victims have described how they were often raped and beaten for this purpose, as well as to “prepare” them for prostitution sex. The sexual violence teaches them that they are there simply to satisfy “customers” and cannot refuse types of “customers” or any sexual act (including sex without condoms). Some victims report being shown pornographic images or videos and told that this is what they will be required to do. Rape, physical violence, starvation, and threats of harm to the women’s families are all used to instil fear and punish those who resist or try to escape (in Fergus 2005, p.23).

Sometimes the violence needs only be implicit rather than actual. An example was given in evidence in the Glazner case where Mr Glazner allegedly would carry a gun on his person – always in view of the women in his ‘employ’.⁹⁴

Inflating the debt

Trafficked women will usually work for six days a week with all money being earned going to the ‘house’ to pay off their original debt and any of the expenses incurred in ‘looking after’ them:

The trafficker makes an absolute profit from this difference, and from the disproportionate rate at which the “debt” is to be paid off (the “debt” is calculated at a lower rate per half hour than that charged by the trafficker to “clients”). The victim is told that she must provide a certain number of “free services”, typically between 500 and 1,000. They cannot refuse customers, sex acts, or sex without a condom. In order to maximise profits for traffickers, the victims must “work” long hours, doing 18 to 20 “jobs” a day, frequently seven days a week, including when they are sick or menstruating.

⁹⁴ See *DPP v Glazner* [2001] VSCA 204 [6].

Some women report being woken and taken back to the brothel if customers arrive. Seeing no way out of their situation, many women resign themselves to paying off the “debt” as quickly as possible. Many hope that if they can “get through it”, they will be able to go home, or might be able to make their own money to send home (especially if they have children or family depending on their income) (Fergus 2005, p.23).

Former trafficking investigator Det Snr Sgt McKinney, Victoria Police, describes how an already inflated debt can become larger when the women are working in the brothels:

They had to work for six days a week, and Monday was called their ‘free day’. But their free day was not effectively their free day, because if they did not work on their free day they did not have any money at all to survive on. So the deal for them was that if they chose to work on the Monday, which was the seventh day, they were given a portion of the earnings...[But] they had to work on the Monday just to buy personal items, because all they were given was a room and board – that was it nothing else.⁹⁵

These ‘add on’ expenses make it almost impossible for the women to send much money back to their families, which is the reason most women come to Australia in the first place. This partly explains why some women choose to continue working in the brothel once their contract has ended and their debt paid off.

Isolation

A lack of language skills and ignorance about Australian laws and customs ensure most of these women live in great isolation. Many may not even know where they are and this sense of dislocation may be exacerbated by them being frequently moved around from brothel to brothel, city to city – particularly between the major trafficking centres of Sydney and Melbourne. One way of keeping the women ‘under control’ has been to threaten them with being dropped off in the middle of the Australian outback.⁹⁶ This sense of isolation and control is reinforced and compounded by:

[t]he woman’s distrust and fear of the authorities, and the fear – deliberately cultivated – that the law enforcement agencies are involved with the traffickers and misinformation about the consequences of cooperating with the authorities (PJCACC 2004, p.15).

Given this level of fear, distrust, isolation and disconnectedness it is not surprising that trafficking victims may be reluctant to bring their cases to the attention of the authorities.

How are cases of sex trafficking ‘discovered’?

The investigation of suspected trafficking cases is primarily done by the AFP (Transnational Sexual Exploitation and Trafficking Team –TSETT) who can be alerted to a possible investigation through a number of sources.⁹⁷ These may include:

⁹⁵ Former investigator, Det Snr Sergeant McKinney of the Victoria Police, Evidence to the Parliamentary Joint Committee on the Australian Crime Commission 2004, p.15.

⁹⁶ Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

⁹⁷ For a discussion of the operations of TSETT and the investigation of trafficking generally see Chapter 8.

- Internal referrals from within the AFP;
- State and territory police;
- Embassies and consulates of the trafficked victim;
- Sex industry regulators such as the Department of Consumer Affairs (in Victoria);
- Owners and staff from competing brothels, particularly when the reporting brothel is legal and the suspected trafficker is running an illegal brothel (PJCACC 2004, p.17);
- Concerned clients of victims either on their own initiative or at the request of the victim;⁹⁸
- NGOs, particularly those advocating on behalf of sex workers and trafficked women;
- The general public, including people who may have been in contact with the victim, such as medical professionals, shopkeepers, hairdressers, taxi drivers; or
- The victim herself.

The vast majority of referrals to the AFP however come from the DIAC, usually after a compliance raid on a brothel (AIC 2009c). The least common means of referral is for the victims to approach officials voluntarily as victims of crime (Zimmerman 2002 in David 2007).⁹⁹

However, as the PJCACC noted, drawing from evidence given by Project Respect, perhaps the most ironic source of referral are ‘tip offs’ to the AFP or DIAC from the traffickers themselves:

Project Respect report that: ‘at times, traffickers themselves contact [DIAC] and “dob” the woman in, if a woman is close to finishing her “contract”. Once the contract is paid off, the woman is entitled to a percentage of her earnings, which therefore reduces her profitability to traffickers and brothel owners. At the same time, she may:

- ‘contaminate’ new contract women (for example, by telling them how to seek help, by explaining to them what the Australian legal situation is etc);
- operate in competition to the contract women.

This is particularly unfair for the women because it is only after the contract is paid off that they have the opportunity to make the money – which is of course the reason they entered into the arrangement in the first place. This in turn increases the likelihood that they will enter into further contracts with traffickers and be re-trafficked.

In a final irony, if [DIAC] deports the woman, the traffickers may save on airfare and escort costs (PJCACC 2004, pp.17–18).

⁹⁸ It has even been speculated that in some cases on-line forums may be a source, whereby men who have visited sex workers may advertise the fact that these women are trafficking victims. Their motivation in doing so may be less than noble, for example notifying other customers of where they can find compliant women who may ‘do’ unsafe sex. Nonetheless, other forum readers with a social conscience may see fit to report these notifications to the authorities.

⁹⁹ The reasons why this may be the case are complex and are discussed further in Chapter 8.

The issue of consent

Sometimes when trafficked women are in the process of having their servitude investigated it becomes known that they have chosen to stay on working in the brothel after their initial debt has been paid off. To those who believe the distinction between forced and free sex work is meaningless, the issue of consent does not even arise, as sex work is by its very nature exploitative.¹⁰⁰ Some members of the general public, however, may readily understand that a woman is a victim of trafficking during the ‘break-in stage’ when the violence and oppression may be most acute. But they may have more difficulty understanding that a woman is a trafficking ‘victim’ if she decides to continue working in the sex industry, particularly if she has stayed working for the person or persons who have treated her so badly – that is, the original trafficker.

According to some witnesses, traffickers have become more adept in avoiding any appearance of being their victim’s ‘slavers’, so their perceived liability is lessened in any potential investigation or prosecution. For example, Dr Dianne Heriot of the Commonwealth Attorney-General’s Department told the Committee that the traffickers’ forms of control are becoming more subtle. Victims are less often restrained in brothels, they may be able to hold on to their passports and some may even be allowed to possess mobile phones.¹⁰¹ Lawyers in the Commonwealth Director of Public Prosecutions have made similar observations:

I have noticed as more cases are coming in that the brothel owners are getting more attuned to what are indicia of slavery. In [earlier cases] the women had their passports taken off them. Women now have their passports given back to them; the threats are slightly less. It’s quite interesting to see how the people who are engaging in this behaviour are sort of modifying their ‘work practices’.¹⁰²

The issue of consent may be even more problematic where ‘victims’ have chosen not to cooperate with the authorities or have expressed a preference not to become involved in the official investigation/prosecution/repatriation aspects of their ‘rescue’.

Some women may not recognise their experience as ‘trafficking’ nor comprehend themselves as victims. They ‘do not accept what officials see as the “truth” of their situation’ (Segrave, Milivojevic & Pickering 2009, p.55). Are these people then – as they are sometimes characterised, – ‘willing victims’? Does their action in continuing as sex workers nullify their previous experiences at the hands of their traffickers? (Kneebone 2009). According to international law the answer to both is ‘No’. The UN Trafficking Protocol makes it clear that one cannot consent to being exploited and in circumstances where the indicia of trafficking is made out, any ‘willingness’ to come to Australia to

¹⁰⁰ ‘This position is underpinned by the conviction that a woman’s consent to undertake sex work is meaningless and as such sex work satisfies the exploitation element for the purposes of trafficking’ (Submission of Human Trafficking Working Group, University of Queensland TC Beirne Law School to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.).

¹⁰¹ Dr Dianne Heriot, Commonwealth Attorney-General’s Department, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

¹⁰² Ms Mary Lagana, Principal Legal Officer, Commonwealth Director of Public Prosecutions, Sydney Office, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

Commander Ramzi Jabbour of the Australian Federal Police also told the Committee that this was his understanding of how traffickers had modified their actions and behaviour to avoid prosecution or liability.

work in the sex industry is rendered meaningless.¹⁰³ An initial consent to come to Australia to work in the sex industry does not carry over when that ‘consent’ is maintained through force, threat or other pressure. A victim may consent to migrating but that consent is nullified when exploitation occurs.¹⁰⁴

Women go basically, ‘Yes, I will come to Australia; yes, I will do prostitution’. The yeses can get less strong, and then there is inevitably a point where they go, ‘No, I can’t do that’, and whether it is the trafficker, the brothel owner or whatever – slave traders, I think – they will not allow them to refuse, and so that is the point at which their consent matters to me. It is like the old thing where we used to say once you were married you could not be raped. Now we say, ‘No, actually an initial yes to something does not mean forever after you are saying yes’. And the very nature of slavery is that women’s consent is irrelevant.¹⁰⁵

This more flexible notion of what counts for true consent has also been upheld in Australian case law. In the New South Wales case of *Sieders*, Justice Campbell stated:

For a person to be not free to cease providing sexual services or not free to leave the place or area where the person provides sexual services, it is not necessary for them to actually want to cease providing sexual services or to leave the place or area where the person provides the sexual services. Rather what is involved is that *if they were to want to* there would be some circumstance or set of circumstances in which they live that would prevent or seriously inhibit their taking that action (Emphasis in original).¹⁰⁶

The crucial question to ask when looking at whether women have truly consented to the situation they are in is: ‘What is the context in which this choice is made and what if any alternatives exist?’ (O’Connor & Healy 2006, p.13).

¹⁰³ This of course does not mean that juries will necessarily view the trafficked woman’s actions in such a light. Prosecutors may often have difficulty in proving trafficking in cases where the woman has apparently seemed content to stay in the situation where she is ostensibly being oppressed. Segrave, Milivojevic and Pickering 2009 argue that the recognition of women as trafficking victims can depend on how far their behaviour and actions deviate from those expected of an innocent victim. Women who may ‘choose’ to continue working as sex workers may be constructed less as a victim and more as an illegal non-citizen (2009, p.52). For example, in the case *DPP v Ho and Leech* [2009] VSC 495 the defence gave evidence which was not contested of the victim going shopping and socialising with the female co-accused; the implication being if she could enjoy herself in a social context with her so called captor it could hardly be a case of trafficking.

For the problems associated with persuading juries that trafficking crimes have been made out, see Chapter 8.

¹⁰⁴ A submission from the Human Trafficking Working Group at the University of Queensland Law School affirms that the weight of academic legal opinion suggests that in the trafficking context, consent to work must be continuous. (Submission of Human Trafficking Working Group, University of Queensland TC Beirne Law School to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

¹⁰⁵ Kathleen Maltzahn, Founder and Former Co-ordinator of Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

¹⁰⁶ *Sieders v R* [2008] NSWCCA 187 [13] – NSW Court of Appeal.

5. Trafficking: Its Causes, Impact and Consequences

Introduction

Many reasons are suggested for women's vulnerability to or agreement to being trafficked from their country of origin to work overseas. These may differ depending on the theoretical approach taken by researchers to the issue of trafficking. For example, a migration analysis may focus on issues such as migrant labour, globalisation and the availability of work opportunities. A human rights approach may view issues such as corruption, discrimination and abuse of power as the causes of trafficking, whilst a feminist perspective may concentrate on issues pertaining to the male demand for sex and the exploitation of women (Fergus 2005). However, the pinpointing of a single cause for trafficking is ultimately a futile exercise, as it is an extremely complex phenomenon with many factors influencing why it occurs.

There has been very little examination of the impact of sex trafficking on its victims. Certainly first-hand knowledge about experiences of women who have been trafficked to Australia is relatively rare. Nonetheless, secondary accounts from government and non-government sources can give us limited insight into what would appear to be particularly harrowing experiences suffered by these women.

The causes of trafficking

Whilst in one sense the cause of trafficking in women is simple – women are trafficked to foreign countries because their 'sponsors' can extract huge profits from the exercise¹⁰⁷ – the reality is somewhat more complex.

To understand the concept of trafficking it is important from the outset to put aside stereotypical notions. Whilst few women may *choose* in any real sense to work in exploitative conditions, equally few trafficked women are forcibly abducted from their countries of origin and imprisoned in the destination country. This does not make their plight any less disturbing. It is the pressures felt by trafficked women arising from their personal circumstances and lives in the source country that need to be understood in order to comprehend why some women may choose to come to Australia.

Some of the commonly cited factors that are said to *cause* trafficking such as poverty, social disruption and dislocation, or family obligations, are not in fact causes (Yea 2004). Rather, they are *vulnerabilities* that leave a woman exposed to the possibility of trafficking. In Yea's view the only *cause* of trafficking is 'male demand for trafficked women's sexual labour and trafficker's demands for the large profits that may be generated through the deployment and sale of such labour' (Yea 2004).

Adopting Yea's analysis, the 'sites of vulnerability' that may be common for women and children trafficked to Australia (or elsewhere) include:

¹⁰⁷ The lucrative nature of trafficking markets was discussed briefly in Chapter 1 so will not be repeated here. However, it has been estimated that the trafficking of people from South-East Asia to Australia alone is a AU\$30 million dollar a year industry. See McSherry and Cullen 2007.

Poverty; changing economic structures, particularly structural adjustment policies that can lead to heightened rural poverty and out-migration by younger community members in search of job opportunities elsewhere; family support obligations and responsibilities...lack of direction, boredom, lack of opportunities and the desire to improve one's life chances through migration; global consumerism which can create consumer wants amongst persons in developing countries without the concomitant ability to fulfil those wants; war; conflict and population displacement; local prostitution; prior trafficking experiences; a patriarchal social context and gender discrimination; gendered violence and abuse in the home; and family dissolution and breakdown (Yea 2004, p.78).

Another way to conceptualise why trafficking occurs is to think of the movement of people in terms of 'push' and 'pull' factors. Push factors are those that occur in the country of origin and result in people being forced to leave their homes. Pull factors are those things that encourage migration to the destination country. Sometimes these persuasive factors in the destination country may not be based in truth. For example, a trafficked woman may be told she will get plenty of work in hairdressing or as a waitress in Australia when in fact it is the trafficker's intention to set her up in a brothel. Table 5.1 looks at some common push and pull factors that may encourage trafficking.

Table 5.1: Push and pull factors for inter-country trafficking in persons

Push factors	Pull factors
Lack of employment	Economic disparity between neighbouring countries
Lack of opportunities for education	Expect better quality of living
Environmental degradation	Corruption in immigration
National disasters causing displacement	Illegal migration penalties not a deterrent
Persecution, abuse and violence from civil unrest and war	Porous borders
Political instability	

Source: Schloenhardt 2003 in Australian Institute of Criminology (AIC) 2009c, p.9.

Some of the many reasons given in the research literature for trafficked women electing to enter contracts or arrangements to come to Australia include:

- Poverty, lack of opportunity and/or civil/political disorder in the country of origin
- Pressures of globalisation
- Family ties and family support
- Gendered violence
- Racism
- Male demand.¹⁰⁸

¹⁰⁸ To this list The Salvation Army would add: 'Addiction to drugs and alcohol' (Submission of The Salvation Army, (Australian Southern Territory), to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009).

However, few of these explanatory factors exist in isolation from the others. The reasons women leave their country of origin are complex and multilayered. It is a *combination* of the push and the pull factors that most satisfactorily accounts for women deciding to enter contractual arrangements with traffickers or their agents.

Poverty, lack of opportunity, globalisation and/or civil/political disorder in the country of origin

Many commentators have stated that whilst poverty does not *cause* trafficking there is clearly sufficient evidence to draw a link between trafficking and economic, social and political conditions in the country of origin (McSherry & Cullen 2007; Segrave 2009a; Yea 2004). Dr Anne Gallagher told the Committee that: ‘The one constant [in the causes of trafficking] is that people are trafficked from less wealthy places to relatively more wealthy countries’.¹⁰⁹ Certainly the international data shows that many people are living in desperate poverty, particularly in the regions where many source countries are located. For example, the World Bank has estimated that in 2009, 65 million people lived below the \$2.00 a day poverty line and 53 million fell below the level of absolute poverty, being \$1.25 a day (cited in Bell 2009).

Bell argues that such figures clearly make people more vulnerable to ‘escape routes’ such as trafficking. This is particularly the case since the globalisation of the world economy has also resulted in a globalisation of the sex industry, with interconnected aspects such as prostitution, sex tourism, mail order brides, online sex clubs and pornography (Bindel 2006). More importantly, the globalisation of the sex industry and the associated trade in women operates now largely outside the boundaries of sovereign states, making extra-territorial regulation and law enforcement very difficult (Carrington & Hearn 2003).

Pressures on trafficked women may be particularly acute in countries where prostitution is criminalised and women for whom sex work is the only trade they know feel they have no choice but to leave the country of origin (McSherry & Cullen 2007). This may be especially true of women from South Korea (where prostitution was made illegal in 2004) who come to Australia. Often such women have not had equal access to education and training opportunities and lack the skills of their male counterparts required for other forms of employment.

In the last 10 to 15 years issues such as globalisation,¹¹⁰ increased international migration (both legal and illegal), statelessness¹¹¹ and the ‘feminisation of poverty’ have all become risk factors for trafficking (Fergus 2005, p.9).¹¹²

¹⁰⁹ Dr Anne Gallagher, ARTIP, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 9 November 2009.

¹¹⁰ McSherry and Kneebone refer to trafficking as the ‘dark side of globalisation’ reflecting displacement, mobility and inequality in the distribution of wealth and access to education (2008, p.71). See also Segrave for a discussion of trafficked women being at the centre of a ‘transnational flow of labour’ (2004, p.89).

¹¹¹ The links between statelessness and trafficking are discussed in US Department of State 2009, p.31.

¹¹² This particularly applies to poverty among households headed by working mothers: ‘The proportion of women working in the totally unregulated and illegal informal business sector is considerable. Working in the informal economy is an important factor of women’s vulnerability to trafficking’ (O’Connor & Healy 2006, p.6).

In addition, a volatile social situation in the home country characterised by corruption, armed conflict,¹¹³ political instability,¹¹⁴ porous land borders; violence and discrimination against women and children all contribute to the reasons why women may feel they have little choice but to leave their home countries. In such circumstances, certain women and their families become easy targets for manipulative traffickers and their agents promising them 'better' lives in Australia. This belief in a better life may persist, regardless of any objective evidence to the contrary:

...In existing research on trafficking it is often assumed that if women are fully aware of the potential dangers of trafficking and risks associated with migration they will choose not to migrate. This is a rather simplistic construction of women's choice and knowledge and does not allow for any consideration of the broader circumstances and events in women's lives...Prior to their first experiences abroad, many women construct idealised images of their futures as migrants often discounting the possibility of physical danger and sexual and financial exploitation, even when these have been presented to women as very real possibilities. Many women and girls are still willing to take their chances despite considerable anecdotal and factual (media, governmental, NGO) evidence of possible exploitation and danger. In exploring reasons why women are exposed to these situations, despite the risks attached to migration decisions involving tenuous destinations, the texture of women's lives at home is important to consider (Yea 2004, p.81).

Further it seems the economic pressures on women that may contribute to them being trafficked are becoming more acute. International organisations have observed that the current global economic crisis and particularly growing unemployment and underemployment will most likely result in increased trafficking, both sexual and non-sexual (forced labour) (US Department of State 2009).¹¹⁵

Family ties and family support

Studies show that one of the strongest motivators for (Thai) women allowing themselves to be trafficked is a sense of responsibility to provide for their immediate and extended families (Steinfatt 2002 and Singh & Hart 2007 in AIC 2009c). Staff at The Salvation Army's Safe House for Trafficked Women also told the Committee that a lack of opportunity to improve the quality of life for themselves and their families resulted in their clients seeking to migrate to better opportunities elsewhere. Most residential and non-residential clients of the Safe House tell staff they have a responsibility to send money home to their families.¹¹⁶ Other NGO representatives felt that that poverty was at the root of all the problems that resulted in their clients coming to Australia, with women

¹¹³ Bell argues that protracted armed conflicts or natural calamities such as earthquakes, floods and famines give rise to the demand for sexual services by members of the military, peacekeeping troops and even humanitarian workers (2009, p.46). Recognising this potential the United Nations, NATO and other international and regional organisations have put in place strict policies prohibiting international peacekeepers and other workers visiting brothels or otherwise using the services of sex workers (see UNODC 2009, pp.316–317).

¹¹⁴ Refugees fleeing Myanmar (Burma) into transit in Thailand and then being trafficked further afield are a prime example. See AIC 2009c, p.50.

¹¹⁵ The International Labour Organisation's *Global Employment Trends Report 2010* forecasts dramatic increases in the numbers of unemployed, working poor and those in vulnerable employment. According to the Report if the crisis continues possibly more than 200 million workers mostly in developing countries could live in extreme poverty. See http://www.ilocarib.org.tt/portal/index.php?option=com_content&task=view&id=1330&Itemid=368 Accessed 26 February 2010.

¹¹⁶ Support Worker, The Salvation Army, Safe House for Trafficked Women, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

felt feeling the need to send money back to desperately poor villages, usually in South-East Asia.¹¹⁷

This sense of responsibility for the family is to some extent deeply rooted in traditional gender roles expected of women, particularly in poorer nations. It is mothers, daughters and sisters who may be most vulnerable to the pressure of traffickers to leave their homes in pursuit of a better life for their children and families. There are also shocking stories of young children, particularly girls, who are ‘sold’ into slavery by their families in order to send money home (US Department of State 2009). This is one reason it is difficult to prosecute traffickers – women are unlikely to come forward to the authorities if they think it may cut off whatever meagre savings they are accumulating to send home.¹¹⁸

Gendered violence

The former UN Rapporteur on Violence against Women, Ms Radhika Coomaraswamy, indicates that both the supply and demand sides of the trade in women are ‘fed by gendered vulnerabilities to trafficking’ (US Department of State 2009, p.36).

The root cause of migration and trafficking greatly overlap. The lack of rights afforded to women serves as the primary causative factor at the root of both women’s migrations and trafficking in women. By failure to protect and promote women’s civil, political, economic and social rights, governments create situations in which trafficking flourishes (US Department of State 2009, p.36).

These vulnerabilities are the result of entrenched political, structural, cultural and economic processes that leave many women socially and economically dependent on men. Some women such as single mothers or widows are particularly stigmatised and/or dependent on men including their traffickers (Piper 2005). Such women may have little or no recourse to protections under the law, inadequate education, no access to healthcare, poor employment prospects, and in many cases are socially isolated. As the US Department of State has commented:

Gendered vulnerabilities fostered by social and institutional weaknesses in some societies – discriminatory laws and laws that tie a woman’s legal recognition, property rights and economic opportunities to someone else – make women more likely than men to become trafficking victims. A woman who exists only through a male guardian who controls her income, identification, citizenship and physical wellbeing is more susceptible to becoming a trafficking victim (US Department of State 2009, p.36).¹¹⁹

As discussed in Chapter 3, women are overwhelmingly the victims of trafficking, particularly sex trafficking, just as they comprise the majority of the world’s ‘poor,

¹¹⁷ Support Worker, The Salvation Army, Safe House for Trafficked Women, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

¹¹⁸ See discussion in Chapter 8.

¹¹⁹ Rania’s story is one such example. Rania from Morocco signed a contract she couldn’t read to work supposedly as a cleaner in Cyprus. On arrival in that country she was told she had to repay a grossly inflated debt for her travel expenses. On resisting working in prostitution Rania was raped by her trafficker. Rania knew if she returned home she would be killed by her brother, a strict Muslim, for having sex before marriage and bringing the family’s name into disrepute (US Department of State 2009, p.21).

According to O’Connor and Healy (2006) this fear of returning home to ‘death and dishonour’ is one of the main reasons women, particularly from Muslim countries such as Albania and Turkey, can be kept in subjection once they have been trafficked.

unfed and unschooled'.¹²⁰ Inadequate social and legal policy processes such as a lack of anti-discrimination laws and human rights protections also make women susceptible to trafficking. Even in relatively developed economies, women bear the heaviest burden of cuts in social, health and welfare expenditure, making them particularly vulnerable at a time of global economic crisis (O'Connor & Healy 2006).

Racism

Another layer of vulnerability arises because of the racially based nature of trafficking.¹²¹ Not only are women discriminated and abused because of their gender but they may also be targeted because of their race, particularly in Asia, Africa and Eastern Europe (Doezema 2000; McSherry & Cullen 2007). It may be that the general public's indifference towards the serious crime of trafficking is not just because these women are considered to be 'only' sex workers but also because of their background and ethnic origin. Similarly, some clients of ethnic minority sex workers may feel it acceptable to use violence or demand unsafe sex because of the worker's minority status. As Chris Payne, a former AFP trafficking investigator, has stated: 'Australia holds back from committing to the problem partly because of an element of racism – in as much as these victims aren't Australian citizens' (Payne in O'Flaherty 2005, p.4).¹²² Professor Sheila Jeffreys of the University of Melbourne also argues that sex work, trafficking and racism are inextricably linked. When she gave evidence to the Committee she stated:

...indigenous women are hugely involved in prostitution all over the world. There is a huge racism in prostitution. It is very often women from ethnic minorities, indigenous women, women trafficked in [sic]; in fact the world conference on racism had trafficking as one of its five themes, because racism and trafficking are totally allied.¹²³

Male demand

The demand of male clients for women as sex objects/commodities is at the very centre of feminist analyses of trafficking. A cursory look through the Yellow Pages or local paper of any major city in Australia gives some idea of the demand for sexual services, particularly for women from Asian and/or 'exotic' backgrounds. Hughes (2004) has argued that whilst sex workers are much in demand, for some men the act of paying money absolves them from any sense of responsibility to trafficked women and children (or sex workers generally). Herzog considers that the violence exhibited towards trafficked women, particularly those trafficked into sex work, is viewed with less concern by male clients, and to some extent the general public, not only because these

¹²⁰ US Secretary of State Hillary Clinton, Address to Media, Launch of US Department of State *Trafficking in Person Report 2009-2010*, 7 March 2009.

¹²¹ A report by Sigma Huda, former UN Special Rapporteur on Trafficking and Human Rights has found that the demand for trafficked persons is often racially specific (Huda 2006). For example, a demand for Asian sex workers in this region has led to Asian women being trafficked to Australia and New Zealand (Carrington & Hearn 2003).

¹²² For example, an owner of a Melbourne brothel told the Committee that many Asian sex workers and victims of trafficking put up with abuse and behaviour from men that 'Anglo Saxon women simply won't put up with'. Brothel Owner, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009. The identity of the witness remain anonymous for reasons of confidentiality.

¹²³ Professor Sheila Jeffreys, University of Melbourne, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

victims are ‘prostitutes’ and thus second class citizens but also as a result of traditional gender roles towards women generally (Herzog 2008; Farley, Bindel & Golding 2009).¹²⁴

Male clients’ violent attitudes towards sex workers, even when they know (or suspect) they are trafficked women, are evident from some Internet sites. On these sites clients share views as to where the best ‘girls’ can be found, the unsafe practices they will engage in, and the prices they will charge. The misogyny revealed by these ‘swap and tell’ forums is, according to support workers in the field, deep and virulent.¹²⁵

A multi country study undertaken by the International Organisation for Migration (IOM) examined whether there is in fact a *specific* demand amongst male clients of sex workers to access trafficked women. The study found a significant percentage of men did choose to purchase trafficked women or at least were reckless or indifferent to the fact they may have been trafficked. One reason cited for this was that ‘foreign’ women were more likely to be ‘cheaper and more malleable than local women’ (IOM 2003, p.21). Hughes notes the IOM study also found that:

[m]en who knowingly purchased sex from trafficked women, did not perceive consent as an issue for women in prostitution. They viewed all women and girls in prostitution as objects or commodities over which they had temporary powers of possession after they paid their money. Some men indicated that purchasing sex from someone forced into prostitution gave them the advantage of being able to control them...In some men’s minds the act of paying money entitles them to do what ever they want to a woman or child (Hughes 2004, pp.8, 10).

The IOM study and other similar studies have concluded that one of the main drivers of the trade in trafficked women is men creating a demand for purchased sex acts (IOM 2003; Hotaling 2003; Hughes 2004; Ekberg 2004; Farley, Bindel & Golding 2009).¹²⁶

Factors such as male demand, racism and gendered violence support Piper’s argument that it is important not to look simplistically at the causes of sex trafficking only through an economic lens (2005). It must be understood that these women are the victims of violence, both physical and psychological, at all stages of the trafficking process – before, during and after they have left their countries of origin (Yea 2004).

Sex trafficking: Its impact and effects on women

It is extremely difficult to monitor in any comprehensive way the true effects of trafficking on women. This is because so few women, for good reasons (threats, reprisals, loss of livelihood), are willing to come forward and tell their stories. Much of what is known about the trafficking experience is gleaned from the government officials and NGO support workers and advocates who have worked with victims. Some idea of the degradation suffered by victims of trafficking can be gained from the recital of facts in the case law accounts of prosecutions that have gone to trial or evidence given to

¹²⁴ Hughes’ study of sex work and trafficking in the American context shows that purchasers of sexual services victimised sex workers regularly in a variety of locations and venues (street prostitution, escorts and brothels). ‘Prostitutes are considered to be a population that can be violated with impunity, and violent perpetrators seek them out knowing they are unlikely to be apprehended’ (2004, p.12).

¹²⁵ Evidence of Project Respect workers to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

¹²⁶ The issue of male demand for trafficked sex workers will be re-examined in Chapter 13 which will focus on the strategies that can be used to curb such demand.

parliamentary inquiries and other investigatory commissions.¹²⁷ It is clear that the women who *have* told their stories or given evidence in court have suffered grave consequences as a result of being trafficked for sex work.

Ms Gunilla Ekberg, Special Adviser to the Swedish government on gender equality, has reviewed the relatively sparse literature on the effects of prostitution on women, both trafficked and non-trafficked, and described the short and long-term effects as follows:

A prostituted woman or child is in a position of extreme dependency on the man who buys her and who then sexually uses and abuses her. She must to anything he expects her to do. She has to endure all kinds of bodily violations and invasions, and must service many buyers – anonymous men – every day while pretending she enjoys these violations.

Women and girls who have escaped prostitution after years of abuse consistently describe lives filled with terror and unimaginable cruelty at the hands of the buyers and the pimps. They have been subjected to sexual torture in the guise of particular sexual practices such as sadomasochism, systematically humiliated, sexually harassed, threatened, raped, beaten, and sometimes kidnapped. In addition, many women and girls have acquired sexually transmitted diseases (STDs), including HIV/AIDS, from the buyers and the pimps. The pimps, traffickers and buyers often film and photograph the violation, sell the films as pornography, and post the photos on Internet Web sites. The effects on prostituted women's physical, mental, and emotional health are, of course, grave and cause long-term physical and emotional harm.

International studies show that prostituted women suffer psychological injuries similar to war veterans and survivors of torture, such as flashbacks, anxiety, depression, sleep disturbances, and stress. Suicide and suicide attempts are also common (Ekberg 2004, p.1211).¹²⁸

Fear

The common element for all women is *fear*. Fear of their traffickers, fear of the future, fear of what will happen to their families should their traffickers be investigated. As one Sydney brothel owner is reputed to have remarked, 'Fear [is] a more effective gaoler than physical imprisonment' (in Ford 2001, p.24). A sense of extreme isolation also exacerbates the fear. Many women feel alone in a strange country where they might not speak the language or even know where they are located.¹²⁹

The 'seasoning' process of trafficked women seeks to break a woman's will and therefore gain absolute compliance to her situation. This process can consist of threats to self and family, physical brutality such as beatings and rape, poor and insufficient food and provisions, and inadequate and unsanitary accommodation, a change in name and

¹²⁷ In particular the 2004 Parliamentary Joint Committee on the Australian Crime Commission's, *Inquiry into the trafficking of women for sexual servitude*, is a useful account of trafficked women's experiences of their 'captivity' although many of these accounts are from second-hand sources.

¹²⁸ Ms Ekberg's views on prostitution and its effects are not universally agreed with. For a discussion of the differences in (feminist) thinking on this issue in relation to trafficking, see Chapter 10.

¹²⁹ Captain Danielle Strickland from The Salvation Army runs an outreach program for sex workers, including suspected trafficked victims, in Melbourne. She told the Committee that one of the things that shocked her was that few of the victims she met from foreign (Asian) countries had ever met anyone outside the confines of clients and the brothel. These women were truly isolated and ignorant of most aspects of Australian life and society (Captain Danielle Strickland, Social Justice Director, The Salvation Army (Australian Southern Territory), Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 7 December 2009).

identity; and/or a complete dehumanisation and objectification of the victim (Ford 2001; Parliamentary Joint Committee on the Australian Crime Commission 2004). Being forced to engage in unsafe sexual practices may result in serious sexual health and gynaecological problems for women, not the least of which may be sexually transmitted diseases.¹³⁰ Unwanted pregnancies may leave the woman with little option than abortion.

Similar to victims of prolonged domestic violence, the defence and coping mechanisms of women subjected to physical and psychological torture and violence can have long-term deleterious consequences for both physical and mental health. The trauma and shame felt by victims/survivors of trafficking may last for many years and may be felt particularly acutely at certain times after their 'release' from the trafficked situation. For example, David states that, for some women, giving evidence in court against their accused traffickers may be a deeply traumatic experience akin to 'secondary victimisation' (2008a, p.3). Some women may even feel 'traumatic bonding' with their traffickers, akin to the 'Stockholm Syndrome' whereby kidnapped victims may bond with their captors.¹³¹ This may particularly be the case if the trafficker, like the 'wife abuser', has alternatively shown affectionate or considerate behaviour in between bouts of violence and brutality.

Impact on health and wellbeing

A recent study by the IOM for medical practitioners and other health professionals working with trafficked women makes the salient point that diagnosing the health needs of these women and children is extremely complex. This is because 'their symptoms generally reflect the cumulative effects of the health risks they face throughout the trafficking process' (IOM 2009b, p.16). Table 5.2 outlines some of the more common categories of health risks for trafficked persons and their consequences: 'Many of these overlap, particularly psychological morbidity, which is linked to most physical, sexual and social health risks' (2009b, p.16).

¹³⁰ For example, a worker from the NGO Project Respect told the Committee that:

'What we understand from the women whom we have worked with is that they try to have safe sex but if the client does not want to, they have to do what the client wants. We have spoken to women who have actually had the client come out and complain and then they have been beaten for it. Basically they have to do what the client wants, so it is just the luck of the draw whether you get a client who wants to use a condom or not, really. The same with things like anal sex or being tied up or anything. Whatever the client wants, they have to do' (Project Respect Worker, hearing with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Melbourne, 5 November).

¹³¹ See submission of Professor Sheila Jeffreys, University of Melbourne, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

Table 5.2: Summary of the health risks and consequences of being trafficked

Health Risks	Potential Consequences
Physical abuse, deprivation	Physical health problems, including death, contusions, cuts, burns, broken bones
Threats, intimidation, abuse	Mental health problems including suicidal ideation and attempts, depression, anxiety, hostility, flashbacks and re-experiencing symptoms
Sexual abuse	Sexually transmitted infections (including HIV), pelvic inflammatory disease, infertility, vaginal fistula, unwanted pregnancy, unsafe abortion, poor reproductive health
Substance misuse Drugs (legal & illegal), alcohol	Overdose, drug or alcohol addiction
Social restrictions & manipulations & emotional abuse	Psychological distress, inability to access care
Economic exploitation Debt bondage, deceptive accounting	Insufficient food or liquid, climate control, poor hygiene, risk-taking to repay debts, insufficient funds to pay for care
Legal insecurity Forced illegal activities, confiscation of documents	Restriction from or hesitancy to access services resulting in deterioration of health and exacerbation of conditions
Occupational hazards Dangerous working conditions, poor training or equipment, exposure to chemical, bacterial or physical dangers	Dehydration, physical injury, bacterial infections, heat or cold overexposure...
Marginalization Structural and social barriers, including isolation, discrimination, linguistic and cultural barriers, difficult logistics, e.g. transport systems, administrative procedures	Unattended injuries or infections, debilitating conditions, psycho-social health problems

Source: *International Organisation for Migration 2009, 'Caring for trafficked persons: guidance for health providers', p.17.*

Returning home: Stigma and shame

Women who are repatriated to their countries of origin may also feel guilt, shame, stigma and remorse, especially if they feel they have let their families down by not continuing to contribute financially. The consequences for such women may be dire. In some cases women may have no choice but to allow themselves to be re-trafficked either into local sex industries or once more abroad (Bindel 2006).¹³² Alternatively women returning to the country of origin may:

¹³² Some commentators may believe that such an unremittingly bleak account is not necessarily representative of all trafficked women in such circumstances. According to such a view some trafficked women may choose to continue working in the sex industry and may indeed have resented being repatriated in the first place. See Segrave, Milivojevic and Pickering 2009 and the discussion in Chapter 15.

- Feel dirty
- Feel guilty/to blame/complicit
- Be seen/treated as a criminal
- Feel 'unmarriageable'
- [Experience] Post traumatic stress
- [Feel] Isolated
- Feel subject to gossip/innuendo
- [Experience] Loss of family/friends
- Feel a loss of self-respect
- Feel a loss of sense of a future
- Feel social exclusion (Bindel 2006, p.8).

The impact of the trafficking experience has consequences for the ways in which a woman may later react with regard to the investigation and prosecution of trafficking crimes. It also has important repercussions as to how the woman is treated as a 'victim' and the outcomes that may flow from being associated with the official strategies developed to address trafficking – particularly those pertaining to investigation and prosecution.

6. Sex Trafficking: Law and Legal Issues

Introduction

The relevant law on trafficking and particularly sex trafficking of women and children is complex. One reason for this is that the issues are governed by law and legal procedures from four different, albeit overlapping, jurisdictions. These are:

- International law (particularly United Nations (UN) protocols and conventions)
- National laws of the Commonwealth subsequent to the Federal government's ratification of international trafficking instruments
- State laws with regard to the regulation of commercial sex services
- Municipal or local regulation with regard to the planning and oversight of brothels.

The following discussion focuses exclusively on current international, national and state instruments, laws and agreements to address the trafficking of women for sexual purposes. It concentrates on the *law* with regard to trafficking rather than *policy* and program issues. It is acknowledged, however, that much overlap exists between these areas and therefore policy documents, most notably the Commonwealth whole-of-government counter-trafficking *Action Plan*, are discussed in subsequent chapters.

International law

The United Nations Trafficking Protocol¹³³

The most important development in international law for the eradication of trafficking is the 2000 UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the UN or Palermo Protocol). This Protocol strengthens earlier UN initiatives to address trafficking (both general labour and sex trafficking) through the UN *Convention against Trans-national Organised Crime*.

Compliance with the Palermo Protocol and the earlier slavery conventions such as the 1949 *Convention for the Suppression of Traffic in Persons and of the Exploitation of Prostitution in Women* is monitored by the Working Group on Contemporary Forms of Slavery within the UN Office of the High Commissioner on Human Rights (UNOHCHR).¹³⁴

¹³³ The United Nations Convention against Trans-national Organised Crime and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children can be downloaded at http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf and http://www.unodc.org/pdf/crime/a_res_55/255e.pdf

¹³⁴ This is the official international monitoring body. Human rights abuses with regard to trafficking are also monitored by NGOs and advocacy groups such as Human Rights Watch and Amnesty International.

Another 'backdoor' method of enforcing compliance with the Protocol, particularly with regard to the imposition of severe penalties for traffickers, is through sanctions and trade embargoes imposed on nations by the Trafficking in Persons (TIP) Report of the US Department of State. Whilst the operation of the TIP Report (discussed in Chapter 3) has been criticised it has been viewed as an important way of putting pressure on countries to improve their mechanisms to investigate, prosecute and punish trafficking abuses within and across borders (US Department of State 2009, pp.27ff.).

Article 3(a) of the UN Protocol outlines a definition of ‘trafficking in persons’ as follows:

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

This definition encompasses three major elements:

- Conduct associated with moving people (across or within borders)
- Coercive or deceptive means
- The purpose of exploitation.

Whilst the definition in the Protocol covers all forms of trafficking and exploitation, the emphasis in the title on the trafficking of women and children indicates the concern with which the international community views this particular form of servitude (McSherry 2007). The UN has also specifically emphasised that the ‘consent’ of a victim to any forms of exploitation outlined in the definition is void and irrelevant (United Nations 2000).

Strengths and limitations of the Protocol

There are critics of the Protocol, particularly of its definition of trafficking (given above). It has been commented that it is an overly complex document and very difficult to adopt into domestic legislation.¹³⁵ In a submission to this Inquiry members of the Human Trafficking Working Group at the University of Queensland Law School explained:

The actual content of the definition [of trafficking] has received mixed reviews. Positive points include its consideration of more subtle forms of coercion as a means of facilitating trafficking. For example, the phrase ‘abuse of a position of vulnerability’ takes into account the fact that trafficking does not always occur by force, but often involves close family members pressuring or convincing the victim to partake in the activity. However, the definition has also been criticised on a practical level as unwieldy and ill-suited for use in domestic criminal codes. A major criticism is that it contains too many elements, which complicates prosecution efforts. Furthermore, ambiguity in some of the language could lead to legal challenges by defendants in appellate courts.¹³⁶

¹³⁵ For example, Dr Anne Gallagher from ARTIP expressed a need for an overhaul of most domestic laws pertaining to trafficking and Australia was no exception:

‘The law in Australia is very complex, very confusing; I would hate to be a prosecutor or an investigator operating under this law. I think Australian law can be much better... It seems very typical that after five years or a little bit longer there will be a review of the laws, and they will be amended. ...I have a sense that at the [Australian] federal level in the next few years there will be such a review’ (Dr Anne Gallagher, ARTIP, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Melbourne, 9 November 2009).

¹³⁶ Submission of Human Trafficking Working Group, University of Queensland TC Beirne Law School to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

Law enforcement agency staff such as immigration officials have also considered the laws to be inoperable to some extent (International Organisation for Migration (IOM) 2008). Moreover, as with much international law, its *enforceability* is limited. Whilst, as mentioned, there is a UN Working Group monitoring compliance with the Protocol, nations are not compelled to adopt all of its provisions and can opt out of particular aspects of it they find unpalatable or unworkable.¹³⁷ Nor are there mandatory penalties or sanctions imposed – the issue of criminal sanctions is left to individual nations.¹³⁸ Thus to some degree the Protocol is a largely *symbolic* framework dependent on the goodwill of nation states to adopt and ratify all or some of its measures (Segrave 2009a).

Nonetheless, on balance the Trafficking Protocol ‘is better than no Protocol at all’ (Gallagher 2009a, p.846). The Protocol’s virtues lie in its acting as an impetus for nations to at least address and respond to trafficking within and across their borders. Whilst many commentators have regretted the conceptualisation of the Trafficking Protocol as a law and order rather than a human rights framework¹³⁹ ‘the new international legal framework is certainly an improvement on anything that existed previously’ (Gallagher 2009a, p.846).

The UN Office of Drugs and Crime (UNODC) Model Law on trafficking

In 2009, the UNODC launched the *Model Law against Trafficking in Persons* in order to promote the implementation of the *Trafficking in Persons Protocol* by Member States.¹⁴⁰

The *Model Law* sets out to comprehensively outline a legislative framework to assist states in incorporating and implementing the legal provisions of the Palermo Protocol.

First, it provides for a system of trafficking offences, categorised into:

- Foundational offences (criminalizes participation in an organized criminal group; laundering of the proceeds of crime; corruption; and obstruction of justice);¹⁴¹
- Specific offences (trafficking in persons; aggravating circumstances; non-liability of victims of trafficking in persons; use of forced labour and services);¹⁴²

¹³⁷ For example, some countries do not have specific legislation on trafficking despite being signatories to the Protocol. Some countries may have ratified the Protocol by passing domestic legislation but that legislation may fall short of the elements of the definition agreed to in the Protocol. As discussed in Chapter 3 of this Report there is a clear need for an international standardisation of definitions of trafficking in line with that in the Protocol. Even where appropriate domestic laws are put in place, countries may vary in the resources they devote to enforcement and the seriousness with which they approach implementing counter-trafficking measures (see UNODC 2009, pp.13ff).

¹³⁸ Although conversely the United States through its *Trafficking Victims Protection Act* and the associated TIP Report will give a ‘bad report card’ (i.e. possibly withhold financial development assistance) to those countries who do not impose minimum criminal penalties in their domestic legislation. Such standards should include a maximum of at least four years imprisonment depending on the circumstances. In most cases the penalty should involve ‘significant jail time’ with sentences of at least one year or more imprisonment (US Department of State 2009, p.27).

¹³⁹ An issue discussed in Chapter 9.

¹⁴⁰ UNODC, *Model Law against Trafficking in Persons* (2009), available at www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

¹⁴¹ *Model Law*, Chapter IV.

¹⁴² *Model Law*, Chapter V.

- Ancillary and related offences (accomplice; organising and directing to commit an offence; attempt; unlawful handling of documents; unlawful disclosure of identity of victims/witnesses; duty of commercial carriers);¹⁴³
- Victim and witness protection, assistance and compensation;¹⁴⁴
- Immigration and return of victims;¹⁴⁵ and
- Prevention, training and cooperation of law enforcement agencies.¹⁴⁶

Australia has had significant influence in the development of the Model Law:

Incorporated into the Model Law is commentary indicating the source of each provision. Although no Australian representatives were expressly consulted in the drafting of the Model Law, it is evident from the commentary that the *Criminal Code 1995* (Cth) was used as a reference point for certain concepts within the Model Law.

The *Model Law* is designed to be adaptable to the needs of each State, whatever its legal tradition and social, economic, cultural and geographical conditions. Whenever appropriate or necessary, several options for language are suggested in order to reflect the differences between legal cultures. Alternative wordings of certain provisions and sample legislation from various countries are also provided.¹⁴⁷

As more countries adopt the Model Law, it is hoped that national approaches to addressing and eradicating trafficking in persons will become globally more uniform.

Other international instruments

There are a number of other international laws and conventions that buttress the workings of the Palermo Protocol, some of which predate it.¹⁴⁸ These include:

- Universal Declaration on Human Rights
- United Nations Covenant on Civil and Political Rights
- United Nations Covenant on Economic, Social and Cultural Rights
- United Nations Convention on the Elimination of All Forms of Discrimination against Women
- United Nations Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Optional Protocol to the Convention on the Rights of the Child (Children in Armed Conflict)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- International Labour Organisation Convention 29 (Forced Labour)

¹⁴³ *Model Law*, Chapter VI.

¹⁴⁴ *Model Law*, Chapter VII.

¹⁴⁵ *Model Law*, Chapter VIII.

¹⁴⁶ *Model Law*, Chapter IX.

¹⁴⁷ Submission of the Human Trafficking Working Group, University of Queensland TC Beirne Law School to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

¹⁴⁸ Earlier conventions on slavery and forms of servitude that may still co-exist with the Trafficking Protocol are discussed in Chapter 2 of this Report.

- International Labour Organisation Convention 105 (Abolition of Forced Labour)
- International Labour Organisation Convention 182 on the Limitation of the Worst Forms of Child Labour
- United Nations Declaration of Basic Principles for Victims of Crime and Abuse of Power.¹⁴⁹

In addition to these international conventions, individual nation states may pass other domestic offences to prosecute trafficking in addition to or supplementing the Protocol. Often this may be done where it is difficult to prove some elements of the definition of trafficking in the Protocol such as exploitation or where a state entity does not have jurisdiction to enact laws based on the Protocol (UNODC 2009). Such laws may include pandering, living off the earnings of prostitution, child protection or labour laws.

Regional instruments and processes

In addition to the international Palermo Protocol there are a number of conventions, laws and agreements entered into on a regional basis to prevent, prosecute and punish the trafficking of persons. Many of these regional agreements are fostered through the IOM via a system called Regional Consultative Processes (RCPs).¹⁵⁰

Such instruments vary in the extent to which they adopt and adapt the most salient features of the Palermo Protocol. For this Report, however, the only regional agreement that needs to be examined is the Bali Process because of its relevance to Australian trafficking law and policy.¹⁵¹

¹⁴⁹ A number of United Nations agencies are also involved with addressing trafficking in various ways including prevention, policy development, protection, awareness raising and training. These include:

- UN Development Fund for Women (UNIFEM)
- UN Children’s Fund (UNICEF)
- UN Development Program (UNDP)
- UN Educational, Scientific and Cultural Organisation (UNESCO)
- UN Office on Drugs and Crime (UNODC)
- International Labour Organisation (ILO)
- UN Office of the High Commissioner for Human Rights (UNOHCHR)
- UN Special Rapporteur on Trafficking (Especially Women and Children).

For a discussion of the roles of these agencies with regard to trafficking, see Australian Institute of Criminology (AIC) 2009c, pp.11–12.

¹⁵⁰ The IOM describes the role of RCPs as follows:

- ‘RCPs bring together states impacted at different points of the trafficking continuum, whether origin, transit and/or destination countries (some affected at each of these stages), and in differing states of socio-economic development and operational capacity – where all states share equal status.
- RCPs enhance interstate dialogue and efforts to improve cooperation.
- RCPs promote a “habit of cooperation” facilitating confidence building in inter-state dialogue, information sharing, cooperation and exploration of collaborative approaches on multilateral challenges, such as TIP in a non binding forum’ (IOM 2009a, p.11).

¹⁵¹ Other important regional declarations, conventions and agreements include:

- The African Union’s Ouagadougou Action Plan to Combat Trafficking in Human Beings
- The Southern African Development Community Convention
- Council of Europe Convention on Action Against Trafficking in Human Beings
- European Convention Against Trafficking in Persons
- ASEAN Declaration on Trafficking in Persons

The Bali Process

Officially known as the Bali Process on People Smuggling, Trafficking in Persons and Related Trans-national Crime, the Bali Process is a regional multilateral network co-founded and chaired by Indonesia and Australia. It seeks through technical and legal assistance to increase cooperation in combating people trafficking and smuggling in countries of the Asian Pacific region.¹⁵² The UN High Commissioner for Refugees (UNHCR) and IOM are partner agencies of the Process. Its primary focus has been to foster cooperation between operational, investigatory and legal agencies in the region through workshops, law enforcement cooperation, information sharing and technical assistance (Attorney-General's Department 2009a).

Another role of the Bali Process is to encourage the criminalisation of people trafficking in countries of the Asia-Pacific. It does this primarily by assisting in developing model legislation to prosecute trafficking and in training prosecutors and other legal personnel. Australia's trafficking laws have been one of the main models used in developing an anti-trafficking template for other nations in the region to adapt to their own circumstances.¹⁵³ The Bali Process is non-binding on member nations. Its activities are essentially tied to the region, being neither international nor domestic in focus, reflecting that whilst trafficking is a global phenomenon it has definite regional characteristics (McSherry & Cullen 2007).¹⁵⁴

The other major area of Australian regional involvement and cooperation is through the Asia Regional Trafficking in Persons (ARTIP) Project – however as this is primarily an area of policy development and aid assistance rather than legal cooperation it will be discussed separately in Chapter 7.¹⁵⁵

-
- South Asian Association of Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution
 - The Co-ordinated Mekong Ministerial Initiative against Trafficking (COMMIT)
 - Inter-American Convention on International Traffic in Minors
 - Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women
 - The Aso Rock Declaration of the Commonwealth Heads of Government.

For details of these and other regional agreements and Conventions, see United Nations General Assembly 2009.

¹⁵² There are approximately 43 member nations, including in addition to Australia and Indonesia: Japan, Vietnam, the Philippines, India, Sri Lanka, Myanmar, China, Cambodia, Papua-New Guinea, Fiji, Malaysia, and Laos PDR. There are also 18 observer countries including the United Kingdom and United States. Twelve organisations also have observer status including Interpol, the World Bank, the ILO and the UNODC. For a full list of membership, see <http://www.baliprocess.net/>

¹⁵³ This model legislation was developed in partnership with China. See Attorney-General's Department 2009a, p.39.

¹⁵⁴ Australia has also signed a number of bilateral agreements in the region to investigate and address trafficking, including with Lao PDR, Cambodia and Thailand. For details, see Fergus 2005.

¹⁵⁵ The Pacific Transnational Crime Network (PCTN) is another important regional organisation that Australia is party to. The PCTN is a joint funded operation by Australia and the United States that assists Pacific Islands to combat trafficking throughout the Region. See D Evans 2009.

Australian national law

Australia's adoption of the Palermo Protocol

Australia has been a signatory to all of the international conventions and protocols regarding slavery, servitude and related crimes. But not until relatively recently have concerted efforts been made to address the issues of sexual and other forms of trafficking across and within this country's borders.¹⁵⁶

In its 1998 Report *Offences Against Humanity: Slavery* the Commonwealth Model Criminal Code Committee recommended a new section be introduced into the Commonwealth Criminal Code (the Code) criminalising slavery and sexual servitude. As a consequence the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth)* added a new Division 270 into the Code introducing, inter alia, offences pertaining to deceptive recruitment into sexual services (270.7), causing another person to enter into or remain in sexual servitude (270.6) and slavery (270.3).

In 2002 Australia signed the UN Protocol although no amendments to the Code were made at that time to ratify the Protocol completely. In 2004 a Parliamentary Joint Committee on the Australian Crime Commission held the *Inquiry into the Trafficking of Women for Sexual Servitude*. The Inquiry Report found that existing offences under the Code 'did not adequately reflect the realities of the trafficking trade' (2004, p.54) or adequately meet the requirements of the UN Protocol.

As a result of this Report and other interventions at Commonwealth level, the *Criminal Code Amendment (Trafficking in Persons) Act 2005* was passed in July 2005 and the UN Protocol finally ratified on 14 September of that year. The 2005 Act added a new Division 271 to the Code dealing with trafficking and debt bondage.

The Commonwealth Criminal Code – Divisions 270 and 271

There are two major offences against humanity in Commonwealth law that can be charged against people who either with actual or reckless intent sexually exploit women and children for gain. These are the crimes of *slavery* and *trafficking* respectively.

Slavery Offences – Division 270

Section 270.1 of the Code defines slavery as:

...the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

Under Section 270 (2) slavery is specifically made unlawful. Section 270 (3) sets up a number of slavery offences with which a person or persons can be charged. Table 6.1 outlines the key slavery provisions of the Criminal Code and the maximum penalties applicable.

¹⁵⁶ For a comprehensive account of the legislative history and background pertaining to Australia's efforts to address trafficking, see McSherry 2007.

Table 6.1: Criminal Code – Division 270 (Slavery and Slavery related offences)

Section	Offence	Maximum Penalty
270.3(1)	Possess or exercise right of control over a slave	25 years
270.3(2)	Commercial transactions involving a slave	17 years
270.6(1)	Causing another person to enter into or remain in sexual servitude ¹⁵⁷	15 years/20 years (aggravated offence*)
270.6(2)	Conduct a business involving the sexual servitude of another ¹⁵⁸	15 years/20 years (aggravated offence*)
270.7(1)	Intentionally inducing another person to enter into an engagement where the other person is deceived about providing sexual services, the nature of the sexual services to be provided, extent to which the person will be free to leave or cease providing sexual services, involvement of exploitation or debt bondage or confiscation of travel or identify documents ¹⁵⁹	7 years/9 years (aggravated offence*)

Source: Adapted from Attorney-General's Department 2009c, p.14.

Note: * Sexual servitude and slavery offences incur higher penalties in circumstances where they are aggravated.

¹⁵⁷ See s.270.4(1) for definition of sexual servitude:

- (1) sexual servitude is the condition of a person who provides sexual services and who, because of the use of force or threats:
 - (a) is not free to cease providing sexual services; or
 - (b) is not free to leave the place or area where the person provides sexual services.
- (2) In this section: 'threat' means:
 - (a) a threat of force; or
 - (b) a threat to cause a person's deportation; or
 - (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

¹⁵⁸ See s.270.4(1) for definition of conducting a business. 'Conducting a business' under this section includes:

- (a) taking any part in the management of the business; or
- (b) exercising control or direction over the business; or
- (c) providing finance for the business.

¹⁵⁹ See s. 271.1 for definition of 'deceive':

'In determining, whether a person has been deceived about any matter a court or jury may have regard to any of the following matters:

- (a) the economic relationship between the person and the alleged offender;
- (b) the terms of any written or oral contract or agreement between the person and the alleged offender;
- (c) the personal circumstances of the person, including but not limited to:
 - (i) whether the person is entitled to be in Australia under the *Migration Act 1958*; and
 - (ii) the person's ability to speak, write and understand English or the language in which the deception or inducement occurred; and
 - (iii) the extent of the person's social and physical dependence on the alleged offender.'

Under Section 270(9) circumstances of aggravation primarily concern circumstances where the person subjected to slavery or sexual servitude is younger than 18.

Interpreting sex slavery – The Queen v Tang

The High Court of Australia recently considered amongst other considerations the constitutionality of the slavery provisions of the Code in *The Queen v Tang*.¹⁶⁰ In this case the respondent was the owner of a licensed brothel in Fitzroy. The complainants were Thai nationals who came to Australia to work as sex workers. They had previously worked in what was described as the sex industry. Whilst there was no written contract, there were ‘agreed’ conditions. Each complainant came to Australia voluntarily. In the High Court appeal judgement Chief Justice Gleeson drew upon the trial judge’s description of the conditions under which the women worked. This account is worth repeating in full to illustrate how the contemporary slave trade operates:

The trial judge said in his sentencing remarks that he was satisfied on the evidence that the complainants were financially deprived and vulnerable upon arriving in Australia. He found that the complainants entered Australia on visas that were obtained illegally. Continued receipt of the benefits of the complainants’ contracts depended on their not being apprehended by immigration authorities. The benefits were more certain to be obtained when the complainants were kept hidden.

While on contract, the complainants’ passports and return airfares were retained by the respondent. This was done so that the passports could be produced to immigration authorities if necessary, and also so that the complainants could not run away. The complainants lived in premises arranged by the respondent, where they were lodged and fed, and their medical requirements attended to. The evidence was that the complainants were well-provisioned, fed, and provided for. The complainants were not kept under lock and key. Nevertheless, the trial judge said that, in the totality of the circumstances, the complainants were effectively restricted to the premises. On rare occasions they ventured out with consent or under supervision. The circumstances to which the trial judge referred included the hours of work involved, as well as control by way of fear of detection from immigration authorities, fear of visa offences, advice to be aware of immigration authorities, advice to tell false stories to immigration authorities if apprehended, and instructions not to leave their accommodation without the respondent, DS or the manager of the brothel. In the case of some of the contract workers, the regime became more relaxed as the contract progressed and, towards the end of their contracts, they were at liberty to go out as they wished. At work, the trial judge found that, while they were occasionally permitted to go out to shop, the complainants were, because of the nature and hours of their work, effectively restricted to the premises.

In the case of the two complainants who ultimately paid off their debts, the restrictions that had been placed on them were then lifted, their passports were returned, and they were free to choose their hours of work, and their accommodation.

In addition to the restrictions that were placed on the complainants, the prosecution pointed to the demands placed upon them as to the numbers of clients they were required to service, their lack of payment, and the days and hours they were required to work as demonstrating that their situation differed materially from that of other sex workers who, however exploited they may have been, were not slaves. The Court

¹⁶⁰ *The Queen v Tang* [2008] HCA 39.

of Appeal accepted that the evidence was capable of supporting the jury verdicts, which were held not to have been unreasonable.¹⁶¹

The High Court upheld the constitutional validity of the slavery/trafficking legislation pursuant to the external affairs power of the Commonwealth and the federal government's signing and ratification of the relevant international slavery and trafficking treaties. A majority of the court also found that:

- Consent to being trafficked or to enter 'contracts' such as those entered into by the women is not necessarily inconsistent with slavery. In other words the absence of consent is not a necessary element of the offence.
- Exploitative conditions of labour do not of themselves amount to slavery. 'The term "slave" is sometimes used in a metaphorical sense to describe victims of such conditions',¹⁶² but whether or not a given scenario is slavery on the one hand or harsh and exploitative conditions of labour on the other is dependent on the nature and extent of powers exercised over a complainant:

In particular, a capacity to deal with a complainant as a commodity, an object of sale and purchase, may be a powerful indication that a case falls on one side of the line. So also may the exercise of powers of control over movement which extend well beyond powers exercised even in the most exploitative of employment circumstances, and absence or extreme inadequacy of payment for services.¹⁶³

- The existence of a contract between the parties (express or implied) is not inconsistent with the commission of an offence. A condition of slavery may arise from a contract.

There have been a number of other cases prosecuted in the area of slavery, trafficking and debt bondage although none as important as *Wei Tang* in enunciating a set of legal interpretive principles.¹⁶⁴

¹⁶¹ *The Queen v Tang* [2008] HCA 39 at paras 15–18 per Gleeson CJ.

¹⁶² *The Queen v Tang* [2008] HCA 39 at para 32 per Gleeson CJ.

¹⁶³ *The Queen v Tang* [2008] HCA 39 at para 44 per Gleeson CJ.

¹⁶⁴ The other major cases in the area of trafficking and slavery are:

- *Sieders v R* [2008] NSWCCA 187 [13] – NSW Court of Appeal (*Sexual Servitude*)
- *R v Kovacs* [2008] QCA 417 [12] – Queensland Court of Appeal (*Slavery*)
- *Fryer v Yoga Tandoori House* [2008] FMCA 288 [16] Federal Magistrates Court (*Forced Labour Trafficking*)
- *R v McIvor and Tanuchit* Not Reported. 18 September, NSW Court of Appeal. New trial pending (*Slavery*)
- *R v Dobie* Not reported. Queensland District Court before Judge Leanne Clare, 23 December 2008. (*Trafficking in Persons*)
- *DPP (Cth) v Ho and Leech* [2009] VSC 495. Supreme Court of Victoria (*Slavery*).

The above list shows just how few cases have been prosecuted on trafficking and associated crimes in Australia. This may in part be due to the relative newness of the anti-trafficking legislation and the complex and lengthy investigations required to launch a prosecution. For a discussion of the difficulties in prosecuting these offences, see Chapter 8 of this Report. For further analysis of case law in this area, see Debeljak et al 2009.

Trafficking offences (Criminal Code 271.2)

The relatively new Division 271 of the Code inserted in 2005 deals with the specific offences of Trafficking in persons and debt bondage. Table 6.2 outlines the key trafficking provisions of the Criminal Code and the maximum penalties applicable.

Table 6.2: Criminal Code – Division 271 (Trafficking and Trafficking Related Offences)

Section	Offence	Maximum Penalty
271.2(1) (1A), (1B), (1C)	Trafficking offences involving the use of force or threats, or recklessness as to whether the trafficked person will be exploited (see s271.5 for domestic trafficking offences)	12 years/20 years (aggravated offence*)
271.2(2), (2A)	Trafficking offences where trafficked person is deceived about providing sexual services or involvement of exploitation or debt bondage or confiscation of travel or identity documents	12 years/20 years (aggravated offence*)
271.2(2B), (2C)	Trafficking offences where there is an arrangement for the trafficked person to provide sexual services but is deceived about the nature of those sexual services, freedom to leave or cease providing sexual services, or any debt owed in connection with the arrangement	12 years/20 years (aggravated offence*)
271.4(1), (2)	Trafficking in children offences where there is intention for or reckless as to whether the child will be used to provide sexual services or be otherwise exploited (see s271.7 for domestic trafficking in children offences)	25 years
271.8(1)	Intentionally causing another person to enter into debt bondage	12 months/2 years (aggravated offence*)

Source: Adapted from Attorney-General's Department 2009c, pp.14–15.

Note: * Increased penalties are incurred for the offence of aggravated trafficking in persons.

All trafficking offences operate extra-territorially; that is, they have an extended geographical jurisdiction outside Australia. They can therefore apply in circumstances where the crime takes place overseas (action in the source country such as the entering into the contract of debt) and in Australia (action in the destination country such as working in an Australian brothel). The laws can also apply to actions outside Australia but performed by an Australian citizen, company or resident.

The one exception to the extra territoriality provisions relate to the offence of 'domestic trafficking' (Criminal Code 271.5).

Aggravated trafficking in persons (Criminal Code 271.3)

Under Section 271.3 there are increased penalties for the offence of *aggravated* trafficking in persons. Trafficking will be seen as being associated with aggravated circumstances when the trafficker in committing the offence, subjects the victim to cruel, inhuman or degrading treatment; engages in conduct that gives rise to a danger of death or serious harm to the victim; and is reckless as to that danger.

In such cases the penalty is increased to a maximum of 20 years imprisonment.

The Code also makes it clear that trafficking should not be equated with the crime of people *smuggling*.¹⁶⁵ Whilst in some circumstances they are related, they are two quite different offences. As McSherry states:

In general, smuggling involves delivering persons into the country they wish to enter illegally [for a fee] and then leaving such persons to their own devices. Trafficking in comparison involves some form of coercion or deception, with persons being moved across borders for the purposes of exploitation (2007, p.387).

There is, however, an offence under the Code for *aggravated people smuggling* whereby the person who has smuggled or arranged for the smuggling into Australia of the victim also facilitates, causes or allows that person to enter a condition of sexual servitude or allows the victim to be in other ways exploited.

Trafficking in children (Criminal Code 271.4)

A specific offence of trafficking in children has also been established under the Code (271.4) where the person trafficked into or out of Australia is younger than 18 years. In such a case the maximum penalty is increased to imprisonment for 25 years.

Domestic trafficking in persons (Criminal Code 271.5)

Domestic trafficking in persons as the name suggests occurs if the trafficker:

- (a) organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia;
- (b) trafficker uses force or threats; and
- (c) that use of force or threats results in the trafficker obtaining the other person's compliance in respect of that transportation or proposed transportation.¹⁶⁶

Domestic trafficking also occurs in situations whereby:

- (a) a person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
- (b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity

¹⁶⁵ See Commonwealth Criminal Code (Sec 73.2).

¹⁶⁶ Penalty: Imprisonment for 12 years.

documents.¹⁶⁷

Similar to international trafficking, domestic trafficking will be proved where there is deception as to:

- (i) the nature of the sexual services to be provided;
- (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
- (iii) the extent to which the other person will be free to cease providing sexual services;
- (iv) the extent to which the other person will be free to leave his or her place of residence;
- (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services – the quantum, or the existence, of the debt owed or claimed to be owed.¹⁶⁸

There are also provisions with regard to aggravated domestic trafficking and domestic trafficking of children that act in similar ways to the trans-national provisions

Offence of debt bondage (Criminal Code Section 271.8)

Debt bondage had been defined by the United Nations as early as 1957 in the *Supplementary Convention on the Abolition of Slavery*. Under the Code the offence of debt bondage is committed when:

[a] person pledges his or her services or the services of another person as security for a debt if the reasonable value of those services is not applied to repay the debt or if the length and nature of the services is not defined (Attorney-General's Department 2009c, p.14).

In other words, the grossly inflated debt that the exploited victim is obliged to pay by providing sexual services is by no means commensurate with the trafficker's costs of bringing her to Australia. Debt bondage can occur in sexual or non-sexual scenarios.

The offence is a summary offence and thereby carries a maximum penalty of only 12 months. An offence of *aggravated* debt bondage carrying a two-year maximum will occur when the victim is under 18 years of age (Sec 271 (9)).

The maximum sentence for debt bondage cases seems very low to some observers, particularly anti-trafficking activists. This may be the case given that the NGO Project Respect estimates that current levels of debt owing by women in debt bonded sex work tends to be between \$40,000 and \$50,000 per woman (Fergus 2005). Debeljak et al argue, however, that using debt bondage charges has a clear advantage over the more serious trafficking offences – summary offences are triable by judge or magistrate alone, not by jury:

¹⁶⁷ Penalty: Imprisonment for 12 years.

¹⁶⁸ Penalty: Imprisonment for 12 years.

Using juries in the context of trafficking and related offences introduces a wholly uncontrollable “X” factor, which makes conviction difficult. Indeed, juries will have their own (not necessarily generous) views on the seriousness of the alleged offences, the harm done to the alleged victims and the credibility of the victims. The unpredictability of jury trials has been blamed for the low success rate of prosecution in Australia. One clear disadvantage, however, is the relatively low penalty attached to such offences and the implicit message this contains about the seriousness of the behaviour and harms suffered (2009, p.22).

Unlike people smuggling, trafficking/debt-bondage is a recognised form of slavery at international law for which consent is irrelevant. As Fergus states:

Smuggling is the receipt of some form of payment to transfer a person from one country to another illegally. It is not for the purpose of exploiting that person once they arrive in their destination country. Importantly, particularly in the Australian context, the payment made to the smuggler is final. In the case of trafficking, not only is the person transferred to another country illegally, they are then exploited once they arrive, usually through debt-bondage. That is, the payment made to the trafficker(s) is not only inflated relative to the “services” being paid for, but also ongoing, ill-defined, and able to be increased at any time by the trafficker(s).

By definition, an “unlawful non-citizen” in Australia who is in a condition of debt-bondage has been trafficked, not smuggled. As such, the person is not an illegal immigrant, but a victim of a human rights violation on Australian soil, to whom Australia therefore has obligations under international law (Fergus 2005, pp.3–4).

For an in-depth analysis of the slavery and trafficking provisions of the Criminal Code see McSherry and Kneebone 2008; Debeljak et al 2009; Schloenhardt 2008, 2009.

Other Commonwealth laws

There are a variety of federal laws that support the investigation and prosecution of trafficking offences. These include employer sanctions under the *Migration Amendment (Employer Sanctions) Act 2007*. This Act makes it an offence for an employer to knowingly or recklessly employ or refer a person for work who does not have a valid visa or who is working in breach of their visa conditions. Section 245(AH) of the Act includes aggravated penalties where the aggrieved person is being exploited as a result of forced labour, sexual servitude or slavery. Penalties cover a maximum of two years imprisonment for individuals and five years in the cases of aggravated offences. Monetary fines are imposed in the cases of companies being convicted under the Act.

Other federal laws are used as an adjunct to facilitate the investigatory and evidence gathering process for prosecuting trafficking laws under the Code. For example, the trafficking offences in the Code are designated offences that allow the provisions of the *Telecommunications (Interception and Access) Act 1979 (Cth)* to be used. Thus the Australian Federal Police (AFP) and other approved law enforcement agencies can seek judicial orders to permit the interception of telephone calls and other telecommunication methods. Such information can then be used as evidence of slavery or trafficking offences in court.

Similarly, the *Proceeds of Crime Act 2002 (Cth)* will allow the tracing, restraint and confiscation of the proceeds of crime against federal laws including the trafficking, slavery and sexual servitude provisions of the Code:

For example, the AFP can in certain circumstances, issue notices to financial institutions seeking information about account transactions...a judge can issue a monitoring order to require a financial institution to provide information about transactions conducted during a certain period. Ultimately, the regime allows for a court to order the restraint and forfeiture of proceeds of certain crimes (David 2008a, p.10).

Taxation laws may also be used in appropriate cases and there are also a number of labour legislation offences that could be applied particularly in the case of labour trafficking or forced labour offences.

The law in Victoria

Sexual servitude and state jurisdiction

An analysis of slavery and trafficking law is largely restricted to a discussion of Commonwealth legislation because these crimes consist most usually of extra-territorial (offshore or interstate) elements and for legal and constitutional reasons are therefore more suitably dealt with as Commonwealth offences. However, state and territory laws *are* applicable to the circumstances of a trafficked person or a person held in sexual servitude in a number of ways.

First, there are offences under the *Crimes Act* that may be applicable in relevant circumstances. Examples include laws with regard to false imprisonment, and kidnapping. Moreover where physical violence has been used, rape, sexual assault, general assault or other crimes against the person may be charged.¹⁶⁹

Second, most states now have offences related to forced prostitution and sexual servitude. In Victoria sexual servitude offences are found in Subdivision 8EAA (Sections 60AB-60AE) of the *Crimes Act* 1958 as follows:

60AB. Sexual servitude

- (2) A person who, by the use of-
- (a) force; or
 - (b) a threat; or
 - (c) unlawful detention; or
 - (d) fraud or misrepresentation, including by omission; or
 - (e) a manifestly excessive debt-
 - causes another person to provide, or to continue providing, commercial sexual services is guilty of an offence and liable to level 4 imprisonment (15 years maximum).

There are also offences for aggravated sexual servitude where the person forced or induced to provide sexual services is under 18 (Section 60AC); deceptive recruiting for sexual services (Section 60AD); and aggravated deceptive recruiting where the person recruited for sexual services is under 18 (60AE).

¹⁶⁹ See the *Crimes Act* 1958 as amended and the *Summary Offences Act* 1966 as amended.

These offences generally mirror their Commonwealth counterparts, although given the extra-territoriality of most trafficking offences there are no equivalent trafficking offences under state law. Nor are there debt bondage offences under state law. This is an oversight that could and should be remedied. Therefore the Committee believes that there needs to be a debt bondage offence to accompany the offence of sexual servitude already in the Victorian *Crimes Act*. It is acknowledged however, that in a great majority of the cases matters pertaining to sex trafficking are referred to the AFP and dealt with as offences against the Commonwealth. For example where state police come across matters related to sexual servitude rather than using the existing Victorian offence they are more likely to refer them to the AFP,¹⁷⁰ (Attorney-General's Department 2009c).¹⁷¹

Nonetheless, by creating a state offence the educative message is sent out that trafficking is a matter that is taken seriously by the Victorian community.

The Prostitution Control Act 1994¹⁷²

As state and territory governments are responsible for regulating prostitution in their respective jurisdictions it is the state laws governing brothels and the sex industry that may most often be used to address sex trafficking, in conjunction with Commonwealth offences.¹⁷³

Sex work is legal in Victoria when regulated and licensed according to the provisions of the *Prostitution Control Act* (PCA) 1994. Providing commercial sexual services is illegal however when it is:

- Street sex work
- Provided to or by a person under 18 years of age
- Taking place in unlicensed brothels
- Provided through unlicensed escort agencies

It is also illegal:

- When brothels do not have the relevant planning permission to operate their business
- When provided by sole or private workers/operators who are not registered with the Business Licensing Authority (BLA).
- When a person is forced into or to remain in sex work.

¹⁷⁰ See Chapter 8 of this Report for a discussion of the relationship between federal and state police in this regard.

¹⁷¹ For example, the Australian Institute of Criminology has noted that as of December 2008, 13 of the 14 nationwide trafficking/slavery cases brought before the courts were based on charges under Commonwealth legislation (AIC 2009c, p.31).

¹⁷² As a result of legislative changes to the Act being debated in Parliament at the time of writing, it is likely that the *Prostitution Control Act* will be renamed the *Sex Work Act 2010*. See discussion later in this chapter.

¹⁷³ Whilst the criminal law with regard to prostitution is suitably discussed here, the regulatory regime governing sex work, particularly through the oversight of Consumer Affairs Victoria and local councils is more appropriately examined in Chapter 12. The relationship between the legal and illegal sectors of the sex industry is also discussed in that chapter.

Street sex work

Soliciting, accosting or loitering for the purpose of commercial sexual services is illegal in Victoria. The main offences are divided into those committed by clients (Section 12 PCA) and sex workers (Section 13 PCA).

Section 12 (offences by clients) states:

- (1) A person must not for the purpose of, or with the intention of, inviting or soliciting any person to prostitute himself or herself with him or her or another person or of being accosted by or on behalf of a prostitute, intentionally or recklessly loiter in or near-
 - (a) a place of worship; or
 - (b) a hospital; or
 - (c) a school, kindergarten or children's services centre; or
 - (d) a public place regularly frequented by children and in which children are present at the time of the loitering.¹⁷⁴
- (2) A person must not-
 - (a) loiter in or frequent a public place for the purpose of, or with the intention of, inviting or soliciting any person to prostitute himself or herself with him or her or another person or of being accosted by or on behalf of a prostitute; or
 - (b) in a public place invite or solicit any person to prostitute himself or herself with him or her or another person.¹⁷⁵

Loitering generally means frequenting or 'hanging around' a public place for the purposes of meeting and engaging in sexual services with a sex worker. Accosting requires the client to stop the worker or otherwise attract his or her attention for that purpose whereas solicit will generally import behaviour such as the negotiating of prices or services offered. As can be seen from Section 12(1) penalties will be higher when the soliciting, loitering or accosting takes place at or near certain proscribed places such as churches and schools.

Section 13 of the PCA concerns offences by workers themselves. It states:

- (1) A person must not for the purpose of prostitution intentionally or recklessly solicit or accost any person or loiter in or near-
 - (a) a place of worship; or
 - (b) a hospital; or
 - (c) a school, kindergarten or children's services centre; or
 - (d) a public place regularly frequented by children and in which children are present at the time of the soliciting, accosting or loitering.¹⁷⁶

¹⁷⁴ Penalty: For a first offence - 30 penalty units or imprisonment for 3 months;

- For a second offence - 60 penalty units or imprisonment for 6 months;
- For a subsequent offence - 90 penalty units or imprisonment for 9 months.

¹⁷⁵ Penalty: For a first offence - 10 penalty units or imprisonment for 1 month; For a second offence - 30 penalty units or imprisonment for 3 months; For a subsequent offence - 60 penalty units or imprisonment for 6 months.

¹⁷⁶ Penalty: For a first offence - 10 penalty units or imprisonment for 1 month; For a second offence - 30 penalty units or imprisonment for 3 months; For a subsequent offence - 60 penalty units or imprisonment for 6 months.

- (2) A person must not for the purpose of prostitution solicit or accost any person or loiter in a public place.¹⁷⁷

The PCA has effected a significant change to the law by increasing penalties for clients or those who seek street prostitution services. These penalties are higher than for the sex workers themselves. The question remains, however, as to what extent offences such as soliciting by clients or ‘kerb crawling’ are vigorously prosecuted when compared to the monitoring and prosecution of street sex workers.

Licensed brothels

Under the PCA a person can legitimately carry on the business of a ‘prostitution service provider’ as long as he or she is licensed with the BLA and complies with the provisions of the PCA, relevant planning laws and the permit requirements of the local council.¹⁷⁸

Licences can be issued for a business to operate a brothel and/or escort agency. Workers employed by brothels or escort agencies do not need to be licensed. Brothels may be exempt from having a licence if they are solely owned and operated by one or two workers only.

The PCA and its regulations provide for a number of rules pertaining to the running of licensed brothels. For example, alcohol cannot be sold or consumed in brothels and children over 18 months or under 18 years of age are not permitted to be on the premises. Brothels must also have a system of alarms or other communications systems in case of emergencies (for example, if a client is violent). Sufficient lighting must also be provided to enable a worker to check a client for visible signs of disease and provide clean linen and showers for both worker and client. Proprietors of brothels must also provide condoms, lubricant and ensure that only safe sex practices are advertised on the premises. There are also strict regulations on how brothel or escort services can be advertised.¹⁷⁹

Unlicensed brothels

Brothels that are not licensed with the BLA or granted the relevant planning permit are characterised as illegal brothels. Operators of illegal brothels are subject to severe penalties.¹⁸⁰ It is also illegal to live off the earnings of prostitution from an unlicensed

¹⁷⁷ Penalty: For a first offence - 5 penalty units or imprisonment for 1 month; For a second offence - 15 penalty units or imprisonment for 3 months; For a subsequent offence - 25 penalty units or imprisonment for 6 months.

¹⁷⁸ Usually the *Planning and Environment Act 1987*.

¹⁷⁹ See Sections 17-18 *Prostitution Control Act 1994*.

¹⁸⁰ Section 10 of the *Prostitution Control Act 1994* states:

(1) A person must not knowingly or recklessly carry on business as a prostitution service provider-

- (a) without holding a licence; or
- (b) in breach of any condition of a licence; or
- (c) when a licence is suspended.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

(1A) A person must not carry on business as a prostitution service provider:

- (a) without holding a licence; or
- (b) in breach of any condition of a licence; or
- (c) when a licence is suspended.

Penalty: Level 7 fine (240 penalty units maximum).

(2) In a proceeding for an offence against subsection (1) or (1A) it is a defence to the charge for the accused to prove that he or she was exempted by section 23 from the requirement to hold a licence.

brothel.¹⁸¹ Clients of illegal brothels are also subject to penalties. For example, a person must not be found, without reasonable excuse, in or entering or leaving a brothel in respect of which there is not in force any licence required under the Act.¹⁸²

There are specified provisions with regard to police entry into licensed and unlicensed brothels. These powers of entry have recently been changed by amendments to the *Prostitution Control Act*, but up until January 2010, police of the rank of inspectors or above may enter and inspect licensed brothels without warrant.¹⁸³ Police of the rank of senior sergeants or above were able to enter suspected unlicensed brothels with search warrants,¹⁸⁴ whilst inspectors could enter suspected unlicensed brothels without a warrant outside of office hours.¹⁸⁵

Federal Police, Social Security and Immigration agents may also enter licensed and unlicensed brothels and search workers and staff in certain circumstances including where they suspect an indictable activity (such as sex trafficking or working without a legal visa) is being conducted on the premises. The new laws of entry and inspection for Victoria Police are discussed in Chapter 12 of this Report.

Owner operated (exempt) brothels

Within the *Prostitution Control Act* there are provisions for operating commercial sexual services by sole operators. An exempt prostitution service provider may operate a brothel with up to one other person (not including drivers, receptionists, security officers or cleaners) without a licence from the BLA, although planning permission from the local council will still be required. The brothel cannot be in a residential area or closer than 200 metres from a church, school, hospital or place where children regularly frequent (for example, a park or playground).

Whilst a sole provider need not be licensed, he or she is required to be registered with the BLA and is then given an official PCA number.

(2A) In a proceeding for an offence against subsection (1A) it is a defence to the charge for the accused to prove that, at the time of the conduct constituting the offence, the accused was under a mistaken but honest and reasonable belief about facts which, had they existed, would have meant that the conduct would not have constituted an offence against that subsection.

(3) A person must not assist in the carrying on of a prostitution service providing business at a time when he or she knows that subsection (1) is being contravened or is reckless as to whether or not subsection (1) is being contravened.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

(4) An offence against subsection (1) or (3) is an indictable offence.

(5) In a proceeding for an offence against subsection (1), (1A) or (3) evidence of the presence on premises of materials commonly used in safe sexual practices is inadmissible for the purpose of establishing that a prostitution service provider carried on business on those premises.

¹⁸¹ Section 22, *Prostitution Control Act* 1994.

¹⁸² Penalty: For a first offence - 10 penalty units or imprisonment for 1 month;
For a second offence - 30 penalty units or imprisonment for 3 months;
For a subsequent offence - 60 penalty units or imprisonment for 6 months.
Section 15, *Prostitution Control Act* 1994.

¹⁸³ Section 62, *Prostitution Control Act* 1994.

¹⁸⁴ Section 63, *Prostitution Control Act* 1994.

¹⁸⁵ Section 64, *Prostitution Control Act* 1994.

Escort services

The clear difference between brothel and escort work is that in the latter commercial sexual services are provided in a location other than a fixed premises such as a brothel. Usually the worker will visit a hotel, a client's hotel or other place. Legal escort work can be done through a licensed escort agency or as a sole private worker. Escort agencies must be duly licensed and registered with the BLA as prostitution service providers. As a safety measure, agency licensees must provide escorts with an appropriate communication device such as a mobile phone or buzzer to ensure they are contactable whilst working. Similar to sole operators in brothels, private escorts need not be licensed but are required to register with the BLA.

Forced prostitution

Similar to the sexual servitude provisions of the state *Crimes Act* discussed earlier, there are some provisions of the PCA 1994 that can and have been used to address domestic trafficking or slavery-like situations in Victoria. Most notably Section 8 of the PCA makes it an offence to induce a person to engage or continue to engage in prostitution as follows:

- (1) A person must not with intent to induce another person aged 18 years or more to engage or continue to engage in prostitution-
 - (a) assault or threaten to assault that other person or any other person; or
 - (b) intimidate that other person or any other person; or
 - (c) supply or offer to supply a drug of dependence to that other person or any other person; or
 - (d) make a false representation or use any false pretence or other fraudulent means.
 - Penalty: Level 5 imprisonment (10 years maximum).

R v Glazner

*R v Glazner*¹⁸⁶ was the first major case in Victoria to deal with women held in a situation akin to sexual slavery or servitude.

The evidence showed that Garry Glazner had brought several Thai women to Australia after buying them for about \$20,000 each from a Thai agent. The women knew they would be working in the sex industry, but were unaware of the oppressive conditions they would be subjected to in Melbourne. For example, the women were kept in small rooms with sealed windows and iron gates and bars to restrict their movement. Mr Glazner verbally abused the women and to intimidate them kept a firearm in clear view of them. There was, however, no direct evidence of physical violence.

The women initially entered Australia on tourist visas and were accompanied by a Thai 'minder' who escorted them and carried their passports. Some of these documents were forged, others were legal. Mr Glazner confiscated the women's passports and lodged forged refugee protection visa applications on their behalf, enabling them to continue working. They were forced to work 12 hours a day, seven days a week in an unlicensed brothel in South Melbourne, and were told they would not receive any payment for their first 500 jobs. Some of the women were moved to premises in Sydney. It is estimated that Mr Glazner made at least AUD 1.2 million from the women in his 'employ'.

¹⁸⁶ *DPP v Glazner* [2001] VSCA 204 [6].

Mr Glazner was arrested in 1999. Neither the Commonwealth nor Victoria had any laws on the statute books then relating to slavery or trafficking. Therefore he was only charged and convicted for offences under the PCA 1994 (Victoria), namely being an unlicensed prostitution provider (s.22) and living off the earnings of prostitution (s.10). He received a suspended 30-month sentence and a \$30,000 fine. Arguably today Mr Glazner could be charged under numerous federal or state offences.

Reforms to sexual regulation in Victoria – The Sex Work Act

At the time of writing, the Victoria Parliament has been debating the Consumer Affairs Legislation Amendment Bill 2009. This is an omnibus bill seeking to amend many of the laws pertaining to consumer affairs regulation. However, in the context of this Inquiry, the Bill seeks to amend the *Prostitution Control Act 1994* to reform licensing arrangements, strengthen enforcement powers and clarify the operation of certain aspects of the Act. In particular, Clause 42 of the Bill renames the *Prostitution Control Act 1994* as the *Sex Work Act 1994*. Similarly, the Act's Schedule updates references to 'prostitute' and 'prostitution' to 'sex worker' and 'sex work' in the *Prostitution Control Act 1994*.

Many of the new reforms to the Act will be discussed later in this Report when the nature of the sex industry in Victoria is examined. Nonetheless, it is important here to flag two particular changes to the law relevant to sex trafficking within this state.

First, Clause 60 inserts a proposed section 60A into the *Prostitution Control Act 1994* to require licensees to display prescribed signage relating to sexual slavery in brothels in places where any person on the premises can read that signage. The Governor in Council may also make regulations prescribing the signage and its locations. These provisions legislate for a state-wide scheme of similar bylaws to those already introduced into brothels under the jurisdictions of some local government areas, including the City of Melbourne, City of Yarra and City of Moreland. The Minister for Consumer Affairs noted during his Second Reading Speech of the Bill that the rationale for signage about sex slavery is: 'to improve awareness that sex slavery exists, and that it is illegal. This will particularly enhance awareness for people who may not otherwise have access to that information, for instance due to language differences'.¹⁸⁷

Second, Clause 61 amends section 61 of the PCA 1994 to require licensees and approved managers to produce, on demand, their identity card to an authorised member of the police force or an inspector.

As the Minister for Consumer Affairs states these laws will extend the powers of Consumer Affairs Victoria inspectors to allow them to seek information about reasonably suspected unlicensed brothels and take effective enforcement action against such illegal brothels.¹⁸⁸

Finally, the Bill introduces a variety of measures to strengthen the enforcement of the *Sex Work Act*. For example, the bill significantly increases penalties for operating a brothel without a licence, bringing those penalties into line with penalties for operating a brothel without a planning permit.

¹⁸⁷ The Hon. Tony Robinson, Minister for Consumer Affairs, Consumer Affairs Legislation Amendment Bill 2009. Second Reading Speech, Hansard Legislative Assembly 26 November 2009, p.4329.

¹⁸⁸ The Hon. Tony Robinson, Minister for Consumer Affairs, Consumer Affairs Legislation Amendment Bill 2009. Second Reading Speech, Hansard Legislative Assembly 26 November 2009, p.4329.

Conclusion

The cases that have arisen as a result of state and federal laws with regard to slavery, sexual servitude and trafficking have been few. There are numerous reasons. These include the relative recency of the legislation, the complexity of the law, the unwillingness of victims to cooperate with investigators or give evidence in court and the lengthy and expensive nature of the process.¹⁸⁹ Nonetheless, the slowly evolving body of case law is valuable not only in terms of interpreting the law and setting legal principles and precedents in this area, but also for giving insights into how trafficking is conducted, why it happens and the consequences for its victims. An analysis of how the facts in the various cases give an illustration of trafficking in Australia is therefore a useful adjunct to the discussion of the nature of trafficking, described in the next chapter.

Recommendation

The Committee recommends that an offence of debt bondage similar to that found in the Commonwealth Criminal Code be enacted in Victoria. (*Recommendation 5*)

The Committee believes a debt bondage offence is needed to accompany the offence of sexual servitude already in the Victorian Crimes Act. This offence should mirror its counterpart in the Commonwealth Criminal Code. It is acknowledged that in a great majority of the cases matters pertaining to sex trafficking are referred to the AFP and dealt with as offences against the Commonwealth. Nonetheless, by creating a state offence the educative message is sent out that trafficking is a matter that is taken seriously by the Victorian community.

¹⁸⁹ See Chapter 8 of this Report for a discussion of the difficulties involved in investigating and prosecuting trafficking cases.

Part 3 – National Approaches to Address Trafficking

7. Commonwealth Strategies to Address Sex Trafficking

Introduction

Due to their international and transnational nature, the Commonwealth government has the primary responsibility for addressing trafficking crimes that occur within Australia's boundaries or involve Australian citizens.

The complex nature of sex trafficking requires a comprehensive and coordinated policy framework to address it. The key policy initiative to address trafficking in Australia is the Commonwealth Whole of Government Anti People Trafficking Strategy. Established in 2003, this Strategy was comprehensively revised in 2009.

The Strategy and an accompanying Action Plan are supported through the work of approximately ten Commonwealth agencies and departments. Each department is represented on an Anti People Trafficking Inter-Departmental Committee (IDC). The IDC is chaired by the Attorney-General's Department.¹⁹⁰

Partnerships have also been established between government departments and non-government organisations (NGOs) through the National Roundtable on People Trafficking. This body acts as a consultative mechanism between the government and the community sector on current and emerging trafficking issues. The Roundtable was established in 2008.¹⁹¹

¹⁹⁰ The full list of key agencies and departments that make up the IDC are as follows:

- Australian Agency for International Development
- Australian Crime Commission
- Australian Federal Police
- Australian Institute of Criminology
- Commonwealth Director of Public Prosecutions
- Department of Education, Employment and Workplace Relations
- Department of Foreign Affairs and Trade
- Department of Immigration and Citizenship
- Department of the Prime Minister and Cabinet
- Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs.

¹⁹¹ Membership of the Roundtable includes representatives from inter alia:

- Australian Catholic Religious Against Trafficking in Humans
- Australian Chamber of Commerce and Industry
- Australian Medical Association
- Anti-Slavery Project
- Australian Women Lawyers Association
- Australian Workers Union
- Australian Human Rights Commission
- Law Council of Australia
- National Association of Community Legal Centres
- National Association of Services Against Sexual Violence

Australia's Anti People Trafficking Strategy 'addresses the full trafficking cycle from recruitment to reintegration, and lends equal weight to the critical areas of prevention, detection and investigation, prosecution and victim support' (Attorney-General's Department 2009a, p.1).

The major features of the Strategy are:

- International Aid, Assistance and Development
- Regional Support, Training and Cooperation
- A National Policing Strategy
- Detection, Investigation and Prosecution of suspected trafficking cases
- The Victim Support Framework
- Return and Reintegration Frameworks
- A new Communication Awareness Strategy
- A new visa framework and visa regime.

The responses and strategies to address sex trafficking discussed in this chapter could be loosely described as 'supply side' strategies, as they seek to stop trafficking once it has occurred by penalising those responsible for the crime.¹⁹² This is to be distinguished from strategies that seek to stop the demand for trafficking by concentrating on those men who purchase sexual services from trafficked women. Approaches and more general prevention strategies aimed at heightening education and awareness of sex trafficking that are better handled at a state level are dealt with later in this Report.

Given the scope and breadth of these topics, three areas of the Action Plan, namely the investigation and detection of sex trafficking, the prosecution of cases and the support and reintegration of trafficking victims will be dealt with in Chapters 8 and 15.

International aid and development

Australia's international and regional aid and assistance programs aim to address the factors that may contribute to trafficking, such as global and regional poverty, unemployment, lack of education and gender discrimination.

The eight Millennium Development Goals (MDGs), agreed targets set by the world's nations to reduce poverty and achieve other development objectives by 2015, guide the Australian Government's overseas aid program. In 2009–10 Australia will provide an estimated \$3.8 billion worth of official development assistance.¹⁹³

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- Project Respect
 - Scarlet Alliance
 - Sisters of Saint Joseph
 - The Salvation Army
 - Victims Support Australia
 - Representatives from the Commonwealth Government including members of the Anti People Trafficking Inter Departmental Committee.

¹⁹² See for example, Attorney-General's Department 2009c.

¹⁹³ Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

Australia's aid program concentrates primarily on the Asia-Pacific region, and plays a leading role there. The Australian Agency for International Development (AusAID) coordinates and manages Australia's federal development and cooperation programs. Programs may be broad based and designed to achieve general economic development and growth; stability and effective governance; and better education and school retention in developing countries, thereby indirectly addressing the problems that may lead to trafficking. As well, specific programs aimed at preventing or combating trafficking are being developed (Sutherland 2007).¹⁹⁴ AusAID also supports a number of NGO projects aimed at preventing trafficking and assisting victims, including projects overseen by international aid agencies such as International Red Cross, World Vision and UNICEF. A number of projects also target child sex tourism and promote child protection.¹⁹⁵

Countries known to be key source locations for trafficking are a particular focus of Australian aid programs. These countries include Cambodia, southwest China, Lao PDR, Burma, Thailand and Vietnam (the Greater Mekong Sub-region). Countries such as these, with the possible exception of Thailand, 'remain dependent on overseas aid to resource their anti-trafficking efforts' (Asia Regional Trafficking in Persons (ARTIP) Project 2005, p.11). However, unlike the United States Trafficking in Persons (TIP) programs, the grant of development aid is not linked to whether or not the recipient country has formulated an Action Plan or similar program to combat trafficking.¹⁹⁶

A Commonwealth joint departmental submission to this Inquiry states that a key aim of Australian development assistance is to: 'improve the capabilities of organisations and persons to combat human trafficking and support trafficking victims, especially women.'¹⁹⁷ A major focus of these programs is to improve regional and national communication and cooperation, particularly through legal, administrative, policy and advocacy measures. They also fund interventions that particularly focus on gender equality through measures such as community development programs, training and education of women, health and nutrition, income generation and anti-violence projects. The most important project seeking to achieve these goals is the ARTIP Project.

Asia Regional Trafficking in Persons Project (ARTIP)

The ARTIP Project, begun in August 2006, is a five-year, A\$21 million activity funded by AusAID. ARTIP aims to assist the criminal justice systems of South-East Asia in developing a more effective and coordinated approach to people trafficking. It builds on an earlier regional initiative known as Asia Regional Cooperation to Prevent People Trafficking (ARCPPT).

¹⁹⁴ For a comprehensive discussion of the various international, regional and national anti-trafficking aid projects funded by AusAID, see Sutherland 2007 and the AusAid website at <http://www.ausaid.gov.au/>

AusAID is also involved with other international aid projects to reintegrate and repatriate victims of trafficking in their home countries. These projects are described more fully in Chapter 15 on victim support and reintegration.

¹⁹⁵ In particular, AusAID is designing two new programs as part of its anti-trafficking work; one to assist vulnerable migrant workers and their families and another to combat the sexual exploitation of children in the Mekong sub-region. These programs are expected to commence in 2010.

¹⁹⁶ Ms Melinda Sutherland of AusAID states that whilst the TIP Report highlights the 'three 'Ps' – prosecution, protection and prevention – a victim centred approach to trafficking requires more concentration on the 'three Rs' – 'rescue, rehabilitation and reintegration' (Sutherland 2007, p.91).

¹⁹⁷ Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

Partner countries of ARTIP include Thailand, Lao PDR, Cambodia, Burma, Indonesia, the Philippines and Vietnam. The ARTIP Project also works closely with the Association of South-East Asian Nations (ASEAN) and engages with all ASEAN countries at a regional level. The Project has developed training materials for all ASEAN members, enhancing cross-border cooperation on anti-trafficking matters through the use of common standards and procedures, and improved information sharing.

A key focus of ARTIP, and previously of ARCPPT, is to foster regional and international cooperation to strengthen criminal justice responses to trafficking. In particular, Australia has taken a key role in the training of criminal justice personnel (immigration officials, police, prosecutors and judges) throughout the Asia-Pacific region.

The three key components of this aspect of ARTIP's functions are to:

- Strengthen specialist and general law enforcement responses to trafficking;
- Strengthen judicial and prosecutorial responses to trafficking; and
- Improve policy, legal, research and outreach capability in the region (Attorney-General's Department 2009c, p.41).

A recent mid-term review of ARTIP noted that its work is highly respected in the region and that ARTIP training has been linked to increased instances of cross-border communication by relevant agencies, victim rescues and identification, and arrests and successful prosecution of suspected traffickers.¹⁹⁸

Assistance to International Organisation on Migration (IOM)

A major aspect of Australia's humanitarian and development assistance is its ongoing support and funding for the IOM. The IOM provides comprehensive assistance to the victims of trafficking through its repatriation, settlement and reintegration packages.¹⁹⁹ In addition it has been responsible for compiling invaluable data and information on global trafficking flows and the extent of the problem, particularly in the Asia-Pacific region.²⁰⁰

Regional support strategies

As well as funding international assistance programs, the Commonwealth also attempts to prevent human trafficking through:

¹⁹⁸ See Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

¹⁹⁹ See Chapter 15 for further discussion.

²⁰⁰ The IOM takes a 'Four Pillar' approach to combating trafficking. These pillars consist of programs or projects aimed at:

- 'Prevention [Research, Data Gathering and Analysis; Awareness Raising and promotion of Sound Migration Policy]
- Protection Assistance [Empowerment of Victims, Return and Reintegration]
- Prosecution
- Partnership [Capacity Building of governments, NGOs, international agencies and civil society]' (See International Organisation for Migration 2009a, p.2).

- Diplomatic and bureaucratic personnel liaising with regional governments;
- Strengthening legal agreements such as extradition treaties and memoranda of understanding (MOUs); and
- Law enforcement training for domestic, regional and international police forces.

Diplomatic representation

Australia has appointed an Ambassador for People Smuggling and Trafficking Issues. The Ambassador's role is to promote high level advocacy and dialogue on promoting and developing 'effective and practical international cooperation to combat people smuggling and trafficking in persons', particularly in the Asia-Pacific Region (Attorney-General's Department 2009c, p.39).

The Ambassador works closely with other countries and international agencies such as the Australian Red Cross in promoting Australia's all-of-government approach to human trafficking. This approach aims to implement measures that deliver practical benefits and aid to regional agencies in order to prevent and combat trafficking in the regions.

Senior Migration Officer Compliance (Trafficking) (SMOCT) positions

Australia has a large network of general immigration compliance officers deployed throughout Australian missions and embassies, particularly in the Asia-Pacific region. Their role is to collect intelligence on possible or potential migration fraud and combat people smuggling and human trafficking.

Since 2003, three SMOCT positions have been established based in Bangkok, Manila and Beijing to specifically target sex trafficking:

The preventative work of the specialist positions aims to prevent trafficking at its source by vetting visa caseloads for fraud that may lead to trafficking and analyse trends in visa processing. They also work closely with police and with local government and NGOs to identify ways to prevent trafficking (Attorney-General's Department 2009c, p.2).

SMOCT officers work in tandem with and provide training to the general officers of the Department of Immigration and Citizenship (DIAC) overseas compliance network, airport liaison officers and Australian embassy personnel. The training focuses on how to identify the indications of people trafficking in immigration and visa caseloads. In particular, SMOCT officers vet visa caseloads for fraud that could lead to trafficking. They also analyse any trends that may arise including:

- Applicant's travel plans
- Use of Migration Agents; and
- The nature of the claims lodged in applications (Attorney-General's Department 2009c, p.2).

The officers, in conjunction with the Australian Federal Police (AFP), have played a key role in identifying trafficking links to Australia, particularly from Bangkok. They also liaise closely with international and regional government and non-government agencies to identify ways to prevent trafficking.

At a domestic level, SMOCT officers also work closely with a network of 18 DIAC Intelligence officers deployed in each state and territory of Australia. These agents are usually based in airports and seaports across the country. In conjunction with the AFP, SMOCT officers collect and analyse intelligence on migration patterns that may assist in preventing trafficking and smuggling operations.

Treaties and memoranda of understanding (MOUs)

A key aspect of preventing and fighting people trafficking is establishing strong international and regional legal cooperative agreements. The Commonwealth has entered into a number of treaties of extradition with relevant regional neighbours to enable suspected people traffickers to be extradited to or from Australia for trial. It has also entered many mutual assistance agreements and MOUs in order to provide and obtain formal government-to-government assistance in criminal investigations and prosecutions, particularly in the areas of arrest, investigation and evidence gathering.

Currently the Attorney-General's Department is undertaking a policy review for reform of Australia's international and regional agreements for legal assistance and cooperation: 'Possible changes will be directed to reducing delays in current processes, and enhancing Australia's ability to co-operate with other countries in fighting crime' (Attorney-General's Department 2009c, p.16).

International Legal Assistance Unit, Commonwealth Attorney-General's Department

The International Legal Assistance Unit of the Attorney-General's Department provides technical legal assistance and support to countries to build their capacity to prosecute transnational crime, including people smuggling and human trafficking. Assistance programs are developed cooperatively with partner countries and are flexible and tailored to suit their specific needs.

Law enforcement training

The AFP's Transnational Sexual Exploitation Investigations training program aims to provide specialist training to investigators and police officers in countries throughout the Asia-Pacific region. Its goal is to 'help investigators develop the skills necessary for successfully investigating these sensitive and often complex cases' (Australian Institute of Criminology (AIC) 2009c, p.26). According to Professor Susan Kneebone, this is particularly important because some countries in the region where trafficking is a problem 'do not have a trained police force, do not have an uncorrupted judicial system [and] do not have a legal profession'.²⁰¹

²⁰¹ Professor Susan Kneebone, Deputy Director for Castan Centre for Human Rights Law, Monash University, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

Policing sex trafficking

As trafficking offences fall almost exclusively under federal law, the responsibility for investigating cases is primarily with the AFP, with occasional assistance and cooperation from local state and territory police forces. Similarly, the prosecution of trafficking suspects under the Commonwealth Criminal Code is the sole responsibility of the Commonwealth Director of Public Prosecutions, even if state courts hear the cases, as they are then acting in a federal capacity.

A national policing strategy

In 2005, an Australian Policing Strategy to combat trafficking in women for sexual servitude was initiated to provide a framework to guide investigation and law enforcement activity with regards to sex trafficking.

The strategy aims to complement the Commonwealth's all of government Anti-Trafficking Strategy. It outlines six targeted areas: prevention, capacity and resources, victim assistance, partnerships, training and education, and regulation and legislation.

The objectives of the strategy include to:

- promote community awareness
- promote successful investigations and prosecutions
- ensure Australian police agencies have the recourses and capacity to fulfil their obligations under the strategy
- encourage the sharing of information across law enforcement agencies
- introduce training and procedures to improve detection of and responses to victims (including the development of appropriate interviewing guidelines)
- establish and maintain effective relationships with state, territory and Australian Government departments, NGOs and regional and international law enforcement agencies
- provide training on the nature, extent and sensitivities of trafficking in persons
- examine legislation and regulations to ensure that law enforcement have the necessary powers to investigate trafficking cases effectively (AIC 2009c, p.31).

The Australian states and territories provide annual reports of their activities against the objectives and benchmarks of the strategy. The Australian Crime Commissioners Forum (ACCF) then compiles this information into a national annual report. State Police Commissioners also attend annual working meetings that discuss operational issues pursuant to the strategy and general issues with regard to trafficking in the respective states and territories.

Transnational Sex Exploitation and Trafficking Teams (TSETT)

A key aspect of the Commonwealth Anti Trafficking Strategy has been the establishment of TSETT, a specialist unit of the AFP responsible for investigating trafficking in persons and child sexual tourism offences.

TSETT investigators must enrol in a three-week residential specialist training program run by the AFP. The objectives of the program are to:

Develop the knowledge and skills required to successfully conduct complex, sensitive and/or protracted investigations of offences involving sexual exploitation and child sex tourism in a multi-jurisdictional and international environment (David 2008a, p.11).

The program focuses on several learning outcomes, including:

- Identification of relevant legislation and case law
- Identification of relevant best practice investigation procedures and methodologies
- Key issues and considerations in victim-led, reactive investigations of trafficking
- Understanding cultural issues that impact on a victim's ability and willingness to become a witness in a trafficking investigation and displaying sensitivity to cultural issues when conducting interviews
- Gender awareness
- Identifying and analysing trafficking trends.

The program includes input from other government departments such as DIAC. There are also presentations from NGOs such as Project Respect and the Scarlet Alliance, the peak body representing Australian sex worker organisations and projects. The program is also open to and attended by other federal agents such as DIAC officers and state police officers and investigators.

Communication Awareness Strategy

The Commonwealth Government has implemented a Communication Awareness Strategy to increase awareness about people trafficking, particularly within the sex industry. The Strategy aims to inform and educate sex workers and people who may come in contact with sex workers. It provides information on how to seek assistance or report people trafficking:

The Communication Awareness Strategy is a highly targeted campaign. Market research indicated that the primary target audiences were local and overseas-born sex workers, with a secondary audience including clients and service providers. To access these primary and secondary groups, a suite of discrete information materials has been produced in six languages: English, Chinese, Thai, Tagalog, Korean and Vietnamese. The materials were developed to be sensitive to the needs of potential trafficking victims and minimise the risk of further exploitation.²⁰²

The materials were first distributed in March 2007 and are apparently very popular amongst community and other agencies.²⁰³ The volume of materials distributed has exceeded expectations, with over 16,000 requests received for copies of the information suite (brochures, address books and information cards.) Overall, the materials in the English language were most requested (26 per cent), followed by Chinese (20 per cent) and Thai (19 per cent).²⁰⁴ A key goal of distributing these materials is to encourage

²⁰² Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

²⁰³ Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

²⁰⁴ Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

greater reporting of suspicious activity by sex workers, brothel owners, clients, managers, sex worker advocacy organisations, migration agents, brothel regulators and others (Attorney-General's Department 2008 in AIC 2009c).

DIAC and other Commonwealth departments have also worked with agencies such as Project Respect to produce pamphlets for those who may have been trafficked, or may know a suspected trafficking victim. The pamphlet is available in English, Chinese, Thai, Indonesian and Korean and is distributed by immigration compliance officers to those working in the sex industry.

The Strategy also aims to promote 'responsible, culturally appropriate and context sensitive' media reporting of trafficking issues (Attorney-General's Department 2008 in AIC 2009c, p.26).²⁰⁵ It includes pro bono advertisements encouraging victims and concerned members of the public to telephone an AFP hotline. These advertisements have been published in the personal services sections of major metropolitan and suburban newspapers since January 2006.²⁰⁶

Visa regimes

In 2004 the Commonwealth Government implemented a number of reforms in the area of people trafficking and migration law and policy. This was partly in response to some of the international and national changes made to the law of trafficking in 2002 (discussed in Chapter 6).

One of the most significant of the reforms has been the establishment of the People Trafficking Visa Framework. This scheme allows victims of trafficking to remain legally in Australia (despite in many cases original non-legal entry) if they agree to assist law enforcement agencies in criminal justice proceedings against alleged traffickers.²⁰⁷

The original scheme

Under the previous arrangements, the Framework comprised three phases:

- Assessment Stream, which provided intensive support for the first 30 days after a victim is identified;
- Justice Support Stream, which provided ongoing support until the finalisation of the trafficking. investigation and/or prosecution; and
- Temporary Trial Support Stream which provided intensive support for clients who return to Australia to give evidence in a trafficking-related prosecution.

The Visa component of the Framework consisted of four visas, as follows.

²⁰⁵ The issue of the media reporting of trafficking is a complex and sensitive one, but beyond the scope of this Report. For an in-depth critique of the media role in this context, see Bindel 2006. For further comment see Schloenhardt 2008; United Nations General Assembly 2009.

²⁰⁶ The issues of education and awareness training are also relevant to strategies that can be developed at state level. These issues are discussed in Chapter 14 of this Report where a copy of the AFP hotline advertisement can also be found.

²⁰⁷ For a comprehensive discussion of the visa framework both under the old law and since the changes introduced in 2009, see Burn 2009.

Bridging F visa: Granted for up to 30 days during the assessment stream after the person is identified as a possible trafficking victim.

Criminal Justice Stay visa: Granted after the expiry of the Bridging F visa and when the victim has agreed to participate in criminal proceedings.

Witness Protection (Trafficking) (Temporary) visa: Granted for up to three years if victims have met certain criteria about their contribution to and cooperation with criminal proceedings.

Witness Protection (Trafficking) (Permanent) visa: Granted after at least two years on the temporary visa and the victim has made significant contributions to the prosecution of his or her trafficker or otherwise made a significant contribution to the investigation of a trafficking matter.

Victims of trafficking previously needed to apply for or hold one of the visas under the Visa Framework to access the various streams of support under the Program. In other words, a trafficking victim with a legitimate visa (such as a study visa) was not eligible as of right to the services provided under the Victim Support package.

A 2009 report by the Australian National Audit Office (ANAO) found some deficiencies with the People Trafficking Visa Framework and other aspects of the federal government's people trafficking policy (ANAO 2009). For example, it had been argued that potential witnesses may have been 'reluctant to testify in a trafficking case if they fear that they may be required to return to their home country at the end of the trial possibly to face the persons who trafficked them' (Attorney-General's Department 2009c, p.27). As a result of the Report's recommendations and pressures from community groups working in the field, a series of changes were made to simplify the Framework, give greater support to victims and clarify their position at law.

Changes to the Framework

The changes to the People Trafficking Visa Framework were developed following consultations by DIAC, with a range of non-government stakeholders and government agencies. The main changes are as follows.

Victims on legitimate visas

Victims no longer have to hold a visa under the People Trafficking Visa Framework to access the Support for Victims of Trafficking Program.²⁰⁸ This enables victims in possession of valid visas when discovered to remain on their current visa while considering their options as to whether to assist with an investigation. Victims on current legitimate visas are eligible for victim support and are able to maintain any employment they have.

²⁰⁸ For details of the Victim Support Program see Chapter 15.

Bridging visas and victim support

Victims are now only granted a visa in the trafficking framework if they have entered unlawfully. If the person is unlawful, they can be granted a Bridging F visa for 45 days. Thus under the new system all victims of trafficking now receive an initial period of 45 days support regardless of whether they are willing to assist police.

Another major change is that victims are now eligible for assistance when they are willing, but not able, to assist with an investigation and prosecution of a people trafficking offence. This may be because they are suffering from trauma and require a period of rest and reflection before they are ready to face the rigours of a trafficking trial. Formerly victims who were not able to assist with an investigation and prosecution of a people trafficking offence were assisted to return to their country of origin, unless they could satisfy criteria of another visa enabling them to remain in Australia.

Under the new arrangements, victims of trafficking who are willing, but not able, to participate in a criminal investigation may be eligible for up to 90 days support under the Program (45 days support under the Assessment Stream and 45 days support under a new Extended Intensive Support Stream). The victim support package is managed by the Australian Red Cross on behalf of the Commonwealth Government.²⁰⁹

Criminal Justice Stay visas

Criminal Justice Stay Visas allow a person to remain in Australia lawfully for the period of criminal justice proceedings. They are usually issued after bridging visas have expired and the victim has indicated she is willing to participate in criminal proceedings. These visas are only granted where a person's status is unlawful. People holding these visas continue to have access to the Victims of Trafficking Support Program and also have work rights.

Witness Protection visa

Until July 2009 a victim of trafficking on a criminal justice visa may have been invited to apply for a Witness Protection (Trafficking) (Temporary) visa if they had significantly contributed to, and cooperated closely with, a trafficking-related investigation or prosecution and would be in danger if they returned home. Their immediate family members in Australia could be included in the invitation. The temporary visa was granted for a period of three years with processing for the permanent visa commencing in the third year.

From 1 July 2009, the temporary visa was removed from the Visa Framework and victims of trafficking can now apply directly for the permanent visa. Their immediate family members, both inside and outside Australia, can be included in the invitation.

A further change is that the threshold for issuing a Witness Protection Visa has been lowered from having made a 'significant contribution' to making a 'contribution' to an investigation. Prior to 1 July 2009, victims of trafficking and their immediate family members in Australia were invited to apply for a Witness Protection (Trafficking) visa *after* the prosecution process has been finalised. From 1 July 2009, victims of trafficking and their immediate family members both in and outside Australia can apply for a

²⁰⁹ For a comprehensive discussion of the victim support package and victim assistance generally see Chapter 15.

Witness Protection (Trafficking) visa earlier in the criminal justice process under an independent trigger (time of charging plus 90 days).²¹⁰

A change for the better?

Community groups such as Project Respect have lauded these changes as providing improved levels of support to victims of trafficking. It is also agreed they simplify and clarify the legal and administrative process.²¹¹ For example, Professor Jennifer Burn, Director of the Sydney based Anti Slavery Project, writes:

These changes will simplify a complex visa framework, provide victims and their immediate family members with greater certainty about their immigration status, facilitate family reunion and improve access to the government funded victim support program...The new framework prioritises the protection of trafficked people while strengthening the capacity for law enforcement to build relationships of trust with people who are willing to give evidence against their traffickers (Burn 2009, p.3).

Most notably, the new changes separate victim support from visa status. From 1 July 2009, victims of trafficking on any valid Australian visa are able to access support under the Program. This de-linking of support from the legal status of the victim was one of the most sought after reforms.

This area of law and policy is complex and difficult to administer. And whilst the legal framework is certainly comprehensive with Australia honouring all of its obligations under international law, the question remains as to how effective law enforcement is in this area and whether the level of resourcing that is put into both investigation and policing of trafficking and the support of victims is sufficient.

Moreover, whilst the reforms to the visa system introduced in 2009 have been relatively far-reaching, do they go far enough in centering people trafficking policy on a humanitarian and human rights basis? According to some critics, they do not. For example, some advocates have argued that in line with international human rights obligations²¹² the provision of support and assistance to victims should be *completely* divorced from any requirement that the victim cooperate with legal authorities or any prosecution. If this was the case it would be more difficult for defence counsel to argue that the victim's evidence at trial has been concocted in order to gain access to visas and victim support (Burn 2009).

Other criticisms have also been forthcoming, for example whether avenues such as refugee protection be used instead of or in addition to the trafficking visa regime? Or should the focus remain primarily on law enforcement and migration control?

²¹⁰ Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

Despite this observation some critics have argued that there is still uncertainty as to exactly when the 'independent trigger' is initiated.

²¹¹ See for example, News Release. 'Australia provides greater support and better visas for survivors of trafficking', 25 June 2009, Project Respect website www.projectrespect.org.au/news/aust-govt-reforms Accessed 17 August 2009.

²¹² For example, the *United Nations Principles and Guidelines on Human Rights and Human Trafficking* state 'access to adequate physical and psychological care shall not be conditional on the capacity or willingness of trafficked persons to co-operate in legal proceedings' (United Nations, High Commissioner for Human Rights Principles and Guidelines on Human Rights and Trafficking, E/2002/68/Add.1,2002 at <http://www1.umn.edu/humanrts/instree/traffickingGuidelinesHCHR.html>, Accessed 11 March 2010).

8. The Investigation and Prosecution of Sex Trafficking Offences in Australia

Introduction

The investigation and prosecution of trafficking offences is primarily a responsibility of the federal government and its agencies pursuant to the Commonwealth *Anti People Trafficking Strategy*. This is not to discount the role that state and territory police forces may play with regard to law enforcement in this area. They provide an important ancillary service to their federal counterparts in investigating trafficking and have responsibility for the related area of offences under the *Prostitution Control Act*. The role of state based law enforcement therefore requires separate discussion.²¹³

To successfully investigate trafficking and prosecute and convict offenders requires a comprehensive law enforcement model. It is necessary therefore to examine the current investigatory procedures used with regard to trafficking; the problems associated with them and how they could be improved. Similarly, there are challenges associated with the prosecution of cases under the Commonwealth Criminal Code. Addressing these challenges, thereby increasing the likelihood of securing convictions, is a key task for law enforcement officials.

Investigating sex trafficking offences

The process of investigating trafficking cases is extremely complex. It requires an investigatory model incorporating best practice strategies to minimise problems related to investigation and ensure suspected sex trafficking offenders are brought to justice.

A model framework

Developing effective criminal justice responses to a clandestine and global crime such as trafficking is difficult. It is especially difficult for source countries that are invariably less wealthy and well resourced than destination countries such as Australia. It has been suggested that an effective model to address trafficking of human beings must include the following:

- A comprehensive legal framework in compliance with international standards
- A specialist law enforcement capacity to investigate human trafficking
- A general law enforcement capacity to respond effectively to trafficking cases
- Strong and well informed prosecutorial and judicial support
- Quick and accurate identification of victims along with immediate protection and support
- Special support to victims as witnesses

²¹³ See Chapter 12.

- Systems and processes that enable effective international investigative and judicial cooperation.²¹⁴

Whilst the Australian legal system incorporates most of these features into its suite of measures to investigate sex trafficking offences, the problem arises that not all investigations will be conducted in Australia, or at least part of those investigations will take place overseas. This adds to the complexity of the investigation:

Unlike many crimes, trafficking is not a single static 'event'. It is a process that can involve multiple offenders and crime sites across several jurisdictions...Many investigations will be conducted in the country of destination where the exploitation is perpetrated. However, important evidence such as information about deceptive recruitment practices may be located in the country of origin or transit (David 2007, p.2).

The need for cooperative international and regional law enforcement

It is essential therefore that Australian investigators work closely with law enforcement personnel in other countries in the region to exchange intelligence, secure evidence and where relevant seek extradition of offenders. Trafficking cases are long, time-consuming and very expensive, particularly if they involve evidence gathering in two or more countries.²¹⁵ Regional and international agreements are one method of keeping costs relatively manageable by sharing resources and expenses. The regional cooperative arrangements such as memoranda of understanding (MOUs) referred to in Chapter 7 are examples of cooperative regional law enforcement. In addition to bilateral MOUs and agreements with international policing networks such as Europol, the Australian funded Asia Region Trafficking in Persons Project (ARTIP) has developed several tools for developing trans-national investigations and prosecutions of trafficking suspects. For example, in conjunction with the United Nations Office of Drug and Crime (UNODC), ARTIP has drafted a *Trafficking in Persons: Handbook in International Co-operation*, which will be released later in 2010.²¹⁶

The need for specialist and generalist approaches

Many countries have established specialist units to investigate trafficking cases. In Australia this role has been assigned to the Transnational Sexual Exploitation Trafficking Team (TSETT).²¹⁷ This is a specialist unit of the Australian Federal Police (AFP). It has a central intelligence team in Canberra and mobile investigation teams across the country, including major units in Sydney and Melbourne.

²¹⁴ The model framework is that suggested by Dr Anne Gallagher and Mr Paul Holmes in their article *Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the Front Line*. The subtitle is indicative of the expertise of the authors. Dr Anne Gallagher is an international lawyer specialising in trafficking matters. Paul Holmes, a former senior law enforcement official working in anti trafficking, is now a special advisor to the United Nations. The two of them bring years of experience and knowledge as to how best address and combat trafficking in human beings.

²¹⁵ For an account of the day-to-day problems associated with investigating trafficking cases, particularly in developing countries, see Moskowitz 2008.

²¹⁶ Information provided in the Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009. See also, discussion of international legal co-operation in Chapter 6 of this Report.

²¹⁷ Discussed in Chapter 8.

The benefits of such a specialist approach include:

- Consolidation of resources, including expertise and experience
- A focal point that can build strong working relationships with other key agencies, including law enforcement in other jurisdictions
- Capacity to develop, test and refine appropriate and effective standard operating procedures and training (David 2007, p.4).

A specialist unit, particularly in developing countries, may also assist in addressing public sector corruption and complicity in trafficking. However, it is essential that adequate and ongoing funding be provided for such a unit to function effectively (Gallagher & Holmes 2008).

David argues that specialist units focussed on a narrower range of crime types are likely to have an increased capacity to undertake proactive or intelligence-led policing – rather than simply responding to crime reports. They are also more likely to have strong working relationships with similar units in other countries, particularly important in terms of intelligence gathering, mutual assistance and extradition (David 2007).

Australian federal investigators also rely on close cooperation and assistance from local state and territory police and regulatory bodies such as Consumer Affairs Victoria.²¹⁸ This is particularly the case where trafficking investigations result from women being found working in legal or illegal brothels, as sex work regulation comes under state jurisdiction. While specialist units may be the main focus of trafficking investigations, it is essential that local or frontline law enforcement officials know how to identify and respond to trafficking:

They know their local area, have local contacts, and are best placed to identify what is out of the ordinary in a way that specialist units cannot. Accordingly, it is vital that frontline officials know how to:

- quickly and accurately identify victims and perpetrators
- identify, preserve and collect evidence
- ensure victims are removed to safety and receive immediate assistance and support (David 2007, p.5).

Clearly such knowledge and expertise can only be accumulated through appropriate training in the area.²¹⁹ For instance in 2006 all Australian police services signed up to an Australian Policing Strategy to Combat Trafficking in Women for Sexual Servitude (APSCTWSS). As part of this Strategy state police representatives attend an annual training and information course on trafficking investigation run by the TSETT.

The limitations of specialisation and the need for a proactive approach

There is a caveat to the generally accepted need for having both generalist and specialist law enforcement units. For such a division to work successfully it is essential that roles and responsibilities for the specialist unit and the local police agency are clearly demarcated.

²¹⁸ The role of state and territory police forces, local government and regulatory units such as Consumer Affairs Victoria is discussed further in Chapter 12.

²¹⁹ A topic discussed in Chapter 14 of this Report.

There must also be clear lines of communication between them. Otherwise specialisation can result in unhelpful monopolies and destructive turf wars (Holmes & Gallagher 2008). Initiatives such as the APSCTWSS and individual MOUs between police forces can help avoid these problems in the Australian context.

Even with a skilled specialist unit, time and cost factors involved with a trafficking investigation may mean that police work in this area is not as proactive as it ideally could be.²²⁰ For example, Dr Gallagher told the Committee that if cost was not a factor there was no reason why there could not be a more rigorous pre-emptive and proactive investigation of suspected trafficking occurring within local sex industries:

If the decision was taken that the rules that were in place for the sex industry were to be rigorously enforced – which would involve combing the personals, which would involve going undercover; it would involve proactive intelligence-led investigations, which are very hard and very expensive and very time consuming – and if this was all done, then there is no question that more victims of trafficking would be identified, and there is no question that it would make life harder for the exploiters. The bottom line is...the chances of identification and prosecution [of traffickers] are very small. The chances of a criminal going through a full prosecution and being convicted are way, way smaller. This is a crime where, if you weigh up the opportunity cost, the odds are very much in favour of the criminals.²²¹

Without the resources or capacity to conduct intensive proactive, intelligence based investigations, prosecutors have little choice but to base their cases on the evidence of victim witnesses (if they decide to launch a prosecution in the first place). This process is fraught with difficulty particularly with regard to the credibility of the witness, as discussed later in this chapter.

The importance of a good relationship between TSETT and the Department of Immigration and Citizenship

The Department of Immigration and Citizenship (DIAC) provides the greatest numbers of trafficking referrals to the AFP. It is therefore extremely important that a good working relationship with clear lines of communication is maintained between the two agencies. However, not all matters referred to the AFP will result in investigation, as the threshold for referral is low (David 2008a). Between July 2004 and April 2009, 287 matters of suspected people trafficking were referred by DIAC to the AFP. Most of these involved Thai nationals who entered Australia on tourist visas. Of these cases, TSETT assessed or fully investigated 270 suspected offences. The majority of these cases involved a form of sexual servitude (Attorney-General's Department 2009c).

Many of the DIAC referrals come from compliance 'raids' on brothels. Under the *Migration Act 1975* (Cth), immigration officers can seek a search warrant to enter such premises when they have reasonable cause to believe that a non-citizen is staying or working there in breach of their visa conditions. A first interview with a suspected person will be held to ascertain her immigration status. If the interviewee is a non-citizen sex worker she will usually be asked questions in relation to the circumstances of her

²²⁰ The cost of trafficking operations is a significant factor in how many investigations will be undertaken. A typical trafficking operation may require simultaneous investigations in many locations throughout Australia and overseas. For example, the Inaugural Report of the Trafficking Inter Departmental Committee notes that for a single operation alone the Melbourne TSETT devoted a total of 2976 police hours, such time not including the work of other numerous agencies involved (Attorney-General's Department 2009c, p.19).

²²¹ Dr Anne Gallagher, ARTIP, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 9 November 2009.

recruitment, working conditions and freedom of movement (Parliamentary Joint Committee on the Australian Crime Commission 2004). If after that initial interview indicators of trafficking are present, DIAC will refer the matter to the AFP under a referral protocol.

There are problems with this process. Firstly, the DIAC officer's role is primarily about immigration compliance. As such it may be difficult for a person to put their initial trust in an official who is primarily there to investigate any visa or migration irregularities.

Secondly, whilst DIAC officers are provided with training to identify possible indicators of people trafficking, they are not criminal investigators in the same way AFP officers are. As David notes:

While DIAC officers will look for indicators of trafficking, they are not investigators of this crime type. If a person has a valid visa and appears to be complying with the terms of that visa, or if they are Australian, DIAC officers have limited capacity to take further action even if they suspect a trafficking offence may be taking place. DIAC can invite (but cannot compel) the person suspected of being a victim of trafficking to leave the premises with them (David 2008a, p.28).

In such cases, however, DIAC can still refer the matter to the AFP, which will decide whether or not to investigate.

The need for a victim-centred approach

Numerous studies of the impacts of trafficking on victims claim that an approach that places the needs of the victim first is one that is more likely to achieve cooperation from the victim in any ongoing investigations and prosecutions (International Organisation for Migration (IOM) 2009b; United Nations General Assembly 2009). 'Far from undermining the criminal justice response to trafficking, a victim-centred approach is a vital part of ensuring the effectiveness of the criminal justice response' (David 2007, p.3). Persuading victims of trafficking to cooperate with law enforcement officials, however, is not necessarily straightforward.

Addressing the reluctance of victims to come forward or be involved in investigations

It is relatively rare for a trafficking victim to bring her case to the attention of the investigating authorities (Zimmerman in David 2007).²²² David argues the implication of this is that investigating officials simply cannot *react* to crime reports. '[They] will need to work closely with a range of agencies, including NGOs and be ready to recognise trafficking in a range of contexts' (2007, p.2).

But the reasons why a victim may choose not to report being trafficked or not cooperate in an investigation are many and varied. They can include:

- Mistrust and fear of law enforcement officials in the home country and therefore a concomitant fear of law enforcement in the destination country, particularly if they are from a minority community

²²² See also discussion in Chapter 4.

- Seeing the situation as their own fault
- Believing they are the ones that have committed a crime, particularly if sex work is illegal in the home country
- Fear of punishment, particularly deportation
- The need to keep working no matter how exploitative the conditions. This is particularly the case when the aim is to remit money back to the family in the home country
- Not self-identifying as victims.

In all of these circumstances ‘an intervention may be seen more as an oppressive interference than a rescue from an exploitative situation’ (Anti-Slavery International 2005, p.19).

The impact of the crime on victims may also make victims unwilling, reluctant or unable to cooperate with a trafficking investigation. For example victims suffering from trauma:

[m]ay say they do not remember key events or situations, deny that key events took place, appear to consent or agree to their situation, display a high level of apathy or indifference about their situation, or be overtly hostile, refuse to cooperate and avoid release. These behaviours can indicate a deliberate, rational decision not to cooperate with law enforcement. However, they might indicate that an individual is suffering from trauma and is in need of professional support and assistance (David 2007, p.3).

The impact of fear and trauma can affect an investigation in a number of ways. For example, some victims may change or correct their version of events over time:

This may reflect the fact that they have very little recall of what happened, and their memory may improve over time. This can easily be misread as a lack of truthfulness or credibility. Other victims may have full recall of what happened but hesitate to tell their story to complete strangers, particularly foreign law enforcement officials. This scenario presents law enforcement with practical difficulties. Consistency in statements, and the related issue of credibility of witnesses, have a considerable impact on whether prosecutions proceed and the outcome of the prosecutions.²²³ Inconsistency in witness statements can be used to attack the credibility of a witness in court, and undermine their evidence. Law enforcement also has to work within the reality that many victims will not want to participate in the investigation if it means appearing in court as a prosecution witness (David 2007, p.3).

Finally, some women may simply want to get on with their lives and ‘put the whole thing behind them’ without getting involved in a long, tedious and intrusive investigative process (David 2008a, p.31). For some women the possible benefits of cooperation, even ‘rewards’ such as long-term visas which in any case can not be guaranteed, are simply not worth the price of participation (Segrave, Milivojevic & Pickering 2009).

Time for recovery and reflection

Because many complex factors contribute to why a victim may not willingly cooperate in a trafficking investigation, it is argued that it is essential that law enforcers take a victim-centred approach to investigation (Anti-Slavery International 2005; Gallagher & Holmes 2008).

²²³ See later in this chapter for a discussion of the difficulties associated with prosecuting cases.

AFP investigators, for example, have noted the importance of building rapport and trust with victims, which may take a great deal of time (David 2008). Such victim based approaches are centred on establishing the trust of the victim, liaising with victim support groups and giving the victim sufficient time to prepare herself for the ordeal of the investigative process and a possible court case:

A recent European study of 207 female victims found that it took at least 90 days for their mental health symptoms to start to reduce once they escaped their traffickers. Even at this point, their symptoms remained problematic, to the extent that they inhibited women from re-engaging in normal daily activities.

These health impacts have implications for law enforcement. If a law enforcement official seeks to interview a victim too early in the process, or if they push too hard during an interview, they may result in an uncooperative or traumatised informant who cannot recall what happened, or who gives two or more conflicting versions of events. Accordingly, it is important to ensure that victims have sufficient time to stabilise after their experience, begin the process of recovery, and consider the range of options available to them, before being asked to make important decisions such as whether to participate in a criminal justice process (David 2007, p.3).

Recent policy changes in 2009 have extended the Bridging F visa to a possible 90-day period. In this time the victim can recover from her experience and receive support without necessarily having to cooperate with the authorities at that stage. This is a positive step in the direction of a victim-centred law enforcement policy.²²⁴

Despite the difficulties involved in cooperating with the authorities, not the least of which being fear for their own safety, more than 70 per cent of suspected victims of trafficking to date have fully cooperated with police and prosecutors and been willing to assist in trafficking investigations.²²⁵

Using the expertise of support agencies

Another key feature of a victim-centred approach to criminal investigation is the need for investigatory authorities such as TSETT to cooperate with, and rely upon, the assistance of NGOs who work closely with victims. Holmes argues that law enforcement should forge interdependent partnerships with NGOs for the following reasons:

- Because of endemic lack of trust in law enforcement, it is NGO personnel that are able to build relationships of trust with trafficking victims
- High-grade intelligence critical to the successful identification and investigation of traffickers is likely to be provided to NGOs and not police
- NGOs have the specialist skills and experience to treat, counsel and accommodate the victims whom investigators wish to convert to witnesses (Holmes 2002, pp.5–6).

²²⁴ See discussion in Chapter 15.

²²⁵ Joint Submission of Commonwealth Government Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

The AFP have recognised the value of using the skills of NGO groups, particularly those working with sex workers or on behalf of the sex industry. Indeed, Commander Ramzi Jabbour of the AFP told the Committee that working closely with NGOs has become a key imperative for the AFP in recent years.²²⁶ In other words NGOs who liaise with sex workers have valuable inside knowledge that can be drawn upon to assist with trafficking investigations.

The need for legislative and technical resources to aid the investigation

Whilst specialist investigative teams such as TSETT clearly have the knowledge and training to make them experts in investigating trafficking offences, such knowledge needs to be supplemented by sufficient resources and enforcement powers that will facilitate a full-scale investigation into the traffickers' movements. Often such an investigation will have complicated international features, with complex money trails and a number of offenders involved at different stages of the trafficking process.

The use of federal search and seizure laws with extra-territorial effect, telecommunication intercepts, financial transaction provisions, advanced surveillance methods, forensic evidence and undercover deployments are all necessary.²²⁷

Prosecuting people trafficking for sexual servitude

Prosecuting sex trafficking offences under the Commonwealth Criminal Code is the sole responsibility of the Commonwealth Director of Public Prosecutions (CDPP). The legal policy aspects of prosecuting trafficking cases is undertaken by the Head Office in Canberra, whilst prosecuting cases is the task of the state and territory based offices. Unlike some overseas jurisdictions, the CDPP has no investigatory functions. It concentrates simply on prosecuting cases before the courts and providing, where necessary, legal advice to investigative agencies, primarily the AFP.

When is a prosecution warranted?

In order for a trafficking prosecution under the Code to be initiated, the CDPP must be satisfied that:

- The evidence is sufficient to make out a prima facie case on all elements of the offence
- There is a reasonable chance of conviction
- It is in the public interest to prosecute.²²⁸

²²⁶ Commander Ramzi Jabbour, AFP, Meeting with the Drugs and Crime Prevention Committee at the Commonwealth Departments Roundtable, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

²²⁷ For a discussion of some of the proactive investigation techniques developed by the Metropolitan Police (UK) to aid in trafficking cases, see International Centre for Migration Policy Development 2004.

²²⁸ The decision whether or not to prosecute is judged according to the guidelines in the *Prosecution Policy of the Commonwealth* which states inter alia:

‘In making this decision [to prosecute], the prosecutor must evaluate how strong the case is likely to be when presented in court. This is an important distinction as the decision can only be made based on admissible evidence, not necessarily all the information gathered during the course of the investigation. The evaluation must take into account such matters as the availability, competence and credibility of witnesses and their likely effect on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor

Since Australia's anti people trafficking legislation came into effect in 2005, there have been approximately 14 prosecutions by the Commonwealth DPP for people trafficking or related offences. By January 2010, four convictions for trafficking related offences had been recorded for which all avenues of appeal had been exhausted. At the time of writing this Report, there are currently 10 defendants before Australian courts on people trafficking charges. Eight of these defendants have appealed their conviction, sentence or both. Of these eight defendants, four are awaiting retrials and four have not had their appeals finalised. The majority of these cases have involved trafficking or slavery for sexual purposes.²²⁹

A significant number of cases have also been dismissed for evidential reasons after they have commenced trial.²³⁰ Some of the reasons for this are outlined below. However, given the high threshold of evidence required under the Commonwealth *Criminal Code* to sustain a conviction, Schloenhardt comments that 'it is unlikely to see the number of prosecutions escalate in the near future' (2008, p.27).

Nonetheless, if it is decided that a trafficking prosecution is appropriate in the circumstances, the CDPP will decide which specific charge or charges under the Code will be laid, prepare the brief, and undertake the prosecution.

A specialist prosecution unit?

Unlike some jurisdictions, the CDPP does not have a specialist unit charged with prosecuting trafficking cases. This is partly because few cases have been tried in this area and also because the legislative regime governing trafficking under the Code is relatively new.

should also have regard to any lines of defence open to the alleged offender and any other factors that could affect the likelihood or otherwise of a conviction.

The possibility that any evidence might be excluded by a court should be taken into account and, if that evidence is crucial to the case, this may substantially affect the decision whether or not to institute or proceed with a prosecution. Having been satisfied that there is sufficient evidence to justify the initiation or continuation of a prosecution, the prosecutor must then consider whether the public interest requires a prosecution to be pursued. In determining whether this is the case, the prosecutor will consider all of the provable facts and all of the surrounding circumstances. The factors to be considered will vary from case to case, but may include:

- Whether the offence is serious or trivial;
- Any mitigating or aggravating circumstances;
- The age, intelligence, health or any special infirmity of the alleged offender, any witness or victim;
- The alleged offender's antecedents;
- The staleness of the offence;
- The availability and efficacy of any alternatives to prosecution;
- The attitude of the victim;
- The likely outcome in the event of a finding of guilt; and
- The need for deterrence' (Prosecution Policy of the Commonwealth, Accessed at <http://www.cdpp.gov.au/Publications/ProsecutionPolicy> 16 March 2010).

²²⁹ Information provided in correspondence from the Commonwealth Attorney-General's Department to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, 12 February 2010.

²³⁰ For example, the CDPP discontinued prosecution of trafficking offences in the cases of *R v Kwok, Ong, Tan and Yoe* and in the case of *R v Xu, Tran and Qi*. See Attorney-General's Department 2009c, p.24 and Appendix 2 therein for full details.

Nonetheless there has been an argument that prosecuting trafficking crimes requires a degree of specialisation best achieved by the establishment of discrete prosecution units. Practitioner guidelines for criminal justice responses to trafficking cases, prepared by ASEAN, suggest that not only should such specialisation apply to prosecutors but also that specialist judges be assigned to undertake the management and adjudicate trafficking in persons cases.²³¹

Close collaboration between specialist investigative units and a specialist prosecution service is also thought to be particularly important. Such a collaborative model has been established in the Netherlands whereby trafficking investigations are conducted by police interdisciplinary specialist teams led by a Coordinator for Trafficking in Human Beings. The Coordinator then liaises with a specialist prosecuting team (Ministry of Justice and Police 2004b). Similarly, in the United States a specialist trafficking prosecution unit has been established in the federal Department of Justice that works closely with the Federal Bureau of Investigation (FBI):

That office has about 50 trial lawyers who travel throughout the country to prosecute or assist local Assistant United States Attorneys [AUSA] in litigating trafficking cases in federal court. While issues of coordination between the central unit and field offices can sometimes arise, as a general matter, cooperation has been fruitful, with specialist prosecutors bringing their skill and knowledge of the law and litigation issues in TIP [trafficking in persons] cases to bear while the AUSAs contribute their trial experience and knowledge of local practice. This team approach [in conjunction with the FBI] has proven highly effective in bringing significant numbers of successful TIP prosecutions worldwide (Moskowitz 2008, p.16).²³²

According to international anti-trafficking lawyer Albert Moskowitz, FBI investigators and these specialist federal prosecutors have established a close and collaborative relationship in addressing trafficking crimes:

This spirit of cooperation is based in part on the realisation that trafficking cases present difficult and unique issues, particularly with respect to the victim, and as a result benefit from a team approach. Also the use of specialist prosecutors dedicated to bringing trafficking cases has made interagency cooperation easier, as investigators are more likely to accept input from specially trained prosecutors with skills that add real value to the case (2008, p.13).

²³¹ See *Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines*. ASEAN Ad Hoc Working Group on Trafficking in Persons. Formulated and adopted at 7th ASEAN Senior Officials Meeting on Trans-national Crime, Vientiane, Lao PDR, 27 June 2007.

In particular the following guidelines are pertinent in this context:

- 'Prosecution agencies should also develop a specialist response capacity. A number of prosecutors – appropriate to the current and anticipated caseload – should be specially trained and designated to undertake the preparation and presentation of TIP and related prosecutions.
- Priority should be given to the development and delivery of specialist training for any designated prosecutors.
- If the caseload does not yet warrant a specialist prosecutorial response, then the prosecutorial agency should designate a focal point for the TIP related cases.
- A number of judges, appropriate to the current and anticipated caseload, should be specially prepared and designated to undertake the management and adjudication of TIP related trials.
- All prosecutors and judges should be sensitized to understand the crime of trafficking and informed of the applicable legal framework' (Accessed at http://www.artipproject.org/artip-tip-cjs/tip-cjr/recent_developments/ASEAN-PG_Web_English_Final.pdf, 16 March 2010).

²³² Specialist prosecution units have also been established in Italy, Thailand, Belgium and the Philippines. See Gallagher and Holmes 2008; David 2008b.

The low case volume of trafficking prosecutions in Australia may not warrant a specialist prosecuting service in the same way as the United States. It may be, however, that eventually a ‘tipping point’ is reached whereby sufficient cases are coming to the attention of the authorities to justify the establishment of a separate unit. David states that slowly a growing number of prosecutors, particularly in Sydney and Melbourne, are building up expert knowledge or experience in prosecuting trafficking and associated crimes – thus becoming in fact de facto specialists (2008a).

Problems in prosecuting sex trafficking cases

As with investigating trafficking there have also been a number of problems in prosecuting traffickers and successfully achieving convictions. Some of these are discussed below.

Insufficiency of cases

As the Commonwealth Criminal Code provisions regarding trafficking and associated offences are still relatively new, few cases have run the full course of investigation, prosecution and conviction. This is partly the result of the selective filtering process that takes place. Such a process may commence with the identification of possible trafficking scenarios, proceed to referral to investigative authorities, and finally may result in a decision by prosecutors whether to proceed with a trial:

Consequently, the criminal justice knowledge and data that is produced is partial and incomplete, we know nothing of cases that are deemed not to be strong enough to prosecute, of victims who are willing enough to cooperate but have little information for authorities to work with or cases that have significant evidence but victims who are unwilling or unable to participate as informers or as witnesses. Critically we also know little about those who are simply deported when picked up by immigration authorities and identified as illegal non citizens ...who are not identified as potential victims/witnesses and who intentionally or otherwise remain outside the purview of the Australian government’s anti trafficking machine (Segrave 2008, p.327).

As such there are few precedents established to guide prosecutors (and defence counsel) in determining how the law will develop in this area.

Indeed no country can lay claim to genuine or extensive experience in prosecuting these essentially new crimes: ‘most countries are developing and adapting their criminal justice responses on the run and principally through trial and error’ (Gallagher 2009b, p.3).

Complexity of legislation

It has been argued earlier that the Criminal Code provisions governing trafficking and the associated crimes of slavery, sexual servitude and debt bondage are extremely complex pieces of legislation. There are also arguably inconsistencies between the Code provisions and some aspects of the international (Palermo Protocol) law on trafficking (Gallagher 2009b).²³³ Therefore prosecutions pursuant to these laws require meticulous

²³³ In particular Gallagher laments the fact that there are insufficient alternative offences of any note open to the prosecution in lieu of trafficking or slavery charges. For example, the offence of debt bondage in the Code which may be relatively easier to prove has a maximum penalty in most cases of only 12 months compared to 12 or even 20 years for trafficking. ‘The gap between the penalty for debt bondage and the penalties for slavery and trafficking is too great to make the former a sensible alternative charge’ (2009b, p.6).

preparation and much time. It is not surprising that in many cases a very long time can elapse between initial arrest and final dispensation.²³⁴ Adding to the complexity is the inherently political nature of trafficking cases. As Gallagher notes, trafficking prosecutions are by their nature associated with controversial issues such as migration and the sex trade – both legal and illegal. Moreover, a country's prosecution policy on trafficking is noted and given a report card by the Trafficking in People Report of the United States Department of State: 'Like it or not, these factors shape the environment in which criminal justice officials are working' (Gallagher 2009b, p.3).²³⁵

Inconsistent use of state procedural laws and processes

Whilst trafficking and sexual servitude prosecutions are based on federal offences under the Commonwealth Criminal Code, much of the procedural law governing the trial of the case is state law applied to federal offences. Therefore there can be a huge variation in the protections and resources available to witnesses depending on the jurisdiction in which the trial is being held. There will also be major differences in the rules governing the conduct of the trial. For example, one state may automatically make a suppression order protecting the identity of the victim, in another state this may need to be applied for. In one state a witness may be able to give evidence without appearing physically in court but in a different state this may not be possible. In New South Wales, time limitations restricting the length of the criminal process may be placed on trafficking cases, in Victoria this may not be the case (David 2008a).

Finally, there may even be jurisdictional differences in the facilities available to witnesses (and the accused). For example, David notes that whilst in Victoria there had been a shortage of Thai translators and interpreters the same could not be said of New South Wales.²³⁶

Currently the Standing Committee of Attorneys-General has established a working group to consider the development of model provisions for the protection of vulnerable Commonwealth witnesses. It is hoped that the findings of this group will result in uniformity in the procedures governing the conduct of trafficking trials across the country.

Witness credibility

One of the biggest challenges for prosecutors in trafficking cases is protecting their witnesses from having their credibility undermined by defence counsel. They are usually extremely vulnerable during both the investigation of the alleged offence and the subsequent trial. One of the ways in which defence counsel can damage the credibility of trafficking victims is to use, to the defendant's advantage, any prior inconsistent statements made by those witnesses:

²³⁴ For example in *DPP v Tang*, Ms Tang was arrested in May 2003. Her final appeal was not resolved until 2008 and the case sent back for sentencing in 2009.

²³⁵ For a critique of the focus of trafficking policy in Australia being on achieving successful prosecutions only, see Segrave 2008 and the discussion in Chapter 9 of this Report. In particular it has been argued that an inordinate focus is put on the need for prosecutions and convictions as these are the 'primary goal of nations and agencies working to produce evidence of their efforts to combat trafficking' (Segrave, Milivojevic & Pickering 2009, p.36).

²³⁶ For an account of how these jurisdictional inconsistencies can cause problems for Commonwealth prosecutors, see Dr Dianne Heriot, Commonwealth Attorney-General's Department, Meeting with the Drugs and Crime Prevention Committee at the Commonwealth Departments Roundtable, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

During initial interviews, traumatised, frightened and deeply suspicious victims may provide incomplete or even untruthful accounts to officials. Later when the victim has had time to heal and has developed a sufficient degree of trust and confidence in the police and prosecutors, a full and truthful statement from the victim can be taken. But the prior inconsistent statements given earlier during the investigation do not disappear. They remain and will be used by defence counsel to cross examine the victim to cast doubt on the victim's veracity and to suggest that, in view of the varying stories, the victim is not a trustworthy witness (Moskowitz 2008, p.9).

For example, a Senior Legal Officer, Commonwealth Department of Public Prosecutions (NSW), told the Committee that prior inconsistent statements are a common issue raised by defence counsel in trafficking cases and very difficult to rebut:

I guess one of real difficulties is when we get a first victim statement that will contain things that aren't true or will contain half truths or it will leave out a whole lot of stuff because [the witness] is distrustful of people in authority. We might end up with five statements from the one victim with different stories in the statement before it even reached trial. So often one of the difficulties is how to work with that when defence say you're just making this up to get all these benefits [such as victim support or new visas]. We have to be really diligent in getting a lot of corroborative material and also getting a subsequent statement to explain why they made those previous false statements; for example it may have been due to fear for their family back in Thailand.²³⁷

Ms Fiona David commented to the Committee that when potential witnesses are picked up during an Immigration compliance raid they are particularly anxious, fearful and vulnerable:

So for example, a policeman comes in here [to the brothel], he takes you away, bundles you into a car. He wants to know your story. He expects you to tell your story straight away. You don't really want to.

So you tell him a story to get out of the car and get home. Then he interviews you again and you tell him a little bit more, and then eventually after maybe three or six months he gets the whole story. What happens in court is then the defence are able to stand up and say, on this date you said this, but then on this date you said something different...So, one of the things that makes it easier for prosecutors, is if the police take their time and do things slowly and carefully. And obviously that's not something prosecutors have a lot of control over.²³⁸

Given these difficulties, trafficking experts have argued it is crucial for both investigators and prosecutors to have the patience and skills to 'develop a relationship of trust with the victim and the skill to explain the reasons for discrepancies in a way that is understandable to the court' (Gallagher 2009b, p.4). There is also considerable research suggesting that, as with sexual assault victims, the trauma of the trafficking experience may lead to 'hostility, patchy memory, confusion over chronology or even complete inability to recall key events' (ICMPD 2006 in David 2008b, p.3).

The changes to the trafficking visa regime, whereby potential witnesses can get an extension to their bridging visas allowing them more time for rest and reflection before

²³⁷ A Senior Legal Officer, Commonwealth Department of Public Prosecutions (NSW), Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

²³⁸ Ms Fiona David, Research Consultant, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

going to trial, is intended to help investigators and prosecutors more readily prepare witnesses for the rigours and pressures of giving evidence in court.²³⁹

Corroboration

One of the problems facing prosecutors is that in many trafficking cases, the only evidence being led to substantiate the charges is that of the victim witness. Without corroboration the case can be reduced to a ‘my word against his’ account.

There *are* ways in which investigators can gather corroborative evidence but they are time-consuming and expensive: ‘Conducting evidence searches; effectively working with other witnesses; dealing with experts; or overseeing complex financial investigations takes expertise and skill’ (Gallagher 2009b, p.5).²⁴⁰

Nonetheless, both Gallagher (2009b) and David (2008a) argue that skilled investigators and prosecutors will be able to develop ‘objective’ evidence with sufficient time, expertise, resources and commitment. Valuable and objective corroborative evidence can include:

- Transcripts of intercepted telephone calls between defendants
- Records of money transfers
- Documentation such as diaries and payment books
- Photographs of premises
- Records from mobile telephone towers confirming an individual’s movements (David 2008a, pp.52–53).

However, given that these techniques may not in all cases supply the necessary evidence ‘to secure convictions of traffickers for the grave physical, sexual and psychological abuses they characteristically inflict on their victims’, Gallagher and Homes argue it is essential that national criminal justice agencies provide witnesses with sufficient protections and incentives²⁴¹ to participate in the prosecution of their exploiters (2008, p.332).

Inducements to become a witness

In several trafficking cases the credibility of witnesses has been impugned because it was alleged they have not come to court with ‘clean hands’ (David 2008a, p.52). In other words, defence counsel has alleged that the victim is cooperating with the authorities and/or is giving evidence for the possible benefits that might ensue from this

²³⁹ For a discussion of current visa arrangements for trafficking victims, see Chapters 7 and 15.

²⁴⁰ Commander Ramzi Jabbour of the AFP told the Committee that the TSETT is currently in the process of examining and developing new methodologies to try and collect evidence in trafficking cases without relying exclusively on witness statements. TSETT is also working with their counterparts in the United Kingdom to look at ways in which prosecutions can become more efficient and successful. Commander Ramzi Jabbour, AFP, Meeting with the Drugs and Crime Prevention Committee at the Commonwealth Departments Roundtable, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

²⁴¹ Commentators have noted that merely appealing to victims’ sense of responsibility to reduce or end exploitative practices by testifying is quite rightly hardly incentive enough to put themselves through the trauma of a prolonged investigation and prosecution. For further discussion of this issue and the wider question as to whether prosecution and conviction of traffickers acts as a deterrent to other potential exploiters, see Segrave, Milivojevic and Pickering 2009, pp.138ff.

cooperation. Such benefits may include immunity from prosecution, victim support measures, having access to visas and even permanent residency.²⁴²

It is a fine line between reassuring a potential witness that she will not remain in ‘limbo’ once any court proceedings have been finalised, and providing the defence with a line of argument that the only reason a victim is giving evidence is in fact to have access to these benefits.²⁴³ One way that prosecution authorities have got around this dilemma is to delay the seeking of a visa for a longer-term stay until after criminal proceedings are completed. As trafficking investigations and trials can take an extremely long time, this process can result in great uncertainty for the victim and her family (David 2008a).

Some advocates have argued that *automatic* assistance and visas for women identified as trafficking victims are a necessary strategy to secure their cooperation and protect them and their families. For instance, advocates from Project Respect, drawing from the experience of witness support schemes in Italy, have stated that ‘usually women will want to give more information to police once they’ve been stabilised and they can see they are getting support and they feel trusted and secure’.²⁴⁴ However, this has not been a universally held view. For example, the Parliamentary Joint Committee on the Australian Crime Commission added a cautionary note in its Report for the ‘Inquiry into the trafficking of women for sexual servitude’:

[Such a proposal] may be counterproductive, with the perverse effect of creating an incentive for women to come to Australia and claim to have been trafficked as a backdoor way to secure entry. This may also inadvertently increase demand for the service of people traffickers (2004, p.44).²⁴⁵

Prejudicial views towards witnesses

Clearly a defence counsel will use whatever strategies she or he can to persuade the jury her or his client is not guilty of trafficking charges. A review of the research undertaken by the Australian Institute of Criminology (AIC) indicates that pre-existing attitudes towards some sexual assault victims may also be relevant with regard to trafficking victims:

Of the trafficking cases tried in Australia to December 2008, all have been jury trials. Jury members are drawn from the community and the level of awareness, attitudes and perceptions of community members towards trafficking in persons and related issues is important to assess. In terms of victim credibility, trafficking cases share some commonalities with sexual assault cases and much can be learnt from the

²⁴² Gallagher and Holmes argue, however, that it is absolutely imperative that criminal justice officials do not ‘lure’ fearful victims into giving evidence or cooperating with authorities on the basis of false or unrealistic promises (such as permanent residency for themselves or their families) when they are not in a position to fulfil them (2008, p.333).

²⁴³ For an account of how these dilemmas can be handled and reconciled in practice, see the evidence of a Senior Legal Officer, Commonwealth Department of Public Prosecutions (NSW), Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

²⁴⁴ Ms Nina Vallins, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

²⁴⁵ The most generous schemes offered to witnesses are those pioneered in the European Union. After the ‘rest and reflection’ period in which the potential witness has thought about whether or not to give evidence, she will be granted a residency permit if she chooses to cooperate. This practice:

‘[i]s beginning to demonstrate its value in providing victims with time, information and power to decide their future. The rate of convictions of traffickers based on victim-witness testimony has, according to the US State Department, increased in all major destination countries [where] these support measures were implemented’ (Gallagher & Holmes 2008, p.334).

sexual assault literature on dealing with victims, attitudes towards them and the impact of such attitudes on trial outcomes (AIC 2009c, p.40).

One of the reasons defence counsel may be able to use evidence of ‘inducements’ to her or his advantage is that juries may already have somewhat stereotypical views of both sex workers, illegal (and legal) migrants and Asian women:

I think sometimes the victims as witnesses are very easy to attack on a number of grounds. They’re foreigners, they may have been working illegally, they may be from some sort of sector of society that’s not very well regarded such as sex workers, so there are a number of grounds on which you can attack them personally as witnesses.²⁴⁶

These views about witness credibility may be strengthened if the witness has originally used fraudulent methods to obtain her visa into Australia.

Finally, a jury member may not believe a victim is credible if her account of the trafficking experience does not accord with his or her stereotypical ‘commonsense’ notions of what trafficking is: ‘The absence of physical restraint for example is a frequent issue in trafficking cases. The victim’s failure to escape an exploitative environment will lead to questions about whether she or he was really in a coercive or exploitative situation’ (Gallagher 2009b, pp.4–5). A Melbourne based barrister working in trafficking cases comments in this regard:

What concerns me is a narrow conceptualisation of trafficking...So the juror might think: well obviously this is not slavery, this is just someone who has been ripped off...it’s a failure to understand that a victim may be a victim of trafficking despite the fact that the doors have not been locked. That is something that comes up again and again: the doors were not locked why didn’t they leave? It’s a failure to understand the complexity of the entrapment of that person (Quoted in Segrave, Milivojevic and Pickering 2009, pp.141–142).²⁴⁷

Gallagher argues that in such situations it is the quality of criminal justice officials, including investigators, prosecutors and judges that will determine how far the victim’s credibility will be impugned:

The essential qualities include an understanding of how trafficking works, in particular how psychological coercion is exercised. The prosecutor’s ability to present this information effectively in court and the judge’s ability to consider the evidence in an informed way are both crucial (2009b, p.5).

The Commonwealth Attorney-General’s Department in association with the National Roundtable on People Trafficking is currently exploring ways in which jurors, investigators and legal practitioners can be informed on trafficking issues so as to improve the experience of participants in anti-trafficking trials. The Attorney-General’s

²⁴⁶ Ms Fiona David, Research Consultant, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

²⁴⁷ In such cases it has been argued that, similar to sexual assault cases, there is a slippage between good witnesses (real victims) and bad witnesses (those who are manipulating the system). Good witnesses are those who might show evidence of particularly brutal and arguably stereotypical signs of slavery. See Segrave, Milivojevic and Pickering 2009, pp.69ff.

Department is also working with the Judicial College of Australia to develop training and resource materials on trafficking for members of the judiciary.²⁴⁸

Conclusion

Many of the witnesses who may eventually give evidence in a trafficking trial may not speak English, let alone understand the complexities of the Australian legal system, particularly the adversarial process of a court trial. As with all criminal prosecutions, a fine balance needs to be drawn in trafficking cases. On the one hand due process must be observed in guaranteeing to the defendant all the safeguards of a fair trial. On the other hand, the victim needs to be sufficiently familiarised with court processes and given support before, during and after her court appearance.²⁴⁹ This is where the role of culturally appropriate victim support advocates and outreach workers becomes invaluable.²⁵⁰

²⁴⁸ See Submission of Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009. See also, Attorney-General's Department 2009c.

²⁴⁹ A positive initiative in this regard was the establishment in November 2008 by the Commonwealth DPP of a Witness Assistance Service for victims/witnesses of Commonwealth crimes who may be giving evidence. A full-time Witness Assistance Officer is available (in Sydney) whose role is: 'to provide information and some support to victims or witnesses of Commonwealth crimes prosecuted by the CDPP. This may include providing information about the court process, and providing a court familiarisation' (Submission of Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009).

Community groups such as Project Respect and the Anti Slavery Project of the University of Technology, Sydney, have also been active in supporting trafficked women through the pre-trial, trial and post-trial process. See Project Respect and Anti Slavery Project websites for details of their assistance at <http://projectrespect.org.au/> and <http://www.antislavery.org.au/index.html>

²⁵⁰ For a discussion of victim support, see Chapter 15.

9. Conceptualising Sex Trafficking and Critiquing Trafficking Policy

The Commonwealth Anti People Trafficking Strategy is the central policy approach to addressing trafficking in Australia. Its key features are to investigate trafficking, prosecute the perpetrators and support the victims. Having a trafficking ‘blueprint’ in place is clearly an important step in attempting to address and minimise the traffic in women into Australia for the purpose of sexual servitude. It is equally important, as commentators and advocates point out, to critique these strategies and the direction counter-trafficking policy is taking. For example:

- Is the focus of the current policy centred on the perpetrators – maximising the number of prosecutions that result as a consequence of investigating individual cases – a *criminal justice/law enforcement* approach?
- Is it focused on preventing uncontrolled and unlawful migration flows across Australia’s borders – a *migration/border control* approach?
- Should the focus of the policy be on the trafficked women – an approach centred on supporting their fundamental *human rights* to security, autonomy and a life without fear?; or
- Is the ideal policy one that includes *all* three of these aims and objectives, so that safeguarding a victim’s human rights is not necessarily incompatible with the vigorous prosecution of her persecutor? And if this is the ideal, is it in fact realised under the Commonwealth Trafficking Strategy?

These are not merely theoretical speculations – how the issue is framed and the problem conceptualised has important consequences in terms of the strategies developed and implemented to address that issue. Each of the main approaches underscoring the way counter-trafficking policies can be developed is dealt with in the following sections.

Trafficking as a law and order issue

Critics of the Australian approach to counter trafficking including the current Strategy argue that this is a law and order response and as such privileges the prosecutions of traffickers at the expense of the human rights of the trafficked women themselves (Carrington & Hearn 2003; Segrave 2009a, 2009b, 2009c; Segrave, Milivojevic & Pickering 2009).²⁵¹ According to this ‘commonsense logic of law and order’, the focus of the Australian approach is to maximise successful prosecutions (Segrave 2008, p.322). This remains a ‘key indicator of the success of the policy nationally and internationally’ (Segrave 2008, p.234) and ‘the best way to feel like you’re doing something’ (Segrave, Milivojevic & Pickering 2009, p.3).

The problems associated with investigating and prosecuting trafficking crimes are many and varied. In some respects a prosecution, and more to the point a successful prosecution, is seen as an indicator that a signatory to the Protocol is upholding its credentials as being a good international citizen in this area. This is particularly important given that each country receives a report card on its annual efforts to address and combat trafficking from the United States Department of State in its yearly *Trafficking in Persons Report* (TIP). Support for women is *conditional*; they are placed

²⁵¹ See also Fergus 2005; Piper 2005; Moskowitz 2008.

in a position whereby they either cooperate in the investigation and/or testify or they do not receive the benefits of the witness support program²⁵² (Segrave 2004).

However, under the 2009 amendments to the program, women may now have a period of 'breathing space' in which they can decide whether to testify or not and still receive interim support.²⁵³ However, it is true that in most cases ultimately the victim will not be allowed to stay in Australia unless she agrees to become eventually involved in the criminal justice process and the prosecution of her trafficker.²⁵⁴

Segrave argues that whilst prosecutions are important, the logic of law and order also results in the victim losing any sense of identity. The victim is simply a witness whose real needs or wishes are subsumed to the imperatives of the prosecution and the criminal trial. Ms Elena Jeffreys, President of the sex worker advocacy organisation Scarlet Alliance, substantiated this view, drawing from the experiences of Thai sex workers:

What does that mean when everybody is caught up in prosecution approaches? It means we lose our savings and our belongings, we are locked up, we are interrogated by many people, they force us to be witnesses, we are held until the court date, we are held until deportation, we are forced into retraining, we are not given compensation by anybody, our family must borrow money to survive while we wait, our family is in a panic, we are anxious for our family, strangers visit our villages telling people about us, the village and the soldiers cause problems for our family, our family has to pay fines or bribes to the soldiers, we are sent home, military abuses and no work continues at home, my family now has an unpaid debt and we must find a way back to Thailand to start again.²⁵⁵

Segrave argues further that the only way a law and order narrative can successfully end is with the trafficker punished and the trafficked woman returned or repatriated home:

Critically, a law and order framework is restored through the return of women 'home'. Within this framework the responsibility of the state begins and ends at the border, where order is disrupted then restored and the journey is concluded...Yet this can be identified as an artificial 'conclusion' to the story – as women's lives and their migration journeys in many cases continue [for example through being re-trafficked] and there is a continuity between the issues and factors that contributed to their vulnerability to exploitation in any previous journey and the potential for abuse or exploitation to occur again in the future (Segrave 2009b, p.257).

²⁵² See discussion in Chapter 8.

²⁵³ Many anti-trafficking advocates who gave evidence to this Committee agreed that the current national policy, whilst greatly improved, still inappropriately privileged a criminal justice approach (prosecuting traffickers) over a human rights one (protecting and supporting victims). For example, Ms Nina Vallins, Executive Director of Project Respect, told the Committee that trafficked women still have to give something to the criminal justice system in order to obtain the humanitarian visas for trafficking victims which provide real support and security, adding:

'We don't say to domestic violence victims that you need to make a statement to police before you get entry into a shelter' (Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 14 September 2009).

²⁵⁴ Or unless she can be given an extension of visa, permanent residency or citizenship under some other scheme. The point is that a victim will rarely be allowed to stay in Australia simply because it is suspected she is a victim of trafficking.

²⁵⁵ Ms Elena Jeffreys, President, Scarlet Alliance, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

Another weakness of the law and order approach according to academics is that criminal law and its enforcement are ill-equipped to deal with the structural and political changes needed to address some of the more fundamental causes of trafficking such as third world poverty or gendered violence (Schloenhardt 2000; Piper 2005).

Trafficking as a migration/border control issue

It has been argued that many nation states regard trafficking in general and trafficking women in particular as a ‘threat to national security and societal cohesion’ (Bertone 1999, p.5). Such countries therefore treat any type of cross-border migration, at least at first instance, as a *prima facie* case of illegal entry.

In the Australian context, McSherry and Kneebone (2008) have argued that the Commonwealth’s policy response to trafficked women, at least until policy changes implemented in 2009,²⁵⁶ constructed trafficked women as illegal immigrants. Certainly until relatively recently most women found in trafficking type situations would be prosecuted under Immigration legislation and in many cases deported without the circumstances of the trafficking being investigated (Carrington & Hearn 2003; Fergus 2005; Piper 2005).

This was usually what happened in Australia until the Palermo Protocol was passed in 2000 and the first anti-trafficking program was established in 2003. Until then victims going to the police or other law enforcement agencies such as DIAC were in almost all cases likely to be deported.²⁵⁷ Moreover, as prosecuting traffickers is dependent on victim testimony and cooperation there was little likelihood of victims cooperating if there was no chance of support or protection (Carrington & Hearn 2003). Even since the changes to victim support for those claiming to have been trafficked, there is still some reluctance to cooperate fully because of the precariousness of their migration status and the possibility of being in breach of their visa regime.²⁵⁸

Advocates who support and act on behalf of trafficked women do not deny the importance of investigating and prosecuting suspected perpetrators or the need to monitor cross-border migration. They also acknowledge that a great deal of ‘crossover’ exists between people who are smuggled into a destination country, international sex tourism, people who are trafficked, and refugees (Kneebone 2009).

Some agencies that support trafficked women such as the Australian Red Cross and the International Organisation for Migration (IOM) believe there is a need to address the social dynamics of migration, particularly the vulnerability of particular groups such as trafficked women because of the uncertainty and precariousness of their migration status. They argue that comprehensive and humane assistance and services to repatriate or

²⁵⁶ See discussion in Chapter 7. Advocates such as Professor Kneebone believe the ‘jury is still out’ as to whether the 2009 policy changes including reforms to the trafficking visa regime will result in a more human rights friendly approach to trafficking in women and children. (Professor Susan Kneebone, Castan Centre for Human Rights Law, Monash University, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 December 2009).

²⁵⁷ Piper argues further that it is an incentive for national authorities to ‘label’ someone a smuggled rather than a trafficked victim as then the administrative and financial burden is far less on government (2005, p.222).

²⁵⁸ For example, Dr Marie Segrave told the Committee that there is still great reluctance from trafficked victims to contact or cooperate with the authorities for fear of detention, deportation or in many cases fear of losing their jobs – even in the brothels to which they were originally trafficked. (Dr Marie Segrave, Monash University, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009).

reintegrate them back into the ‘source’ or home country should be provided where necessary.²⁵⁹ From this perspective, trafficking needs to be examined as a ‘subset of “forced” (illegal and involuntary) migration that characterises international migration patterns’ (Grewcock 2003 in McSherry 2007, p.395). What such advocates are concerned about is that the official response to trafficking in Australia is not considered solely a criminal justice/migration issue. For example, Human Rights Watch emphasises that trafficking in women and children is recognised as a human rights abuse by the United Nations states:

Any program must first and foremost return control to the victims...Sometimes in a rush to accomplish other goals such as prosecuting the traffickers, states focus on victims for the information they can provide or their usefulness to the criminal justice system. The danger is that states treat the victims as merely a pawn in a struggle between the state and the trafficker, not as a human being in need of services and deserving of respect (Human Rights Watch 2002, p.2).

An approach that puts human rights as central to the response to trafficking is not necessarily incompatible with bringing those who perpetrate the crime to justice.

Trafficking as a human rights issue

A human rights approach places the woman’s individual human rights as central by attending to the social and economic context of women’s decisions to migrate (either legally or illegally) and/or engage in sex work (Segrave, Milivojevic & Pickering 2009). Whilst the United Nations Trans-National Crime Convention and its Trafficking Protocols are criminal justice instruments, they are also ‘intended to preserve human rights obligations and responsibilities’ (Kneebone 2009, p.4).

A human rights focus does not necessarily restrict the provision of victim support, including the granting of residential status, to the giving of evidence. At least it does not make such support a ‘reward contingent on initial co-operation’.²⁶⁰ Evidence suggests an approach that respects the human rights of victims and guarantees them at least a degree of certainty with regard to their immigration status may be more effective in achieving successful prosecution of perpetrators (Carrington & Hearn 2003; McSherry & Kneebone 2008). In her annual report, Ms Joy Ezelio, the UN Human Rights Council’s Special Rapporteur on Trafficking in Persons, stresses the need for a human rights approach:

Trafficking in persons results in cumulative breaches of human rights, and this correlation needs to be recognized in any intervention effort. As far as the mandate of the Special Rapporteur is concerned, the real challenge is not just in adopting strategies that will effectively lead to catching the perpetrators and punishing them. Rather, it is preferable to put in place strategies that will focus equally on the victim by recognizing and redressing the violations suffered, empowering the victim to speak out without being doubly victimized, jeopardized or stigmatized, while at the same time targeting the root causes of human trafficking. The strategies must be people-centred, bearing in mind that human trafficking is about persons whose basic

²⁵⁹ See IOM 2008, 2009a. See also Mr Lance Bonneau, International Organisation for Migration, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

²⁶⁰ When Dr Marie Segrave gave evidence to the Committee she argued that even under the current trafficking policy there is nothing to encourage victims to come forward to the authorities; in fact: ‘I would say it is the opposite’ (Dr Marie Segrave, Monash University, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009).

right to live free particularly from fear and want is under constant threat. We must recognize the dignity of the victims and their right to survival and development. Thus, restorative justice is central to combating human trafficking...States must avoid treating trafficking only from a crime and border-control perspective or simply as a migration issue. Multilevel approaches are needed that will focus on various perspectives including human rights; crime control and criminal justice; migration and labour (United Nations General Assembly 2009, pp.1, 25).

This approach draws from a number of United Nations and other international instruments that place human rights squarely in the centre of anti-trafficking efforts. For example Articles 6–8 of the Palermo Protocol expressly calls upon nation states to ensure that protection and support of victims is the key aspect of any national anti-trafficking policy and that any visas or residential permits granted to the victim are: ‘*not contingent on their cooperation with the prosecution of their exploiters*’ (United Nations Office for the High Commissioner on Human Rights 2002, p.22) (Committee’s emphasis).²⁶¹ Such an approach ‘[p]rovides a framework for exploring the conditions that may give rise to trafficking such as poverty, unemployment, discrimination and persecution’ (McSherry & Kneebone 2008, p.82).²⁶²

At a state level, many witnesses to this Inquiry stressed the importance of the Victorian *Charter of Human Rights and Responsibilities* and particularly Article 11, which prohibits slavery and forced labour in Victoria, as one way of supporting and providing human rights based service to victims in this state. For example, a person who has worked as a community legal worker addressing the trafficking issue told the Committee:

In Victoria, in terms of our domestic law, the prevention of slavery, servitude and forced labour is the core work of state government, local government and every other public authority in Victoria because of its inclusion in the Victorian Charter of Human Rights and Responsibilities. So it is our responsibility and our law. Section 11 of the charter, with its prohibition on slavery – a person must not be held in slavery or servitude – and, importantly, its prohibition that a person must not be made to perform forced or compulsory labour, has a very wide area of legal responsibility which falls on public authorities – that is, local government, the Victorian government, Victorian government entities like Victoria Police – to act proactively in terms of awareness, prevention, deterrence, identifying, prosecution and supporting and providing remedies to victims.²⁶³

Similar exhortations to make state based approaches and strategies grounded in the Charter were made by other anti-trafficking advocates.²⁶⁴

²⁶¹ This approach was developed as a result of the promulgation of the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* by the United Nations Human Rights Commission, Principle 3 of which states that any protection or care afforded to a victim ‘shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings’ (United Nations General Assembly 2009, p.17).

²⁶² For an example of the types of factors that could be taken into consideration or included in anti-trafficking legislation and policy that is centred in a human rights perspective, see Phillips 2009.

²⁶³ Mr Charnderev Singh, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

²⁶⁴ See Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009; Submission of United Nations Association of Australia to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

Human rights as gendered rights

Whilst men are certainly victims of trafficking and forced labour, the overwhelming majority of people trafficked into sexual servitude are women. From this perspective, sex trafficking is simply another aspect of the ‘international political economy of sex’ which also includes sex tourism, mail order brides, pornography, prostitution, the ‘virginity trade’²⁶⁵ and militarised sexual services: ‘A subset of the business in which women are coerced, enslaved, kidnapped, tortured or raped in order to sexually service men for the profit of others’ (Bertone 2000, p.5; see also O’Connor & Healy 2006). It would seem then that strategies to address sex trafficking must promote gender equality and the empowerment of women (Buettner 2009, p.52).

Human rights violations are therefore both a cause and a consequence of trafficking in persons (Lindley & Davis 2009). Supporters of the human rights perspective argue that whilst the prosecution of traffickers may be a necessary short-term approach to trafficking this ‘will ultimately fail [in stopping trafficking] unless the conditions that lead to the commission of trafficking offences are addressed’ (McSherry 2007, p.385).²⁶⁶

Gallagher and Holmes argue that human trafficking is not just a special kind of organised criminal behaviour but rather the outcome of certain global economic and political realities and conditions including restrictive migration regimes, liberalised trade policies, and the phenomenal growth of the international sex industry, all of which impact on the human rights of trafficked women and children (Gallagher & Holmes 2008). Dr Anne Gallagher calls upon governments and policy-makers not to think of human rights in the trafficking context as an ‘add on’ option or an ‘additional perspective’, as they are the ‘common thread’ and central to the way in which trafficking and the strategies to address it should be conceptualised (Gallagher 2001, p.1004).

²⁶⁵ Whereby young women are seen and traded as prize commodities to paying (male) customers because of their virginity. See Brown 2007 for a case study of the virginity trade in Cambodia.

²⁶⁶ For further discussion of the need for ‘human rights to be at the core of all anti trafficking activities’, see the collected papers from the Pacific Trafficking in Persons Forum held in Wellington New Zealand, 2–4 September 2009.

Part 4 – The Nature, Oversight And Regulation of the Sex Industry

10. Sex Trafficking: Debates and Divisions

The views regarding sex work, trafficking and the relationship between the two are highly polarised. Academics, policy-makers and activists have in many cases taken contentious and diametrically opposed positions as to the extent and nature of trafficking and how it should be conceptualised. This divergence creates a division as to how sex trafficking should be addressed.

Trafficking in women: Polarised perspectives

There are two basic perspectives on sex trafficking and the sex industry that reflect two fundamentally opposed, yet avowedly feminist, ends of the ideological spectrum. These are termed ‘pro sex work’ and ‘neo abolitionist’ viewpoints by Segrave, Milivojevic and Pickering (2009).

The pro sex work approach believes sex work is rarely related to trafficking and is a legitimate career choice for local and migrant women. According to such a view the extent of trafficking for sexual purposes, particularly of migrant women, is overstated and exaggerated by anti sex work ‘crusaders’. Moreover, according to such advocates, whilst the sex industry may require regulation and oversight it should not be regulated any more or less than other legitimate industries.

The neo abolitionist position maintains that prostitution is inherent violence against and exploitation of women and trafficking and forced prostitution is very much part of that violence. Therefore laws and policies should work towards the abolition of prostitution as a means of eliminating sex trafficking and violence against women.

These differing perspectives between the neo abolitionists and the pro sex work groups were very much in evidence during the debates around the Palermo Protocol in 2000.²⁶⁷ These different feminist views on the links between the sex industry and sex trafficking are admittedly two positions at opposite ends of the spectrum. There are also a variety of views taking a more nuanced middle ground between these two positions.²⁶⁸

²⁶⁷ For example, according to one neo abolitionist source, during the Protocol negotiations sex worker NGOs allegedly advocated to limit the definition of trafficking to forced or coerced trafficking and to omit any mention of trafficking for prostitution or sexual exploitation: ‘Along with countries that had legalised/regulated prostitution as labour, they worked to restrict protections for victims by limiting the definition to only those women who could prove they had been forced into trafficking’ (Raymond 2003, p.4).

²⁶⁸ The liberationist versus radical feminist differences on sex work and trafficking are remarkably similar in substance and tone to the pro pornography/anti pornography feminist debates of the 1980s and 1990s. For example in both cases, particularly in the United States, a rather curious alliance of radical feminists and Christian conservatives have opposed a liberal/liberationist coalition of feminists.

The neo abolitionist view on sex trafficking

For the neo abolitionists, prostitution and trafficking cannot be considered separate issues:

One particular problem with...cases of commercial sexual exploitation is the divide between trafficked women and non trafficked women in prostitution. Whilst the former are often referred to in the media as 'sex slaves' the latter are deemed 'prostitutes' and afforded no sympathy at all. In reality, the experience of being prostituted – whether trafficked abroad or pimped/exploited locally – is remarkably similar. One prevalent myth about prostitution is that selling sex is a choice that women are free to make, and that those that do choose it are 'bad' women, but that trafficking is different because the women are 'forced' (Bindel 2006, p.4).

Bindel argues this false dichotomy between trafficking and prostitution results in:

- Trafficked women and children being defined as 'real' victims and other prostituted women seen as choosing their fate;
- A sense of unease, especially for internationals, at the possibility of being seen to challenge local cultures that, in their opinions, tolerate prostitution as a male right and/or as viable employment for women in times of economic hardship;
- A decision, often for strategic reasons, to confine trafficking to clear cut cases of 'forced prostitution';
- A normative effect on society, whereby citizens are led to believe that legalisation of prostitution would help control trafficking of women (2006, p.11).

There is thus an unwarranted division of women into 'legitimate' victims of trafficking and those who are disqualified from being viewed as victims because they chose to migrate for work in the sex industry:

Thus, women who knowingly migrate to work in the sex industry and who may encounter exploitation and abuse are not considered to have a legitimate claim to the same sort of human rights protections demanded for trafficking victims (Doezema 2000, p.37).

This is reminiscent of similar distinctions used to demarcate deserving and undeserving victims in sexual assault cases (Carrington & Hearn 2003, p.7). However, for the neo abolitionists *all* women who come to Australia and work as sex workers are victims whether they are 'forcibly' made to do so or not. According to Leidholdt, trafficking is 'globalised prostitution' and prostitution may be nothing more than 'domestic trafficking' (Leidholdt 2003).

Governments such as Sweden and the United States clearly take the view that *all* prostitution is related to and inseparable from trafficking, and this is reflected in state policies, particularly the criminalisation of commercial sex work (Ekberg 2004; US State Department 2009).

As such, the State of Victoria (Australia) has come in for particular criticism from these governments and groups such as the Coalition Against Trafficking in Women (Australia) (CATWA) for its legalisation of (brothel) prostitution in 1994.²⁶⁹ According to Leidholt this act of legalisation ‘resulted in a massive expansion of Victoria’s sex industry and an increase in sex trafficking’ (2003, p.180).

From this perspective, the link between sex trafficking and prostitution is absolute and trafficking is understood to effectively occur predominantly in countries where there is an acceptance of prostitution (Segrave, Milivojevic & Pickering 2009, p.4).²⁷⁰

Ultimately for neo abolitionists, trafficking and sexual exploitation are intrinsically connected and should not ‘be separated merely because there are other forms of trafficking or some countries have legalised/regulated prostitution’ (Raymond 2003, p.8).

Community views in support of the neo abolitionist position

The Committee has received considerable evidence from groups or individuals who, to a greater or lesser extent, represent the neo abolitionist viewpoint. The CATWA has been most prominent in refuting the idea that sex work is work like any other:

The coalition has found the term ‘sex work’ to be quite misleading as it in fact represents a particular position on prostitution which suggests that prostitution is merely a form of labour like any other work. There are two significant problems we have with this understanding.

Firstly, in positioning prostitution as work, the particular physical and psychological harms involved in prostitution tend to become invisible. There is now substantial sociological evidence that prostitution is not experienced as just a job but rather is experienced as a form of exploitation and abuse...

Secondly, when prostitution is positioned as work, the issue of trafficking then often becomes an issue of migration for labour. The coalition’s position is that trafficking for prostitution is not the voluntary migration of woman from the Asia-Pacific region to Australia for work but rather a coercive and deceptive practice that results in sexual exploitation.²⁷¹

²⁶⁹ In 2002 the United States Government introduced a National Security Directive stating that evidence indicated prostitution is inherently harmful, dehumanising and fuels trafficking in persons: ‘Prostitution and related activities – including pimping and patronizing or maintaining brothels – fuel the growth of modern-day slavery by providing a façade behind which traffickers for sexual exploitation operate’. See, *The link between sex trafficking and prostitution*, US Department of State 2002, 2004, at <http://www.state.gov/g/tip/c26189.htm> and <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1037&context=humtraffdata>. Accessed 22 March 2010.

²⁷⁰ See also Sullivan and Jeffreys (2002). The authors argue that whilst it was hoped the Victorian legislation (*Prostitution Control Act 1994*) would control expansion of the industry in fact it has had the opposite effect: ‘It would be surprising if it did not, since this is the very reason that business interests [push] so hard for legislation’ (2002, p.1146).

²⁷¹ Dr Meagan Tyler, Executive Member, Coalition Against Trafficking in Women (Australia) (CATWA), Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

In addition, neo abolitionists argue that even when the sex industry concedes that there may be some (minimal) evidence of sex trafficking it invariably argues that it takes place in the 'illegal' sector of the industry. For example, Project Respect founder Ms Kathleen Maltzahn told the Committee:

[p]eople from the sex industry will often say, 'This is a problem in the illegal sector and you should do something about it, and by the way can you fix the illegal sector anyway because they are competing with us'. I think it is important to understand that when people are advocating about that, that is a business case. That is not a human rights case...

We know that basically all the [trafficking] cases today in Victoria have been from legal brothels...Trafficking is a crime against humanity. It seems to me that this is something that should be clear just on the facts but people keep asserting, 'No, it is an issue for the illegal sector and not the legal sector'.²⁷²

Professor Sheila Jeffreys, academic and CATWA member, expands this point arguing that it is the legalisation of brothels and other forms of prostitution that has led to an increase in sex trafficking in Victoria and other jurisdictions where the industry has been decriminalised. In a submission to the Committee she stated:

The problem of eliminating trafficking in women for prostitution in Victoria is exacerbated by the legalization of the industry. Legalization creates the conditions for the rapid expansion of the industry and creates the need for the supply chain of vulnerable women through trafficking. As the industry expands, rather than reducing the harms associated with prostitution, legalisation exacerbated them. The harms involved with this industry include, alongside trafficking, organized crime and corruption, violence against women who are prostituted, damage to the equality of all women, harm to streetscapes with sex industry advertising and venues, harm to local democracy and citizens' rights...

...Legalization increases the demand for prostitution on the part of male buyers by creating a sense of entitlement and justification. Thus in Australia, one in 6, or 15.6 percent of men report paying for sex (Rissel, Ritchers, and Grulich, 2003), whereas in the UK it is one in 29 ...Legalization in Victoria has contributed to making the state a popular tourism destination. A research report on male buyers in London found that the popular destinations for prostitution tourism – the Netherlands, Spain and Germany and Australia – are all countries where pimping is legal...

...Legalization of the prostitution industry makes trafficking in women more profitable. The European nations that have legalized have the highest numbers of trafficked women.²⁷³

The views of sex work advocates on trafficking and its relationship to the sex industry

The pro sex work advocates conversely believe there is a need to *distinguish* sex work from trafficking. 'While selling sex may be a rational choice for some, governmental and charitable anti-trafficking initiatives rarely discriminate between those who would prefer sex work and those who have been wronged' (Pendleton & Jeffreys 2008, p.15). Pro sex

²⁷² Ms Kathleen Maltzahn, Founder and Chairperson, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

²⁷³ Submission of Professor Sheila Jeffreys, University of Melbourne, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

work advocates regard any abuse or exploitation of (migrant) sex workers as accidental and not integral to 'prostitution' (Raymond 2003, p.5).

Critics of the neo abolitionist approach, particularly in the American context, have argued that the rhetoric of counter-trafficking, especially as expounded by 'faith groups' and some feminists, becomes conflated with the rhetoric of anti-prostitution and results in policies that in fact penalise sex workers (Berman 2005; Ditmore 2005; Soderlund 2005).

For example, Agustin argues that the 'rescue industry', those NGOs, activists and academics who would see *all* forms of migrant sex work as trafficking, belittle, patronise and stereotype migrant sex workers:

There is a definite effort to conflate [trafficking and sex work] in a stream of feminism I call 'fundamentalist feminism'. These feminists believe there is a single definition of 'woman'...This particular group has tried to say that prostitution is not only by definition exploitation but is trafficking. It's bizarre...The whole idea of migrants who sell sex being victims [is] so different from what I knew (Agustin in Pendleton & Jeffreys 2008, p.15).

Anti-trafficking policy results in migrant women becoming targeted, persecuted and over policed, for example as a result of immigration compliance raids. Their human rights are consequently compromised.²⁷⁴ For example, David notes there is a view within the sex industry that the Department of Immigration and Citizenship (DIAC) migration and compliance 'raids' ostensibly to find trafficked women are simply backdoor methods of policing the decriminalised sex industry (2008a, p.x). Some pro sex work groups believe whilst DIAC compliance activities 'may have resulted in assistance being given to a small number of victims of trafficking, these activities have had a negative impact on a much larger number of women' (David 2008a, p.29).

Moreover, the choice for women who *are* 'labelled' as trafficked becomes either deportation or cooperation with the authorities to investigate and prosecute their alleged traffickers. As indicated in Chapter 8, this is an option that can be time-consuming, traumatic and does not necessarily result in any guarantees for the woman. The alternative scenario of continuing to work in the commercial sex industry thereby remitting income back to the family is rarely countenanced (Segrave, Milivojevic & Pickering 2009).

Trafficking in women involves exploitation, and coercion or deceit about the nature of the work or working conditions. Thus criminalising sex work is seen to aggravate the problem: the sex industry goes underground – as happens with most prohibited practices – and is exposed to organised crime, creating more space for traffickers (Segrave, Milivojevic & Pickering 2009, p.5).

From this perspective the harm done to trafficked women is not denied, but it is confined to the most brutal, extreme and arguably stereotypical practices. To protect women and particularly migrant women from the harms of trafficking the appropriate policy response is to decriminalise sex work, provide appropriate industrial safeguards and working conditions and in some instances sponsor migrant sex workers to Australia on special work related visas.

²⁷⁴ For a critical account of such 'raids' see Elena Jeffreys, *Anti-Trafficking Measures and Migrant Sex Workers in Australia* at <http://Intersections.anu.edu.au/issue19/jeffreys.htm>

In the American context see, *The Use of Raids to Fight Trafficking in Persons*, Sex Workers Project 2009

Community views in support of the pro sex work position

Not surprisingly, Australian sex worker support groups are the most fervent advocates of the pro sex work position. In this Inquiry the evidence supporting such a perspective has come from two main groups – Scarlet Alliance, the national peak body for sex workers and sex work support groups, and the Victorian sex worker support service, Resourcing Health and Education (RhED).

The discrepancy in views with regard to the *numbers* of women being trafficked into Australia has already been discussed.²⁷⁵ But pro sex work groups have also expressed concern with regard to the effect of official anti-trafficking policy on women in the industry. For example, Scarlet Alliance states:

Anti-sex work campaigners have hijacked reasonable discussion about the issue of trafficking, preferring to use it as a platform for increased criminalisation and police involvement in sex work. ...These responses have resulted in reducing the rights of migrant sex workers and increasing vulnerability to trafficking.

Anti-trafficking approaches that are repressive towards sex workers' rights to migrate ultimately benefit traffickers by making their services more prevalent in sex workers' lives. Reduced rights for migrant sex workers and resultant increased vulnerability to trafficking are unintended consequences of anti-trafficking efforts.

Sex workers and sex worker advocates in no way support trafficking. Sex worker criticism of anti-trafficking efforts has unfairly been type-cast by anti-sex work crusaders as a pro-trafficking stance or actually practicing trafficking.²⁷⁶

Scarlet Alliance is particularly opposed to the claims discussed earlier that legalising or decriminalising sex work, for example in Victoria, has led to sex trafficking and the exploitation of women. In its view this is emphatically untrue and not supported by any evidence.²⁷⁷ Rather, criminalisation of sex work increases the vulnerability of (migrant) sex workers to trafficking 'by reducing sex workers' rights and access to justice. Sex worker groups across the world are campaigning for decriminalisation of sex work as a trafficking prevention measure'.²⁷⁸

Similarly, RhED emphasises the lack of evidence to substantiate the neo abolitionist arguments about sex work and sex trafficking. In a submission to the Inquiry it states:

The evidence that is available [on sex trafficking] rarely draws from the experiences and views of those individuals who are themselves directly involved in trafficking, including those who can be defined as "trafficked" and "traffickers"...

The inherent issue relating to trafficking for the purposes of sex work in Victoria relates to the lack of choice available to those seeking to work in this industry from overseas. Sex workers who want to work in Australia face many barriers to migration relating to visa legislation and perceived discrimination which "forces" women into contract situations which equate to trafficking. An individual on a

²⁷⁵ See Chapter 3.

²⁷⁶ Submission of Scarlet Alliance to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

²⁷⁷ Submission of Scarlet Alliance to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

²⁷⁸ Submission of Scarlet Alliance to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

contract such as this, into which they entered freely and knowingly, is still legally “trafficked”, yet may be entirely satisfied with their working conditions and situation.

The lack of working visa arrangements available for migrant sex workers who wish to work in Australia for the legislative, health and occupational health and safety benefits of Australian sex industry laws, brings about situations where few options exist other than to go through traffickers. Situations of possible constrained choice, whereby an individual’s right to choose their work conditions may be compromised by those who enabled their work in Australia, is at the crux of the debate around trafficking.²⁷⁹

RhED argues that enforcement activities aimed at limiting trafficking are counterproductive. In RhED’s view they act instead to limit opportunities for women to access information, advice and assistance with regard to their health, employment conditions and social services:

It is RhED’s observation that activities such as raids and compliance visits erode trust within the sex industry of anybody perceived as an “outsider”, including both regulatory bodies and outreach workers. Anecdotal evidence suggests that in order to escape detection those who are not working legally in Victoria conduct their business in a more mobile and transitory way. This has reduced the ability of services such as RhED to support migrant sex workers in Victoria generally, whether or not they are trafficked.

Scarlet Alliance has reported that law enforcement activities impact indirectly upon the health of migrant sex workers. Opportunities for contact and likelihood of engagement with health and welfare agencies are reduced by sex workers’ suspicion of anyone, including outreach workers, who are not clients entering their premises, and also by businesses regularly moving. ...migrant sex workers are mistrustful and discouraged by law enforcement activities from accessing services.²⁸⁰

In evidence to the Committee, RhED emphasised that just because a migrant sex worker may be disempowered does not mean she has been trafficked.²⁸¹ Similarly, Ms Maria McMahon, formerly of the Sex Workers Outreach Project (SWOP), told the Committee that most of the migrant sex workers she had encountered certainly did not see themselves as ‘sex slaves’; they were sex workers who had come to Australia to make a better life and a small number were subject to “excessive profiteering” by those who arranged their travel and work.²⁸²

²⁷⁹ Submission of Inner South Community Health Service (Resourcing Health and Education – RhED) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

²⁸⁰ Submission of Inner South Community Health Service (Resourcing Health and Education – RhED) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

²⁸¹ Ms Carolyn Mogharbel, Health, Education and Support Worker, RhED, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

²⁸² Ms Maria McMahon, formerly of Sex Workers Outreach Project (SWOP), Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 30 November 2009.

Conclusion

It is clear from evidence to this Inquiry that the schools of thought of the pro sex work lobby and the neo abolitionists are still sharply divided. An ideological impasse between radical and sexual liberationist perspectives also characterises much of the international anti-trafficking debates. When Dr Anne Gallagher gave evidence to the Committee she argued that:

[t]rafficking has been hijacked by both sides of the broader prostitution debate to push for greater recognition of sex work as work on the one hand, and to push for a much stronger response to prostitution (and, hopefully, its eventual abolition) on the other.²⁸³

However, it may be that at the very least these opposed viewpoints have both been instrumental in drawing attention to trafficking and putting it on international and local policy agendas. Nonetheless ‘their exclusiveness and the lack of compromise between them have arguably limited international and national efforts to address trafficking’ (Segrave, Milivojevic & Pickering 2009, p.7).

²⁸³ Dr Anne Gallagher, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 9 November 2009.

11. The Sex Industry in Victoria: Nature, Oversight and Regulation

Introduction

The crime of trafficking is not restricted to sexual servitude or other offences related to sexual exploitation. On a global scale at least, labour trafficking is of increasing concern. Nonetheless, in the Australian context the overwhelming number of investigations of trafficking under the Commonwealth Criminal Code have involved some type of commercial sexual service. As such it is necessary to examine the nature, regulation and oversight of the commercial sexual industry in Victoria as a precursor to discussing the relationship of the Victorian sex industry to sex trafficking.²⁸⁴

Regulating sex work in Victoria

In Australia the regulation of the sex industry is constitutionally a matter for the states and territories. The state of Victoria has a hybrid system of sex industry regulation that is halfway between a licensed and a prohibition model. Brothels, escort agencies, and sex on site venues are able to operate legally when they have obtained the correct permits. Street sex work is strictly illegal. Attempts to establish a gazetted area for street sex work in St Kilda failed in 2002 after the State government rejected the recommendations of the Attorney-General's Street Prostitution Advisory Group.

The legislation primarily governing the sex industry in Victoria is the newly named *Sex Work Act*,²⁸⁵ discussed in detail in Chapter 6.²⁸⁶ Under Section 4 the objectives of the *Sex Work Act* are:

- (a) to seek to protect children from sexual exploitation and coercion;
- (b) to lessen the impact on the community and community amenities of the carrying on of prostitution-related activities;
- (c) to seek to ensure that criminals are not involved in the prostitution industry;
- (d) to seek to ensure that brothels are not located in residential areas or in areas frequented by children;
- (da) to seek to ensure that no one person has at any one time an interest in more than one brothel licence or permit;
- (e) to maximise the protection of prostitutes and their clients from health risks;
- (f) to maximise the protection of prostitutes from violence and exploitation;
- (g) to ensure that brothels are accessible to inspectors, law enforcement officers, health workers and other social service providers;
- (h) to promote the welfare and occupational health and safety of prostitutes.

The overall promotion of these aims and objectives is the responsibility of Consumer Affairs Victoria (CAV). However, in real terms a number of authorities share the

²⁸⁴ This is discussed in Chapter 12.

²⁸⁵ Until this year called the *Prostitution Control Act*. See Chapter 6.

²⁸⁶ The objectives of the Act do not include the prevention and suppression of trafficking for sex work, although arguably that could be read into Section 4 (f) – maximising the protection of workers from violence and exploitation.

responsibility for regulating legal sex work (brothels, escort services and sole operators) in Victoria. For example, general oversight of the sex work industry and the administration of the Act belongs to CAV; the licensing and associated administration of brothels, sole providers and escort agencies is the province of the Business Licensing Authority (BLA);²⁸⁷ planning controls and planning permission for establishing a brothel or sex on site premises belongs to local government authorities; breaches of the criminal law are handled by Victoria Police; and public health and safety issues pertaining to the brothel are the responsibility of the Department of Human Services and WorkSafe respectively. In addition to these state bodies, Commonwealth agencies may need to be involved where there is suspected illegal migrants or trafficked women on the premises.²⁸⁸

The nature of the industry

Ascertaining data on the number of brothels and other sexual service providers in Victoria is not an easy task. It is almost impossible in the case of the unlicensed or illegal sector.

Licensed brothels

Information provided to the Committee by Dr Claire Noone, Executive Director of CAV, states that at the time of writing:

- There are 95 licensed brothels in Victoria
- There are 143 licenses
- There are 691 approved brothel managers
- There are 2453 exempt operators on the register held by the Business Licensing Authority.²⁸⁹

When Dr Noone spoke to the Committee she explained the discrepancy between the number of brothels operating and the number of licences in existence as follows:

There are two aspects to it: there is the licensee who is the person who is in effective control of the business, who is actually running the business and is benefiting from it and then the manager. It is a bit like a hotel where you would have one manager on the night shift, for example. You might have three managers during the course of a day.

Joint licensees may be in partnership, but at the moment each has to have its own licence. More than one might operate [but not own] a single brothel. Some who are

²⁸⁷ Specifically the BLA is responsible for:

- The issuing of sex work service provider licenses;
 - The registration of exempt owner operators; and
 - The issuing of approvals to suitable applicants for brothel managers.
- (Information tabled by Dr Claire Noone, Executive Director, Consumer Affairs Victoria, for the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2010 at p.5).

²⁸⁸ The issue of trafficking in Victoria and the cooperation required between such agencies is discussed in the next chapter.

²⁸⁹ Information tabled by Dr Claire Noone, Executive Director, Consumer Affairs Victoria, for the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2010 at p. 6.

licensees are not currently trading, and some are exempt licence-holders ... There are 691 approved brothel managers at the moment, and there are 2453 exempt operators on the register. That does not necessarily mean they are all operating at the moment, but when the new legislation comes through it will make sure that only up-to-date operators are on the register.²⁹⁰

Dr Noone also told the Committee that neither CAV nor the BLA have information or data on the number of individual sex workers working in Victoria. Nor did she believe there was any noticeable benefit in individual sex workers being registered or identified. Indeed such a move could be said to be prejudicial to their wellbeing and privacy, particularly given the stigma attached to the sex industry.

Sex worker support advocates shared this view. For example, Ms Sandra Gibson, Resourcing Health and Education (RhED), thought that a registration system might have the effect of forcing women into the unregulated sector.²⁹¹ Similarly, Ms Kathleen Maltzahn founder of Project Respect stated:

The fact that prostitution is so stigmatised means that the dangers for women of having somewhere on the record that they have been a prostitute would outweigh the benefits, and it would cause great distress amongst women...

I know very few women in the industry who are comfortable putting their true name to anything that says they have done prostitution, because of course if you have child protection issues later – although this is legal – women constantly tell us that their status of having done prostitution is used against them.²⁹²

²⁹⁰ Dr Claire Noone, Executive Director, Consumer Affairs Victoria, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2009.

²⁹¹ Ms Sandra Gibson, Team Leader, RhED, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

Conversely, representatives of the Victoria Police believed a registration system for individual workers could be worthwhile. For example, Detective Sergeant Murray Aldred said that currently there were insufficient ways in which women, particularly migrant women, who may work in illegal brothels can be identified. In his view it would be appropriate for individual sex workers to have to complete a training course in which they became aware of their rights and responsibilities under the *Sex Work Act* and associated regulations. It would be similar in aim and style to a Responsible Service of Alcohol course. In doing so a worker would need to register her true identity with the authorities. Mr Aldred added that in the context of anti-trafficking measures it would not necessarily be inappropriate for women to have a photo identity card or similar that could be compared to a woman's passport. See Detective Sergeant Murray Aldred, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

²⁹² Ms Kathleen Maltzahn, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

Unlicensed brothels and their relationship to the legal industry

With regard to illegal or unlicensed sex work activity, as could be expected from its clandestine nature, it is almost impossible to get any hard data.²⁹³

Despite this lack of data, a recent Report commissioned by CAV, *Working in Victorian Brothels*, provides some interesting insights into the Victorian sex industry through its qualitative research and interviews.²⁹⁴ A key aim of this independent research produced by Monash University was to understand:

The brothel industry in more detail, including the number and scope of the illegal brothel sector and the intersection (if any) between the legal and illegal brothel sector.²⁹⁵

The report stated, through interviews with sex workers, owners, managers and sex industry regulators, that accurate estimates of the number of unlicensed brothels are very difficult to ascertain:

Regulatory and enforcement respondents suggested two main reasons: 1) there is a lack of integrated data recorded by key agencies concerned with regulation and enforcement; 2) there is a lack of shared definition of unlicensed brothels and illegal activity.²⁹⁶

Nor was there much quantitative evidence of illegal activity:

Estimates of illegal activity vary widely from low estimates amongst law enforcement agencies to higher estimates from industry representatives. However, it is possible that illegal activity is more widespread than some estimates based on evidence from respondents. Types of illegal activity alleged include; larger scale organised networks of illegal brothels; hand relief in ‘massage’ service providers;

²⁹³ This is certainly the experience of The Salvation Army in its outreach work in Victorian brothels. Trying to establish the number of legal brothels in Victoria is, according to Captain Danielle Strickland, difficult enough let alone estimating the number in the unlicensed sector:

‘Our volunteers have found it quite difficult to navigate the details of licensed brothels and unlicensed brothels. Some brothels have their PCA number displayed and that suggests licensing – but the volunteers are unsure what that requires or ensures. Other brothels do not, and yet operate as though they are licensed. Calls to the various City Councils for clarification are often bounced around and the information necessary is hard to access.

Even compiling current lists of brothels (seemingly licensed) required some investigative approaches – papers, out-dated brothel lists online, city council calls etc... It was difficult to ascertain the reality of licensed and unlicensed brothels’ (Submission of The Salvation Army (Australia Southern Territory) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009).

Dr Claire Noone also affirmed that there is limited quantitative evidence of illegal activity. (Dr Claire Noone, Executive Director, CAV, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2010).

²⁹⁴ *Working in Victorian Brothels* An independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector. (Prepared by Sharon Pickering, Jane Maree Maher and Alison Gerard, Monash University, June 2009. At [http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines_2/\\$file/CAV_Monash_Report_Brothels.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines_2/$file/CAV_Monash_Report_Brothels.pdf), 28 January 2010).

²⁹⁵ The other aims were to understand:

- ‘The experience of workers and stakeholders in relation to exiting the industry’ and
- ‘The nature and scope of student involvement’ (Information tabled by Dr Claire Noone, Executive Director, Consumer Affairs Victoria, for the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2010 at p. 6). These last two aims are relevant to other sections of this Report and are discussed at Chapters 15 and 4 respectively.

²⁹⁶ *Working in Victorian Brothels*, CAV, p.vi.

breaches in licence conditions such as licensees selling or trading licenses; unregistered escort agencies; and independent workers offering sexual services without being registered for exemption, or in breach of the conditions for exemption.²⁹⁷

There is very little understanding of the extent of trafficking into and from unlicensed brothels and between the legal and illegal sectors. All that can be stated with any certainty is that nearly all cases of trafficking or sexual servitude that *have reached the courts* in Australia were originally discovered in legal brothels. This does not mean that undiscovered crimes are not occurring in the unlicensed sector.²⁹⁸ Indeed, Ms Fiona David's research suggests that Australian Federal Police (AFP) investigators have detected trafficking cases in both legal and illegal brothels and 'that this distinction had little relevance from the perspective of investigating trafficking' (David 2008a, p.34).

One of the most important overall findings of the Report was the high level of *interdependence* between licensed and unlicensed sexual service providers. The Report noted that this mobility was apparent in a number of ways.

First, a substantial majority of the workers interviewed acknowledged moving in and out of the licensed and unlicensed sex industry during their working lives. Workers also easily moved between different types of sex work, for example going from brothel work to escort work or vice versa. Some women worked on occasion as a sole operator from home (without an exemption) but could supplement that income with casual work in legal brothels. Often these working relationships reflected the woman's need for flexibility. For example, 'working mums' may prefer to work at home whilst children are at school.²⁹⁹

Second, there was also a fair amount of movement of licensees and managers between sectors. For example, it was not unusual for a manager to work a morning shift in a licensed brothel and a night shift in an unlicensed one. Whilst there was no hard evidence given to substantiate the claim, it was also thought on the basis of interviews with licensees (usually competitors) that some licensees ran one or more unlicensed brothels in addition to their one permitted official licence. One respondent from the law enforcement sector told the interviewers:

What we find these days is that you have people slipping in and out of the licensed and unlicensed industry where they may be working for an unlicensed and a licensed at the same time...

We also tend to find that you'll have a group of unlicensed operators or one person, running about two or three [brothels] at other locations, and the girls just go from each of these locations by car, they'll spend a couple of days in one location and then transfer to another one that's operated by the same person.³⁰⁰

²⁹⁷ Working in Victorian Brothels, CAV, p.vii.

²⁹⁸ For example, the three cases of sexual servitude to date before Victorian courts all concerned legal brothels. See *DPP v Tang*, *DPP v Ho, Ho, Hoo and Rahardjo* and *DPP v Leech* and *DPP v Ho*. For further discussion of investigating trafficking in the Victorian sex industry see Chapter 8.

²⁹⁹ Interestingly, this finding was supported by evidence given to the Committee by The Salvation Army. During its outreach work, 'Army' volunteers noted finding women working in more than one brothel, both licensed ones and those they thought could possibly be unlicensed. (Submission of The Salvation Army (Australia Southern Territory) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009).

³⁰⁰ Working in Victorian Brothels, CAV, p.45.

Licensees who were interviewed thought the ban on advertising for staff (both sex worker and ancillary) contributed to the interaction between the licensed and unlicensed sectors, word of mouth being the only way in which brothel owners could find staff. Detective Sergeant Murray Aldred, Victoria Police, agreed that the ban on advertising for sex work is a factor in this interaction.³⁰¹

The problem of ‘brothels without walls’

One problem facing regulators of the sex industry is that increasingly unlicensed sex work may be taking place in a variety of locations not traditionally associated with ‘shopfront’ brothels. This is due in part to advances in technology in Internet and mobile phone services, which have led to a ‘grey zone market’ where it is no longer necessary to work on either the streets or in brothels:

Some persons think that mobile telephones and the Internet have opened up the market for new groups of sellers and new groups of buyers...The new technology offers anonymity, effectiveness and greater freedom of choice as far as the type of service and place is concerned...The Internet opens up all opportunities for the sale of sex all round the country, so that women can arrange [sexual services] in sparsely operated rural areas. ...The sex contact pages are the real forums for prostitution (Ministry of Justice and the Police (Norway) 2004a, p.11).

Ekberg argues we need to widen our conceptualisation of what counts as the sex industry, particularly if we wish to combat trafficking and the abuse of women in that industry. She includes in her definition of the sex industry, not only traditional brothels but also:

- Sex and ‘Gentlemen’s clubs’
- Striptease clubs
- Street prostitution
- Escort services
- Internet marketers of prostituted women
- Mail order bride agencies
- Phone sex operators
- Sex tourism agencies
- Creators and distributors of pornography.

Ekberg also includes in the broader definition of sex industry those third party beneficiaries such as travel agents and tourist operators that benefit from the prostitution of women and children (Ekberg 2004). This proliferation of locations where sex is commercially available or may be accessed would appear to be an international phenomenon. For example, research undertaken by the Australian Institute of Criminology (AIC) noted that sex work in Thailand has become far more ‘hidden’:

Instead of working in brothel based settings, sex workers are increasingly operating out of hotels and there has been an increase in the number of clubs (sporting, karaoke) etc and restaurants that offer ‘girls’ to clients. A similar trend was reported during consultations with Malaysian non government representatives where the

³⁰¹ Detective Sergeant Murray Aldred, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

concern was that many of these entertainment clubs are licensed by local councils and are further removed from the remit of police agencies (AIC 2009c, p.56).

The problem for investigators and outreach workers is that it is extremely difficult to discover the level of trafficking or other illegal operations going on in the 'hidden' or illegal sector. This is particularly true if investigators do not have access to venues such as strip clubs or gentlemen's clubs. The Committee also received anecdotal evidence that whilst unlicensed commercial sex operations may flourish in hidden settings it is very difficult for the regulatory authorities to police these.³⁰²

A possible way of addressing this problem is to adapt the system currently operating in the City of Sydney. The City of Sydney Adult Entertainment and Sex Industry Premises Development Control Plan covers *all* forms of adult entertainment including sex bars, clubs and striptease establishments. The City of Sydney jurisdiction covers not only the central city but also Kings Cross, Darlinghurst and Surry Hills, in which there are many sex venues. The operators of these adult entertainment or sex premises must provide reasonable access to and facilities for staff from council, health service providers and other agencies. Access is also for the purpose of providing information and educational services to the staff on site.³⁰³

Mr Andrew Miles, Sex Industry Liaison Officer, City of Sydney, told the Committee that the City's model was unique in Australia particularly for bringing other areas of adult entertainment into its ambit and in forging partnerships between the Council, brothels, police and local community support agencies. He commented that the City's Adult Entertainment and Sex Industry Premises Development Control Plan:

[r]egulates other types of premises where sexual activity does not or should not take place; the adult entertainment premises usually known as strip clubs and adult book shops. The other unique approach of the City of Sydney was the inclusion of health standards within its development control plan. The councils of NSW have responsibilities for public health under the Public Health Act ... and what was unique about council's initial approach and has continued is the recognition [that] health standards within sex service premises (brothels) are a council consideration and, as part of the City's assessment and compliance of premises, they must meet

³⁰² For example, Professor Susan Kneebone told the Committee about anecdotal reports of illegal brothels operating in the local area in which she lives:

'I live in South Melbourne, and I have spoken to overseas students who work in the area, I have heard anecdotal evidence from people I have chatted to on trams – pizza delivery people – and I also hear stories anecdotally or socially about hotels that have women in their back rooms. I have mentioned this to the Australian Federal Police. They do not seem to be able to take action on that. They will only go into the legal brothels. There is a real problem of the AFP and immigration only focusing on licensed brothels' (Professor Susan Kneebone, Castan Centre for Human Rights Law, Monash University, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009).

Ms Shirley Woods from Project Respect told the Committee that she had also received anonymous 'tip offs' of migrant women being prostituted and trafficked into strip clubs, sex clubs and even domestically in private houses. (Ms Shirley Woods, Outreach Co-ordinator, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009).

Mr Ken Wolfe of the Yarra City Council also told the Committee there was anecdotal evidence of possible illegal sex work taking place in 'entertainment venues' within that municipality. See Mr Ken Wolfe, Co-ordinator, Planning Enforcement, City of Yarra, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

³⁰³ See Attachment A2, *City of Sydney Adult Entertainment and Sex Industry Premises Development Control Plan*. Accessed at <http://www.cityofsydney.nsw.gov.au/Development/documents/PlansAndPolicies/AdultEntertainmentAndSexIndustryPremisesDCP2006.pdf>, 4 December 2009.

minimum standards to those health standards. The other relatively unique component of the City's Plan is the inclusion of design safety features within the control plan including the provision of minimal staff facilities and the inclusion of safer workplace design which our friends at NSW Police have assisted in developing. The impact of the City's approach in short has been successful in ensuring that the majority of businesses that call themselves brothels operate with development consent as brothels and as such are investigated by council whether through a normal annual investigation or in response to a complaint. These premises as a requirement of their [development application approval] have established relationships with the local sexual health services which undertake inspections and visits to make contact with sex worker staff. And in many cases have developed positive relationships with the local police as well.³⁰⁴

Criticisms of the Victorian model of regulation

A criticism sometimes made of the Victorian model of regulation is that there are simply too many agencies involved in the oversight of sex work sites and this leads to confusion and a lack of coordination. A counter argument is that because the aims of the Act and the responsibilities in administering it are so broad, with everything from promoting the health and safety of sex workers to preventing criminals from being involved in the industry, specialist agencies are needed to take responsibility in areas that match their expertise. Following this line of reasoning, Victoria Police are clearly the most suitable agency to investigate issues pertaining to underage sex workers in the industry or vetting or investigating the involvement of possible criminal elements in the trade.³⁰⁵

There is also a view that some units that do play a role in administering the Act are not necessarily suitable for the task. For example, inspectors with the BLA may work on inspecting brothels one week and used cars the next.³⁰⁶ In a case of suspected trafficking, they may not have the necessary specialist expertise to enable them to 'read' signs of forced prostitution or sexual servitude. Dr Claire Noone stated however, that CAV and the BLA are the appropriate agencies to be involved with the licensing and inspection of brothels because of their experience in licensing systems generally. That is, the experience one builds up in licensing hotels and liquor establishments can be extrapolated to the expertise required in regulating the sex industry.

She believed the real challenge is to gain the cooperation of all agencies involved in the oversight process *and* share information and intelligence effectively across those agencies.³⁰⁷ In her view this has been done through the establishment of comprehensive memoranda of understanding (MOUs) between, inter alia, CAV and the Victoria Police

³⁰⁴ Mr Andrew Miles, Sex Industry Liaison Officer, City of Sydney, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

³⁰⁵ Interestingly, a number of witnesses to this Inquiry stated that for this reason alone there was merit in bringing back the system of specialist police units (sometimes known as vice squads) which had previously been responsible for policing the sex industry and investigating any infringements of the relevant legislation. Groups such as Project Respect, however, stated that whilst there needs to be an overhaul of the compliance structure, it would be a retrograde step to replicate the old vice squad system with its potential for corruption. (Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009). See also further discussion in Chapter 12.

³⁰⁶ Certainly the evidence given to the Committee by a number of brothel owners suggested that they were highly critical of the Business Licensing Authority. One licensee much preferred the former *Prostitution Control Board* because it included at least one sex industry representative and it dealt *only* with issues pertaining to the sex industry.

³⁰⁷ Dr Claire Noone, Executive Director, CAV, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2009.

and CAV and the Municipal Association of Victoria representing councils and local government authorities. Such MOUs set out the appropriate roles, responsibilities and relationships for each agency and outline the relationships between them with regard to the oversight of the sex industry.³⁰⁸

Criticisms from within the sex industry

Criticisms of the licensing system have come also from the sex industry and sex worker support groups. Ms Elena Jeffreys, President of Scarlet Alliance, the national peak body for Australian sex workers, believes the Victorian model of sex industry regulation has ‘deeply failed sex workers’ and the sex industry in that state:

[s]ex workers in the licensed sector in Victoria came off with worse occupational health and safety and STI outcomes than sex workers in the fully criminalised industry in WA and in the decriminalised industry in NSW. Increased regulation hurts sex workers, increased surveillance, increased intervention in work places, increased work place visits, increased laws, regulations and policies that are special to the sex industry, that people in other industries do not experience and that are not implemented in other industries – that is what discrimination looks like...³⁰⁹

Ms Jeffreys believes that decriminalised models such as that operating in New South Wales are the most effective means of guaranteeing not only the health and safety of sex workers but also safeguarding their basic human rights, human worth and dignity.

Apart from the broader philosophical objections to the type of control model established in Victoria, some critics disagree with the more detailed nature of the rules and regulations. Sex industry owners and operators in particular have argued that Victoria’s licensing system discourages workers from setting up their own small brothels. The prohibition on operating more than one brothel is also a restraint.³¹⁰ Another is the often-high cost of running a legal brothel or escort agency.³¹¹

³⁰⁸ Dr Claire Noone, Executive Director, CAV, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2009. For a discussion of these MOUs, see Chapter 12.

³⁰⁹ Ms Elena Jeffreys, President, Scarlet Alliance, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

³¹⁰ One group of brothel owners being interviewed in 1999 were heard to remark: ‘There are so many rules and regulations we are thinking of packing up and going to Queensland’. Quoted in Smith 1999, p.18.

³¹¹ At the time of writing the most relevant fees charged associated with establishing and running a brothel and/or escort agency are as follows:

BROTHEL

- Application Fee – Brothel: \$3,999.50
- Annual Licence Fee – Brothel: \$2,285.40 per year
- Fee for Second and Subsequent Rooms: \$428.60
- Fee for Second and Subsequent Business Names: \$428.60

ESCORT AGENCY

- Application Fee – Escort Agency: \$1,999.80
- Annual Licence Fee – Escort Agency: \$2,285.40 per year
- Fee for Second and Subsequent Telephone Numbers: \$428.60
- Fee for Second and Subsequent Business Names: \$428.60.

Source: Information taken from Business Licensing Authority website. Accessed at <http://www.bla.vic.gov.au/wps/wcm/connect/justlib/Business+Licensing+Authority/Find/Fees/> 24 March 2010.

Criticisms from anti-trafficking advocates

The current regulatory system has also been criticised by people outside the sex industry.

Inadequate supervision of licensees

Concern has been expressed that Victorian brothel licensees are insufficiently supervised in the ownership and running of their brothels. For example, workers from Project Respect told the Committee they could not understand how the person who was the licensee of a brothel in which the manager/operative was convicted of trafficking could retain his or her licence. They indicated that even if the licensee was to argue that he or she was never in the brothel at the time the trafficked women were there, in many cases it would be highly unlikely that he or she was not aware of what was going on.

Project Respect also believes those responsible for regulating the sex industry and overseeing brothels could be more vigilant in fulfilling their mandate. For example, whilst the law prohibits one person holding more than one prostitution provider licence at any time, in its experience there are clearly operators in Melbourne flaunting this rule:

[We have] been doing a project mapping trafficking. One of the things [we have] had to do is trawl forums about brothels. There has been consistent information [we are] seeing coming up in forums about X and Y brothel. It appears that X and Y are in effect owned by the same people...

One person in effect owning two brothels is against the law. I do not understand why these things are not being closed down...there is a lack of resources or a lack of will somewhere.³¹²

Evidence from Victoria Police also suggested that it is not always easy to thoroughly check the probity of applicants for prostitution provider licences and that officers do sometimes hear of a person having an interest in as many as four or five brothels.³¹³

The employment status of sex workers

Concerns have also been expressed about the employment status of individual sex workers, both those working in brothels and as escorts. Under employment law, sex workers are in effect independent contractors and are therefore eligible for few of the benefits that employees in other trades and professions receive. Ms Kathleen Maltzahn outlined the difficult position sex workers are in:³¹⁴

Women...are subcontractors in theory, so they do not get super, they do not get WorkCover, they do not get any of the stuff that you get normally, but I tell you, there are many brothels where, if a woman is half an hour late, she is not treated like a subcontractor. Women are sacked for that sort of thing. Women are sacked

³¹² Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

³¹³ Mr Ken Wolfe, Co-ordinator, Planning Enforcement, City of Yarra, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

³¹⁴ Sex workers generally shared these concerns too. For example, the Victorian sex worker support group Vixen has noted that being independent subcontractors 'creates systemic barriers to sex workers effectively acting collectively to advocate for improved industrial relations issues and worker rights' (Submission to the National Human Rights Consultation by Vixen, June 2009. Accessed at www.humanrightsconsultation.gov.au/ on 22 March 2009).

sometimes for refusing to take customers. As a subcontractor, that should be absolutely their right, but the reality is that basically they just operate like very poor employees.³¹⁵

Yet Ms Maltzahn also acknowledged that some women would not necessarily appreciate a more formalised system whereby the woman is licensed or registered because of the stigma associated with their position.

As a result of their outreach work at Victorian brothels, The Salvation Army also believes women suffer under this independent contractor status:

The independent contract situation within brothels creates a competitive atmosphere for the workers. So, alienated from culture as a result of stigma or fear of stigma, combined with a competitive nature within the culture suggests a very unhealthy work environment. The absence of sick leave, no pay if there are no clients, no benefits (health of family) suggests the industry is not one that would benefit single mums and yet they are there in large measures. This clearly identifies a lack of support and infrastructure of education, alternative job training and exit strategies.³¹⁶

Another problem with the independent contractor system according to some observers is that it allows licensees to negate any responsibilities to their workers. For example, Detective Sergeant Murray Aldred stated that in some instances licensees would hide behind the independent contractor status to deny their workers even basic rights such as WorkCover. Whilst it is doubtful that such a stand is legal,³¹⁷ some women would not necessarily be aware of their entitlements in this regard:

The brothel owners cannot even tell you who is working in their brothel, because what they say is, 'We do not employ the girls. The girls in fact hire the room. They operate under their own business names.' Therefore they do not have to look after the girls at all – I have in fact been to a brothel where I said to the manager, 'How many girls have you got working?'. He said, 'I don't know'. I said, 'Who are they? Give me their names'. 'I don't know who they are', he said, 'We only rent the rooms out to them'.³¹⁸

Inappropriate or insufficient sanctions?

The Committee has also heard concerns expressed that the sanctions meted out for infringements of both the state sex work regulations and the Commonwealth provisions against traffickers are too lenient to act as real deterrents. Some witnesses believed the laws needed to be changed to make it far easier to close and/or deregister brothels when

³¹⁵ Ms Kathleen Maltzahn, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

³¹⁶ Submission of The Salvation Army (Australia Southern Territory) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

³¹⁷ For instance Detective Aldred's colleague, Detective Superintendent Guerin, likened the position of the brothel licensee to a hotel licensee who employs security staff. In such a case even though the crowd controllers may indeed be independent contractors that does not absolve the hotel licensee for being responsible for any damage caused by or to them. The licensee is also responsible for maintaining a register of staff whether independent contractors or not and for knowing exactly how many staff he has working for him or her. See Detective Superintendent Brett Guerin, Victoria Police, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

³¹⁸ Det Sgt Murray Aldred, Victoria Police, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, 5 November 2009.

there was proof of serious crimes or infringements by the licensee or his agents.³¹⁹ For example, Project Respect has recommended that if a licensee is convicted of a crime that is in breach of his or her licence conditions, such as sexual servitude, not only should the licence be revoked but the permit for the establishment to operate as a brothel should also be removed.³²⁰ Other witnesses suggested the onus be on the licensee or manager to prove in such instances that he or she was not aware of any infringements or breaches such as the presence of trafficked women on the premises.³²¹

The regulatory framework that governs the sex industry and the perceived problems associated with it are clearly complex.

³¹⁹ See for example, a Senior Legal Officer, Commonwealth Department of Public Prosecutions (NSW), Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

³²⁰ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

³²¹ Mr Charnderev Singh, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009. In such cases the licensee would be liable not only if he knew that there was trafficked women on the premises but also if he was reckless as to that fact and carried on operating regardless.

Part 5 – Strategies at a Local Level

12. Monitoring the Sex Industry in Victoria with specific reference to Sex Trafficking

Introduction

Regulating the sex industry in Victoria is the joint responsibility of Consumer Affairs Victoria (CAV), Victoria Police and local councils. CAV in conjunction with its agency the Business Licensing Authority (BLA) is responsible for the overall administration of the *Sex Work Act*. It is the lead coordination agency with regard to enforcement of provisions relating to sexual service provider permits and breaches thereof by licensees.

Victoria Police investigates criminal infringements of the Act at a local level; for example, offences with regard to underage workers. Local councils are accountable for the planning aspects of the legislation; for example, they may bring enforcement action against a brothel operating without an appropriate planning permit. Victoria Police and local councils have greater powers of entry into brothels and other sexual service providers' workplaces than CAV. This is particularly important in relation to unlicensed or illegal brothels.

Sex trafficking and associated slavery offences are primarily crimes under Commonwealth law, investigated and prosecuted by federal authorities. Whilst there is an offence of sexual servitude under the *Victorian Crimes Act*,³²² it has rarely been used (David 2008a; Australian Institute of Criminology (AIC) 2009c). The *Prostitution Control Act* was not drafted with sex trafficking in mind and it has been argued that its usefulness in this regard is limited (Ford 2001). However, as the legislation was originally enacted in 1994 this begs the question as to whether subsequent amendments to the Act, and new protocols and guidelines, have made the regulatory response to trafficking at state level more effective. Is further reform required to make the response to sex trafficking in Victoria more targeted? Or is this unnecessary given that, due to the comprehensiveness of sexual servitude and trafficking laws under the Commonwealth *Criminal Code*, state authorities have generally been willing to allow the Australian Federal Police (AFP) to take control of investigations of trafficking matters within the state (David 2008a; AIC 2009c).

The legal framework

Under the *Sex Work Act* responsibility for enforcement and compliance measures for licensed brothels and other sexual service providers is shared between CAV, Victoria Police and local government officers.³²³ CAV inspectors are authorised to require the production of documents for inspection and the answering of questions relating to licensed premises. Inspectors also have powers to enter premises, both with³²⁴ and without³²⁵ the consent of the occupier of premises, for the purpose of monitoring compliance with the Act or relevant Regulations. Similar powers exist for Victoria

³²² Sections 60AB-60AE of the *Crimes Act* 1958.

³²³ *Sex Work Act* Division 8A (Sections 61A to 61 Z) and Division 9 (Sections 62 to 65).

³²⁴ *Sex Work Act* Section 61J.

³²⁵ *Sex Work Act* Section 61K.

Police in respect of licensed sexual service providers,³²⁶ in addition to police powers of entry of unlicensed premises that are suspected of being used for the purposes of sex work.³²⁷ Authorised officers under the Act can apply to the Victorian Civil and Administrative Tribunal (VCAT) to have disciplinary proceedings taken against a licensee for breaches of the Act.³²⁸ As an extreme measure the tribunal can suspend or cancel the sexual service provider licence.³²⁹

Despite the existence of these powers a submission from the Human Trafficking Working Group at the law school of the University of Queensland notes that:

These powers of enforcement and compliance place sexual service providers under considerable scrutiny, though such scrutiny is considerably heightened within the regulated sector, given the powers of inspectors to enter premises without consent or warrant. Through this, the likelihood of detecting instances of trafficking may be increased. Nevertheless, this is an indirect effect of prostitution licensing and the reported cases provide no evidence that instances of trafficking have been detected as a result of the powers afforded under these provisions.³³⁰

However, in January 2010 a series of amendments to the legislation were introduced with the aim of making it easier for law enforcement officials to identify and shut down illegal brothels. In addition, CAV inspectors have been given stronger powers to question people suspected of being involved with illegal brothels including persons who may be entering or leaving brothels such as customers.³³¹ Penalties for operating illegal brothels have also been substantially increased.³³²

Compliance inspections

CAV as part of its general oversight of the sex work industry in Victoria has implemented a Compliance Monitoring Audit Inspection Program in order to monitor service providers' compliance with the *Sex Work Act* and associated regulations. In doing so CAV inspectors are given authority to look for:

- Safe sex literature, including safe sex signage
- Current medical certificates for sex workers
- Accessibility of alarms and/or communication devices in working rooms;
- Sufficient lighting in working rooms to enable sex workers to be able to check for signs of sexually transmitted infections
- Cleanliness of the rooms, including bedding and facilities; availability of clean towels, condoms and lubricants
- Presence or consumption of alcohol and/or illicit drugs (Resourcing Health & Education in the Sex Industry 2008, p.25).

³²⁶ *Sex Work Act* Section 62.

³²⁷ *Sex Work Act* Section 63.

³²⁸ *Sex Work Act* Section 48.

³²⁹ *Sex Work Act* Section 48A.

³³⁰ Submission of Human Trafficking Working Group, University of Queensland TC Beirne Law School to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

³³¹ Consumer Affairs Legislation Amendment Act 2010, Part 7 (Prostitution Control Act), section 63.

³³² Consumer Affairs Legislation Amendment Act 2010, Part 7 (Prostitution Control Act).

These are standard or routine inspections. CAV may also undertake compliance inspections (sometimes called ‘raids’ by those critical of CAV’s tactics) in response to allegations or notification of:

- Unsafe sex practices
- Sexual servitude
- Underage sex workers
- Presence of children at brothel
- Harassment or violence towards sex workers (Resourcing Health & Education in the Sex Industry 2008, p.25).³³³

In order to increase licensees’ compliance with the *Sex Work Act* and its regulations, CAV is in the process of developing a ‘Brothel Owners Handbook’. It also has issued guidelines³³⁴ on various matters pertaining to running a brothel in addition to supplying licensees and staff with a quarterly newsletter on matters pertinent to working in the sex industry.³³⁵

CAV, Victoria Police and authorised local government officers can bring prostitution service providers who breach legal requirements before VCAT which, among other options, can suspend or cancel a licence, and impose a fine.

CAV may also work in liaison with the Department of Immigration and Citizenship (DIAC) when evidence of possible cases of sexual servitude comes to light during brothel inspection. When CAV refers a matter to the DIAC (or AFP), DIAC sex industry compliance teams will then visit the brothel, interview the women according to compliance visit guidelines, and if appropriate refer the matter on to the AFP.³³⁶

³³³ From 2008–2009 CAV conducted 66 inspections of Victorian sexual service provider premises. Of this number 38 premises were non-compliant in some way with the relevant regulations. From 2009 to date, CAV has conducted 31 inspections of which 14 have been non-compliant. (Information tabled by Dr Claire Noone, Executive Director, CAV, in a presentation to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2010.)

³³⁴ See *How to be in effective control of your brothel: guidelines to help you meet your obligations*. Consumer Affairs Victoria, December 2009, Accessed at <http://www.bla.vic.gov.au/wps/wcm/connect/bf059280411da659a48fff5c241e6dc3/How+to+be+in+in+effective+control+of+your+brothel-guidelines+to+help+you+meet+your+obligations.pdf?MOD=AJPERES> 29 March 2010.

³³⁵ Information tabled by Dr Claire Noone, Executive Director, CAV, in a presentation to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2010.

³³⁶ DIAC compliance visit guidelines include:

- Pre-operational briefing requirements
- Handling of information received before compliance visits
- Advice on how to conduct on-site interviews with non-citizens in the sex industry using the *Sex Industry On site-Interview Questions*
- Handling of information post-location interview
- Who should undertake non-citizen sex industry interview
- What to do if a minor is located working in the sex industry
- How to refer people trafficking indicators to the AFP (DIAC Compliance Officer training material in Australian National Audit Office (ANAO) 2009, p.54).

Criticisms of the compliance system

A number of concerns have been expressed by sex industry representatives about the perceived heavy-handed approach of those responsible for administering compliance with the *Sex Work Act* and the planning laws pertaining to brothels.

Some of these criticisms were expressed by licensees and staff in the report commissioned by the CAV, *Working in Victorian Brothels*. Some licensees reported that compliance inspections focused on minor breaches of the regulations with little evidence of effective enforcement against illegal activity. For example, there are insufficient prosecutions and few closures of unlicensed operations.³³⁷ This in turn ‘lessened pressure for good practice [as it] was relatively straightforward to avoid detection and/or prosecution’.³³⁸ As such, many of the licensees interviewed reported that a ‘rule compliance model of operation, whereby they work to satisfy the minimum legal requirements and minimise their penalty, governed their business practices’.³³⁹

Other respondents indicated concerns such as a lack of clear regulatory principles and different enforcement roles being assigned to different agencies ‘with different resourcing priorities and systems’.³⁴⁰ For example a brothel owner told the Committee the different levels of oversight of the industry from a variety of agencies led to frustration and confusion. In her view the lines of demarcation of responsibility were not clear even between the agencies that were involved in regulating the industry. In particular, a common complaint from the licensed brothels was that none of the regulatory agencies make the investigation and targeting of illegal brothels a priority:

It has always been the police saying it is the council’s problem and the council saying it is a police problem. And then the two are supposed to be working together and they are supposed to be working in with the brothel inspectors from the Department of Consumer Affairs, and that obviously has not happened because they [illegal brothels] are still in existence. That makes it really difficult for us legal operators who operate properly, because we are really fighting; we are up against it because they do not charge as much. They do not have to comply with any of the medical certificates that we have to get from the women; they are not paying taxes. They are laughing all way to the bank, and then the money is going overseas. It is not staying in this country.³⁴¹

Most sex worker and licensee respondents who were interviewed in the Monash University/CAV study considered that rather than having a positive regulatory model that encouraged the industry to professionalise and enhance the aims of harm minimisation, the current relationship between the industry and the regulatory agencies was based on one of restrictive compliance and enforcement which was ‘unsatisfactory for the industry and sex workers’.³⁴²

Similarly, sex industry support agency RhED has argued that ‘activities such as raids and compliance visits erode trust within the sex industry of anybody perceived as an

³³⁷ CAV 2009, *Working in Victorian Brothels*, p.vi.

³³⁸ CAV 2009, *Working in Victorian Brothels*, p.vi.

³³⁹ CAV 2009, *Working in Victorian Brothels*, p.vi.

³⁴⁰ CAV 2009, *Working in Victorian Brothels*, p.vii.

³⁴¹ Brothel Owner, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009. The identity of the witness remain anonymous for reasons of confidentiality.

³⁴² CAV 2009, *Working in Victorian Brothels*, p.vii.

“outsider”, including both regulatory bodies and outreach workers’.³⁴³ Compliance raids penalise legal workers for minor breaches or infringements without dealing in any significant way with people working illegally. In RhED’s view compliance interventions by CAV or other agencies simply prevent services such as RhED from supporting migrant or other workers whether trafficked or not.³⁴⁴ Yet they argue the responses to serious crimes such as having trafficked women on brothel premises is subject to relatively light penalties. Project Respect explained this in a submission to the Inquiry:

[a]ll women trafficked for prostitution known to Project Respect have been trafficked into *legal* brothels. The three court cases for sexual servitude in Victoria to date have concerned trafficking into legal brothels... It is very clear that trafficking of women into legal brothels is a significant concern.

This means a number of things. Firstly, the *Prostitution Control Act*³⁴⁵ (1994) is not meeting a number of its objects, including:

- to seek to ensure that criminals are not involved in the prostitution industry (Section 4c);
- to maximise the protection of prostitutes from violence and exploitation (Section 4f);
- to promote the welfare and occupational health and safety of prostitutes (Section 4h).³⁴⁶

Whilst trafficking is usually dealt with as a Commonwealth offence subject to federal penalties, Project Respect argues that at state level a useful way of addressing sex trafficking would be to ensure the cancellation of a permit to operate a brothel when there is evidence that a trafficked woman has been working there or is in some other way associated with that brothel.³⁴⁷

One final concern expressed is that whilst the current compliance system may or may not work effectively in the case of licensed brothels, there is less evidence that it can adequately address the issue of possible illegal activity (including trafficking) within the escort industry or outcall sex work as it is sometimes referred to. As one observer has commented:

The nexus between outcall prostitution and trafficking in persons is not very well explored and it remains debatable whether and how escort agencies may be vulnerable to human trafficking. There is, to date, no evidence that trafficked persons have been involved in the provision of sexual services through escort agencies in Victoria. All relevant reported cases involved either legal or illegal brothels. The Crime and Misconduct Commission (CMC) in Queensland, however, expressed the view that the legalisation of outcall prostitution services could ultimately lead to an

³⁴³ Submission of Inner South Community Health Service (Resourcing Health and Education – RhED) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

³⁴⁴ Submission of Inner South Community Health Service (Resourcing Health and Education – RhED) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

³⁴⁵ *Now Sex Work Act* 1994.

³⁴⁶ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

³⁴⁷ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

increased demand in the provision of illegal services, and may add to the number of trafficked and underage workers in the illegal industry.³⁴⁸

Responding to the criticism

From the perspective of the regulators, CAV believes that their compliance approach is very much one of providing assistance to the industry:

We have issued guidelines to industry relating to what is effective control, and that was something we worked on with industry about, to determine what was reasonable to expect in terms of effective control. We have introduced a quarterly newsletter, so that we continue to engage with industry to inform them about what is going on. Part of that is around informing the industry that there is a regulatory activity occurring, but also informing industry about where there is non-compliance, so that it is [able] to improve compliance practices.

Also we have commenced development of a brothel owner's handbook, which is something that they have asked for. What is it that an inspector looks for when they come? It will cover that sort of activity. It is not just a hard-edged regulatory approach; it also includes compliance assistance.³⁴⁹

Ms Noone added that the overall thrust of CAV's compliance regime is to educate by way of educational letters, follow-up inspections and other measures falling short of removal of licences. In response to some criticisms that most CAV inspectors were not specialists, Ms Noone acknowledged that in many respects the sexual service provider inspection/compliance program was not dissimilar to that undertaken with licensed premises. Yet she argued that the expertise gathered in the regulation of one field can be readily transferred to other areas.³⁵⁰

Moreover, Ms Noone said that CAV has fostered good working relationships with the other two state agencies most responsible for oversight of the sex industry. These cooperative partnerships have been established through memoranda of understanding (MOU) with both Victoria Police and the Municipal Association of Victoria on behalf of local councils. Such memoranda aim to provide a much more integrated and coordinated enforcement of the laws with regard to illegal brothels.³⁵¹

Officers from local government also believe the system of oversight and regulation works fairly smoothly. For example, Mr Ken Wolfe, Coordinator of Planning Enforcement for the City of Yarra, believes there is an excellent and cooperative working relationship between all the agencies responsible for brothel regulation.

According to Mr Wolfe the problems with regard to illegal brothels, and particularly identifying any women who may have been trafficked, has less to do with the way in which the ground level agencies work together and more to do with a lack of entry level

³⁴⁸ Submission of Human Trafficking Working Group, University of Queensland TC Beirne Law School to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

³⁴⁹ Dr Claire Noone, Executive Director, CAV, Evidence given to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, 1 February 2010.

³⁵⁰ Dr Claire Noone, Executive Director, CAV, Evidence given to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, 1 February 2010.

³⁵¹ See *New Laws To Stamp Out Illegal Brothels*, Tony Robinson, Minister for Consumer Affairs, Press Release, 25 November 2009, Department of Consumer Affairs, Melbourne.

regulation for women working in the industry. In other words, there needs to be far more stringent ways of identifying women who may be working in the industry illegally:

The regulation is all at the top – licensed operators and managers, full stop. Anybody who works in there does not have to be licensed. They only have to have a medical certificate every month.

...When I go in and I talk to someone, I know when they are ill at ease. I can tell there is something not right. ...we need to be able to readily check that this person is bona fide: 'Here is a licence – and it is a photo ID – of this person working as a prostitute'; 'Thank you very much'. Right now we say, 'Can you produce some ID?' They say, 'I don't speak English'. 'Can you produce some ID?' 'All I've got is this Medicare card'. 'And what is your name?' 'John Smith'. It makes it really difficult. Police have the same trouble; federal coppers have the same trouble. Everybody has the same trouble. That is where the issue is.

To my way of thinking there needs to be regulation at that entry. ...In the illegal industry those parlours need to be registered with public health. There needs to be some form in that registration that states, 'When an authorised officer attends, your staff will be present with their qualifications, their full IDs and all the rest of it', or...Without that regulation we are continually going to be hamstrung.³⁵²

Right of entry

One of the problems noted by those in the regulatory sector has been the limited right of entry various agencies have to visit and inspect brothels, particularly unannounced. For example, Detective Sergeant Murray Aldred of Victoria Police noted that rights of entry for CAV and the police are limited to inspecting the licences of prostitution service providers and managers:

Police must be in a position to visit brothels 'out of the blue' to conduct inspections and verify the bona fides of the sexual service provider. Current legislation does not work. No proscribed form [is available] for an Inspector to enter a brothel. This is an indication as to how little this legislation [*Sex Work Act*] is used. According to LEAP [police] data many brothels have not had a visit for years. Nor is a record kept or required to be kept of who is working in a brothel at any given time.³⁵³

Community agencies have also commented that the right of entry into brothels is too restricted for those who provide support services, particularly for migrant women and those who may have been trafficked. For example, a submission from Project Respect argues that their outreach work is severely curtailed by the limited access available to (legal) brothels:

Access to brothels by support agencies (and indeed police) is limited and at the discretion of brothel management. One of the aims of the 1986 and 1994

³⁵² Mr Ken Wolfe, Coordinator, Planning Enforcement, City of Yarra, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

³⁵³ Information tabled by Detective Sergeant Murray Aldred, Victoria Police, Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

Despite Detective Aldred's concerns it should be noted that the *Sex Work Act* does give the police a right of entry without the consent of the licensee in certain circumstances. These are usually when there is reasonable cause to believe the brothel is operating illegally. In other circumstances search warrants may be sought to enter the premises. See sections 62, 63 and 64 of the *Sex Work Act*.

prostitution-related legislation was to make brothels accessible. This has not been adequately realised.

It is imperative that groups go in to brothels in order to access women and provide them with support. This allows women in the sex industry, including trafficked women, to get information, ask questions, raise concerns and assess the people offering support. It also allows organisations to build a picture of the sex industry from the inside out, to detect changes and trends in the industry, and to leave information in brothels that other women can access. This is particularly important in monitoring criminality, including trafficking.

One way to ensure this is by including conditions in brothel and escort agency licences that require management to allow specialist community agencies to meet with women in their brothels or offices. Specialist community agencies should be resourced to carry out this work.³⁵⁴

The role of local government

Local councils play an important role with regard to the oversight of sex industry premises. Some local governments are more proactive than others in using their powers to regulate and supervise brothels. For example, as has been previously discussed, the City of Sydney in addition to its traditional role of enforcing zoning and planning laws also takes a hands-on approach to oversee how brothels actually operate. They take a role more akin to that of the Health Department in other states in terms of ensuring that health and safety standards are met.³⁵⁵

In Victoria local government is the arbiter of where brothels and other sexual service providers may be located through their planning and environmental controls and powers. Mr Ken Wolfe, City of Yarra, believes that local government officers have the most power to observe what may be happening in illegal brothels. In his view they have a better power of entry than either police or CAV and, moreover, the police consider illegal brothels an issue for planning agencies rather than one of criminal investigation:

Councils are going to be the lead operators, the lead people going into these things...because any legal brothel just does not operate without a planning permit, and the planning permit gives you times, rooms and numbers; it gives you everything that we have to police...VicPol see it [illegal brothels] as a planning offence; they do not see it as a criminal offence.³⁵⁶

The Parliamentary Joint Committee on the Australian Crime Commission (PJCACC) in its *Inquiry into the Trafficking of Women for Sexual Servitude* also noted that local government inspectors, especially in the inner suburbs of Sydney and Melbourne, are the government officials most likely to have reasons to inspect brothels and thereby discover trafficked women. A witness to the Commonwealth Inquiry from the City of Yarra in Melbourne told the Committee that Council officers were frequently on-site before the police or DIAC 'in part because they are often the ones to receive tips from legal brothel rivals seeking to get rid of illegal rivals' (PJCACC 2004, p.27). The witness explained:

³⁵⁴ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

³⁵⁵ See City of Sydney 2006.

³⁵⁶ Mr Ken Wolfe, Coordinator, Planning Enforcement, City of Yarra, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

We have a major role to play. We are at the coalface ...I have personally been in at least 32 illegal brothels and all our legal brothels at least twice in the last 16 months. I know how they operate; I know who is there. I know what they are doing (PJCACC 2004, p.27).

Recognising the importance of the local government role and its officers' ability to assist in the potential detection of illegal activity, CAV has recently entered a MOU, with the Municipal Association of Victoria to delineate responsibilities with regard to the oversight of the sex industry in Victoria.³⁵⁷

Concerns with regard to the role of local government

There have been some concerns expressed about the role of local government in its oversight of sexual service providers in Victoria. Some of these come from the industry itself and are part of the general complaints about intrusiveness and over-regulation of the industry. Other concerns have been expressed by advocates of trafficked women. For example, Professor Sheila Jeffreys of the Coalition Against Trafficking in Women Australia (CATWA) believes that 'combating the illegal industry must be taken out of the hands of local councils and taken seriously by the state'.³⁵⁸ In her view the best way of doing this is for a specialist police unit to be created 'to monitor illegal as well as illegal brothels through regular unannounced visits to check on whether those being prostituted have been trafficked'.³⁵⁹ Project Respect agrees with this viewpoint:

Given the seriousness of the crimes involved, it is inappropriate for local councils to bear the responsibility for the majority of the monitoring of the sex industry (licensed and unlicensed sectors). Local councils need to be able to recognise signs of trafficking and other forms of criminality and exploitation in the sex industry, but

³⁵⁷ In the Netherlands the regulation of the sex work industry is very much the responsibility of municipal government in conjunction with the police when trafficking is suspected. In that country sex industry representatives, particularly brothel owners, are very much part of the regulatory/compliance regime: 'The municipalities were particularly aware that the sex industry would not accept a hierarchical or top-down implementation of the licensing system', Ministry of Justice and the Police (Norway) 2004a, p.51.

In addition, the role of the police in the Netherlands is essentially proactive when it comes to sex trafficking. The problem of sex trafficking in the Netherlands, particularly amongst migrant women has led to a clear distinction between 'forced' and 'voluntary' prostitution. To combat the former, a senior Dutch police officer is appointed to each police district as a 'Co-ordinator for prostitution and trafficking in human beings'. This coordinator works as part of an interdisciplinary team to monitor the legal industry for any signs of forced prostitution. The specific remit of the police is not to reduce prostitution but to prevent sex trafficking. In any monitoring of the sex industry, the human rights of the sex workers are perceived as paramount. Nonetheless police will regularly check licensed sex work premises in conjunction with municipal authorities to establish:

- Whether there are prostitutes under the age of 18
- Whether opening hours [and other conditions of licence] are being observed
- Whether the prostitutes are in possession of a valid residence and work permits
- Whether there are indications that the prostitutes are required to undertake services against their will (Ministry of Justice and the Police (Norway) 2004a, pp.36–37).

District police coordinators for sex trafficking also liaise with specialist public prosecutors with regard to sex trafficking cases. Moreover, the police coordinator also reports to a central Government Rapporteur on sex trafficking 'who collects, analyses and reports further to the government matters pertaining to the trafficking in human beings' (Ministry of Justice and the Police (Norway) 2004a, p.39).

³⁵⁸ Professor Sheila Jeffreys, University of Melbourne and member of CATWA, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

³⁵⁹ Professor Sheila Jeffreys, University of Melbourne and member of CATWA, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

then must be able to refer this to Victoria Police and/or the Australian Federal Police and know that this will be acted upon.³⁶⁰

A final point of concern raised is that even if some councils do an appropriate job in investigating legal and illegal brothels there is not necessarily any consistency in the way local councils conduct their inspections across Victoria. Planning enforcement officers in some municipalities may have an excellent knowledge of trafficking and any signs that may indicate its presence. In other local government areas such knowledge may be non-existent. Some councils have enacted local bylaws requiring signage in brothels alerting people to the possibility of sex trafficking. Most have not.³⁶¹ This also begs the question as to whether addressing sex trafficking is a role that local government is mandated to do in the first place.³⁶²

Liaison and cooperation between the states and the Commonwealth

Whilst sex trafficking is predominantly a matter of Commonwealth jurisdiction, the states and territories have responded to the issue in a number of ways.

First, most states have enacted some type of sexual servitude law or trafficking offence as part of their criminal law legislation. In Victoria these are the offences of sexual servitude and deceptive recruitment for commercial sexual services under sections 60AB and 60AD of the *Crimes Act* respectively.³⁶³ As previously noted, these offences are rarely charged; most often the Commonwealth *Criminal Code* is relied upon.³⁶⁴

Second, non-government and religious organisations at state level have been involved in a number of anti-trafficking projects particularly in the area of victim support and advocacy.³⁶⁵

Third, state law enforcement agencies to greater or lesser degrees have a role in liaising with Commonwealth offices such as DIAC and the AFP to combat trafficking. Some police services such as Queensland still maintain the equivalent of a 'vice squad' – a specialist unit that proactively oversees the sex industry (the Prostitution Enforcement Task Force).

In Victoria the police do not have a dedicated or specific regulatory role with regard to the sex industry;³⁶⁶ their response to suspected trafficking crimes is usually coordinated through the unit responsible for sexual assault – the Sex Crimes Theme Desk (David

³⁶⁰ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

³⁶¹ Such signage is now mandatory in all brothels across the state pursuant to amendments made to the *Prostitution Control* [now *Sex Work*] *Act* in 2010. See Chapter 14 for discussion of the issue of signage.

³⁶² Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, 5 November 2009. Ms Vallins believes that councils themselves 'do not believe they have the training and jurisdiction to look beyond [planning issues] to serious crime'.

³⁶³ For an account of sex trafficking offences in other states and territories, see Australian Institute of Criminology (AIC) 2009c, p.30.

³⁶⁴ See discussion in Chapter 8. David notes that by 2007, Victoria Police had received nine reports of crimes involving sexual slavery or sexual servitude. All of these were referred to the AFP (David 2008a, p.26).

³⁶⁵ These projects will be discussed at greater length in Chapter 15.

³⁶⁶ To a lesser extent the Victoria Police 'Industry related [sex crimes] theme desk' may serve some of the roles of the Prostitution Enforcement Task Force or equivalent.

2008a). This has been a concern for some Victorian police officers, who noted in interviews with Ms Fiona David:

[t]hat the regulation of the sex industry in Victoria is dispersed across several agencies, each of which looks after a discrete issue. The absence of a 'one-stop shop' makes it difficult for police to get a complete picture of issues that might involve the sex industry. The vice unit was disbanded in 1999. Today, Victorian police are trying to build up their intelligence on issues including the illegal aspects of the Victorian sex industry. Victorian police...indicated this [lack of specialist expertise] is an issue across all crime types, not only trafficking. However, this lack of capacity may have a particular impact on a crime type such as trafficking, where proactive policing methods may be the most effective (David 2008a, p.27).

Victoria Police is, however, involved in other ways in addressing trafficking in conjunction with its Commonwealth counterparts at DIAC and AFP. As with each state and territory, Victoria Police have undertaken to provide intelligence assessments on trafficking within the state for the Ministerial Council for Police and Emergency Management.³⁶⁷

All police services have also signed a protocol to the effect that, where appropriate, state police will provide a first call response to trafficking where detected before handing it over to the AFP (David 2008a). Victoria Police is also part of the Australian Police Strategy (Trafficking in women for sexual servitude). The Strategy sets out six focus areas: prevention, capacity and resources, victim assistance, partnerships, training and education, and regulation and legislation.

The objectives of the Strategy include to:

- promote community awareness
- promote successful investigations and prosecutions
- ensure Australian police agencies have the resources and capacity to fulfil their obligations under the strategy
- encourage the sharing of information across law enforcement agencies
- introduce training and procedures to improve detection of and responses to victims (including the development of appropriate interviewing guidelines)
- establish and maintain effective relationships with state, territory and Australian Government departments, NGOs and regional and international law enforcement agencies
- provide training on the nature, extent and sensitivities of trafficking in persons
- examine legislation and regulations to ensure that law enforcement have the necessary powers to investigate trafficking cases effectively (AIC 2009c, p.31).

The states and territories provide annual reports of their activities against the objectives under the Strategy and the Ministerial Council for Police and Emergency Management consolidate this into a national annual report.

³⁶⁷ Formerly the Australasian Police Ministers Council.

An extremely important aspect of involvement by state and territory police services in addressing sex trafficking is the training police receive with regard to this issue. Victoria Police take part in the specialist anti-trafficking training courses conducted by the AFP each year.³⁶⁸

However, notwithstanding the importance of such training, some Victoria Police officers have noted the challenges in responding proactively to sex trafficking. Ms Fiona David interviewed a number of state and territory police officers with regard to their role in addressing sexual servitude cases:

Victorian police noted the need for training for front-line officers in how to detect trafficking. They noted this is unlikely to be part of the current Victoria Police training agenda for general duties officers, as the data (nine crime reports) does not support allocation of resources to this area. Specific training is only delivered to specialist areas within Victoria Police on investigating trafficking offences (David 2008a, p.27).

A separate and specialist agency to regulate the sex industry and monitor trafficking?

David's research indicates that some members of Victoria Police believe a specialist unit may be required to address sex trafficking at state level. Similar views have been expressed by some community agencies. For example, one of the chief criticisms of community support agencies is that the regulatory oversight of brothels is disjointed, particularly with regard to investigating trafficking. Project Respect stated that:

There appears to be a continuing problem of coordination of monitoring of the sex industry. Project Respect understands that Consumer Affairs Victoria has been working on improving communication and collaboration between the various agencies which monitor the sex industry and recommends this work be given high priority.³⁶⁹

None of the main regulatory agencies at state level – police, CAV or councils – have a dedicated focus on finding or reporting the existence of suspected trafficked women to the Commonwealth authorities.

Project Respect advocates for better coordination of all agencies that are responsible for brothel oversight and that one agency should be assigned overall responsibility for monitoring sex trafficking in liaison with the AFP.

³⁶⁸ The importance of training for police and other relevant personnel in addressing sex trafficking is discussed further in Chapter 14.

³⁶⁹ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

Such a streamlined approach would hopefully result in carrying out far more (unannounced) inspections and audits of brothels than is now the case.³⁷⁰ Any new approach however should not act as a replica of earlier Vice Squads nor simply carry out the planning control functions of local councils or the regulatory oversight of CAV:

With respect to compliance, we do not want to set up another vice squad. There [does] need to be attention paid to corruption and particularly to discrimination against women and making sure that in setting up extra compliance you are not just further regulating and further scrutinising the women – that the focus of compliance is quite clearly on criminal activity and not on the people who are vulnerable.³⁷¹

Ms Nina Vallins believes it is essential that the authorities work in tandem with community support agencies expert in identifying and assisting trafficked women, such as Project Respect. In her view an organisation such as Project Respect can in many cases read the ‘clues’ of trafficking more keenly than inspectors from the official agencies. Women who are suspected of being trafficked are likely to be more hesitant about talking to officers from the police or government agencies than to workers from a NGO. This may be particularly the case if the woman in question comes from a country where government officials are corrupt or oppressive. A representative from an agency such as Project Respect on the other hand may more readily be able to reassure the victim that they do not represent ‘officialdom’, nor do they have either the power to deport them or an interest in doing so.³⁷²

The Committee believes that a dedicated unit should be established which will have the responsibility for monitoring sex trafficking as part of its wider oversight role of the Victorian sex industry. In addition, whilst the Committee does not consider that a specialist police unit is warranted in Victoria to address sex trafficking in this state, it does believe that trafficking in persons be regarded as a higher priority policing issue. The need for greater coordination in addressing sex trafficking in Victoria and the establishment of specialist units to support this is discussed further in Chapter 16.

Conclusion

Commentators have observed that the *Prostitution Control Act* was never drafted or enacted with trafficking in mind and as such its usefulness as a mechanism to investigate and prosecute traffickers is limited (Ford 2001). Nonetheless, amendments to the legislation have now provided a compliance and inspection framework that may increase the possibility of trafficking being detected. Whether such a system strikes a correct balance between tracking down cases of sex trafficking and bringing the perpetrators to justice; the protection of safety and health of workers and clients and the safeguarding

³⁷⁰ Criticisms were levelled in evidence from a variety of community agencies that the CAV inspection program resulted in over one-third of licensed brothels not having even one inspection throughout the financial year. In response to this observation Dr Noone stated:

We would do – as with all of our inspection programs – a risk-based inspection review. If there is a new licensee, we would certainly put them on the list for priority inspection. If there is someone who has a record of non-compliance, then we would put them higher up the list for inspection. It is a rotating program so that everyone will get inspected over a period of time’ (Dr Claire Noone, Executive Director, CAV, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 1 February 2010).

³⁷¹ Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

³⁷² Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

the rights of both sex workers and brothel owners on the other is still an issue open to debate.

Recommendation

The Committee recommends that trafficking in persons be regarded as a higher priority policing issue. As such, dedicated officers within the Victoria Police Sexual Offences (Theme Desk) should be given responsibility to liaise with other members of Victoria Police, relevant state and Commonwealth government officials including AFP officers and the proposed Sex Regulation, Policy and Coordination Unit in operational and organisational matters pertaining to sex trafficking. (*Recommendation 8*)

Recommendation

The Committee recommends that clear protocols outlining areas of responsibilities and methods of collaboration and communication be developed between relevant State agencies. This includes local councils, police, Consumer Affairs, and health inspectors. Protocols should be reviewed on a yearly basis to ensure that staff maintain awareness about trafficking and sexual servitude. (*Recommendation 4*)

Recommendation

The Committee recommends that sanctions against brothel owners who have intentionally, knowingly or recklessly allowed trafficked women to work in their premises be introduced in Victoria. Such sanctions will more effectively act as a deterrent to the conduct of servitude and trafficking in the licensed sex industry. In cases where intention or recklessness is proved the owner should be liable to losing his or her permit to run a brothel or other sex service provider business and/or be liable to heavy financial penalties. (*Recommendation 7*)

Recommendation

The Committee recommends that with regard to their role in investigating sex trafficking Victoria Police develop clear protocols regarding communication and collaboration with relevant NGOs.
(Recommendation 9)

Recommendation

The Committee recommends that Victoria Police have a more flexible right of entry to brothels (legal or illegal) for monitoring purposes, ie. The ability to do spot-checks. *(Recommendation 10)*

Such entry is currently restricted to delegation by the Chief Commissioner of Police to an officer of Senior Sergeant rank or higher. Any change to the law should be accompanied by guidelines that ensure such a measure is not used inappropriately. The right of entry should only be sought and granted when there are reasonable grounds to support it.

Recommendation

The Committee recommends that licence conditions for sex work service providers include granting access to gazetted or nominated support agencies. *(Recommendation 11)*

The Committee believes it is essential that recognised support groups for sex workers and/or trafficked women be allowed reasonable access to licensed sex service providers to do their work. A possible way of achieving this aim is for the proposed Sex Industry, Regulation, Policy and Coordination Unit to maintain a register of approved support agencies to be granted access to all brothels. A balance should be struck between allowing such support groups unfettered access and not unduly hindering or interfering in the rights of legal sex service providers to conduct their business.

13. Demand Side Strategies: Addressing the Purchasers

Introduction

The international trade in women for sexual purposes depends on both the supply of women from source countries and the demand for such women by men in the destination countries. However, much of the literature and research on sex trafficking focuses on the source countries and particularly the factors that make women in those countries vulnerable to being trafficked. Similarly, many of the strategies proposed to address trafficking focus on 'supply side' education, prevention and support strategies aimed either at women in the countries of origin (preventive strategies) or once they have been trafficked to their destinations (support strategies). There have been relatively few strategies aimed at reducing the demand for victims (Hughes 2004).

The lack of attention paid to demand side strategies is in part due to limited research in this area. For example, there has been very little quantitative research undertaken on how many men or what percentage of the male population purchase sex acts. Nor is there sufficient qualitative research that examines why such men visit sex workers. Such men remain 'faceless and nameless' (Hughes 2004, p.6).³⁷³ The research that does exist in this area usually focuses on women. Certainly more research is required, not only on the motivations for men purchasing commercial sex, but also on whether there is a demand for identifiably trafficked women, and if so why?³⁷⁴ Research is also sorely needed on what *deters* men from purchasing sexual services, particularly in circumstances where there is evidence of trafficking or other illegal practices (Hughes 2004).

However, addressing the demand aspects of sex trafficking is slowly starting to change, especially in Europe. There is a recent international trend to concentrate on those who create the market that fuels sex trafficking – the buyers of commercial sex. 'Put simply if there were no demand, there would be no supply' (Ritchie 2009, p.51). Proponents of this view argue that in countries where commercial sex is legally available there is an increase in demand, and when the domestic market cannot meet that demand there is 'an inevitable increase in the probability of trafficking' (Parliamentary Joint Committee on the Australian Crime Commission (PJACC) 2004, p.59). One recent British research study aimed to examine the motivations of the men who purchased commercial sexual services (Farley, Bindel and Golding 2009). The authors mixed quantitative/qualitative study was based on interviews with 103 London men who had purchased sex from women in 'prostitution'. The research aimed to 'advance knowledge of buyers' perceptions of women generally and their attitudes toward prostituted women in particular' (2009, p.7). A key aspect of the research was to gauge awareness of trafficking amongst the men who were purchasing commercial sex. This study found that a majority of the men in the study (55%) were aware of specific instances of trafficking for sex work and that they often knew that *they* were using trafficked women for sex. The authors argued that:

³⁷³ One exception to this rule is the recently published book by Canadian author and journalist Victor Malarek, *The Johns – Sex for Sale and the Men Who Buy It* an account of the identities behind the men who buy sex from trafficked women thereby making the international sex trade possible.

³⁷⁴ Although research in this area is indeed limited, Hughes draws from studies that suggest men who purchase sex from women later identified to be trafficked rarely differentiate:

'They viewed all women and girls in prostitution as objects or commodities over which they had temporary powers of possession after they paid their money. Some men however indicated that purchasing sex from someone forced into prostitution gave them the advantage of being able to control them' (Hughes 2004, p.8). See also the recent study of men who buy sex undertaken by Farley, Bindel and Golding 2009.

[b]ased on this study it is known that many of the men who buy prostituted women are aware of the crimes of pimping, coercive control, lack of opportunity for escape and trafficking, the next logical step would be to move forward with stronger legal and social deterrents for the sex buyer (Farley, Bindel and Golding 2009, p.27).³⁷⁵

The authors also indicated that several men reported that women themselves had informed the men that they had been trafficked, yet virtually none of the men reported it to the police. In addition:

Despite their awareness of coercion and trafficking, only five of the 103 men reported their suspicions to the police. They feared a loss of anonymity, especially fearing their families discovery of their use of the prostitutes (Farley, Bindel and Golding 2009, p.17)

A variety of 'carrot and stick' approaches have been developed that seek to stem the demand for the purchase of commercial sexual services and thereby hopefully reduce the need for women to be trafficked. 'Carrot' approaches are based on education strategies that seek to change or moderate men's behaviour, resulting in fewer men purchasing commercial sex. 'Stick' methods include direct penalisation of the man who seeks to purchase trafficked women specifically or commercial sex generally, through fines or even imprisonment. It can also include strategies such as sending such men to 'johns schools'. These are education courses or counselling programs that instruct customers (the 'johns') on the damage that trafficking may cause the victim. In some jurisdictions they are a mandatory penalty on conviction, in others they can be used as an alternative diversionary option to avoid a stronger penalty.

In her study of demand strategies, Hughes argues that the demand for trafficked women can be divided into three components. First, there are the men who are the purchasers of sex themselves. These constitute the primary level of demand. Second, are the traffickers, profiteers, corrupt officials and brothel owners who are complicit in sex trafficking. Their profit is made through supplying the victims to meet the demand. Third, is the 'culture that indirectly creates a demand for victims by normalising prostitution...and cultural attitudes that relegate women and girls to second class status in society' (2004, pp.2-3).

The following discussion concentrates on the first type of demand – the men who purchase sexual services from victims who may have been trafficked and in so doing sustain and encourage the international trade in women.

Legal penalties for men who purchase sexual services from trafficked women

There are two types of strategies that aim to punish or penalise men who may have intentionally, recklessly or even inadvertently purchased sexual services with women who have been trafficked. One is a blanket (re)criminalisation of all purchases of commercial sex, and the other is the penalisation of the act of buying sex with a woman whom the purchaser knows or suspects may be a victim of trafficking. Fergus argues

³⁷⁵ As part of their literature review the authors also drew on American and Scottish studies where 56 per cent of men who bought sex in the USA and 63 per cent who purchased it in Scotland stated that they believed a majority of women in prostitution had been 'lured, tricked or trafficked into it'. Even if these men were so aware this does not 'affect their decision to buy sex'. See Anderson and O'Connell-Davidson 2003 and Di Nicola et al 2009 quoted in Farley, Bindel and Golding 2009, p.16).

there are two major interpretations of the term ‘demand’, each having different implications for policy development to address trafficking:

The more conservative interpretation is that states should educate men who use prostitutes to distinguish between those who have been trafficked and those who have not, and to prosecute those buyers who knowingly use trafficked women. This approach is currently being undertaken in Britain. The second interpretation is that states should target demand for prostitution itself, as the same demand fuels supply of both trafficked and non trafficked prostitutes and that the men who use them are unable and/or unwilling to distinguish between them. The US State Department is of this view and link causally the legalisation of prostitution to the demand for sex trafficking...They claim that “where prostitution has been legalised or tolerated, there is an increase in the demand for sex slaves and the numbers of victimised foreign women – many likely victims of human trafficking” (Fergus 2005, p.28).

This latter view is also supported by the United Nations Working Group on Contemporary Forms of Slavery which urges member states to ensure their laws and policies do not promote the legalisation or normalisation of prostitution (UN Office for the High Commissioner on Human Rights 2003).

Criminalising the purchase of sexual services as a strategy to reduce trafficking

Criminalising commercial sex work to prevent sex trafficking is a key strategy of countries that are termed ‘neo abolitionist’. These countries hold the view that ‘prostitution’ violates a person’s human rights and that prostitution in all its forms constitutes the commodification of women’s bodies and makes them especially susceptible to trafficking.³⁷⁶

The proponents of this view believe that the trafficking of women for sexual purposes and prostitution are intrinsically linked, not separate practices. One of the key demand strategies to address sex trafficking in recent years has become known as the Swedish or Nordic Model.

The Swedish or Nordic Model

Sweden is the prime example of a country that has embraced neo abolitionism. It has received much international attention since the Act Prohibiting the Purchase of Sexual Services came into effect in 1999. Sex workers cannot be penalised for soliciting or offering sex for payment, but clients and procurers can be charged.

In Sweden, prostitution is officially acknowledged as a form of male violence against women and children and to society at large (Ekberg 2004). Customers can now be charged with a criminal offence and if this is proved, they are subject to monetary and carceral penalties.³⁷⁷ The prohibition against the purchase of sexual services was part of a broader legal package entitled *Kvinnofrid* (The Protection of Women). It included more severe punishment of rape, sexual harassment and assault of women and domestic

³⁷⁶ It is recognised that men work in the commercial sex industry as well. However, as it would seem the majority of sex workers in both the legal and non-regulated sex industries are female, the terms ‘woman’, ‘she’ and variations thereof will be used unless the context demands otherwise.

³⁷⁷ The usual penalty is a fine that is fixed depending on the person’s financial position. A term of imprisonment of up to six months maximum may be imposed in cases of ‘serial purchases’ (Ministry of Justice and the Police (Norway) 2004a, p.17).

violence (Ministry of Justice and the Police (Norway) 2004a). In short, commercial sex work is incompatible with the official Swedish goal of gender equality (Bernstein 2007).

While most neo abolitionists call for the decriminalisation of sex workers' actions, they encourage governments to criminalise the activities of procurers and customers.³⁷⁸

In cases of serial offending, men may theoretically be imprisoned but the women who provide the sexual service are not penalised. In its proposal to change the policy in the late 1990s the Swedish Ministry of Labour argued that:

By prohibiting the purchase of sexual services, prostitution and its damaging effects can be counteracted more effectively than hitherto...The government considers, however, that it is not reasonable to punish the person who sells a sexual service. In the majority of cases at least, this person is a weaker partner who is exploited by those who want only to satisfy their sexual drives (Ministry of Labour 1998, p.55).

In addition to the criminal penalties imposed upon buyers, the Swedish government addresses at a structural level the political, social and economic conditions under which women in the sex industry live and work. Thus the Swedish model incorporates ancillary programs in poverty reduction, sustainable development and social programs focusing specifically on women, both trafficked and non trafficked, who were previously involved in sex work (Ekberg 2004).

Effectiveness of the Nordic Model in reducing trafficking?

The effectiveness of the Swedish and similar laws in reducing trafficking has been much debated and highly contentious. The Swedish government claims it has been greatly effective in reducing the demand for both commercial sex and trafficked women (Swedish Ministry of Industry, Employment and Communications, Division of Gender Equality 2004; Ekberg 2004; O'Connor & Healy 2006).³⁷⁹ The Swedish National Criminal Intelligence Service (NCIS) produced a report five years after the laws were enacted examining the impact of the law on the reduction of sex trafficking. Overall they stated the results were positive:

In recent years there have been obvious indications that the Act relating to purchase of sexual services has had a positive result as regards trafficking in human beings. Several women have in interrogations told that pimps and traffickers in human beings that they have been in contact with do not consider Sweden a good market for these activities. The woman must be escorted to the purchasers and then they do not have time with as many purchasers as they would have had in a brothel or in street prostitution. So pimps and traffickers in human beings do not earn money quickly enough. Another aspect is that the purchasers of sexual services take place with much discretion. To carry on the activities indoors it is necessary to have several apartments or other premises available and that the activities are not carried on too

³⁷⁸ See *Prostitution: A Review of Legislation in Selected Countries*, Report prepared by Karen Hindle, Laura Barnett & Lyne Casavant, Legal and Legislative Affairs Division, Parliamentary Library of Canada, 20 November 2003. Accessed at <http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0329-e.htm> 25 March 2010.

³⁷⁹ Ekberg for example cites figures that suggest the number of women in sex work has reduced from 2,500 in 1999 (prior to the law being enacted) to 1,500 in 2002 (after the law had been enacted). Moreover, the amount of new women recruited into sex work after the law was introduced 'has come almost to a halt'. There is no evidence according to Ekberg or the studies she cites that the sale and trafficking of women has moved to the Internet as a result of these laws (2004, pp.1193, 1194). Conversely, Kulick argues (without elaborating) that there are also at least three government reports that indicate there has not been a significant drop in prostitution in Sweden (2003, p.204).

long at the same place. The necessity of several premises is confirmed in almost all preliminary investigations that have been carried on in 2002. Some women have also stated that countries like Denmark, Germany, Holland and Spain have appeared as more attractive for traffickers in human beings and pimps.

Telephone interception has also demonstrated that Sweden does not stand out as a good market for selling women. Also here it is understood that the criminals complain about the purchasers being afraid and about the fact that the activities in Sweden must be more organised to be profitable. On several occasions also the police from the Baltic States have informed that criminals in their native countries do not consider Sweden a good market for trafficking in human beings (NCIS 2004 in Hughes 2004, pp.26–27).

It has also been argued that the laws continue to act as barriers against the successful establishment of trafficking operations in Sweden. These barriers include:

- Prostituted women must be escorted to the buyers, therefore giving less time to fewer buyers and gaining less revenue for pimps than if women had been in street prostitution;
- Swedish men who want to buy women for prostitution purposes express serious fear of being arrested and prosecuted under the Law and hence absolute discretion from the pimps/traffickers;
- To minimise the possibility of exposure/detection, the pimps/traffickers are forced to operate apartment brothels in more than one location and to change locations regularly. Thus the mode of operation is expensive and requires that the pimp have local contacts (Ekberg 2004, p.1201).

Specific concerns about the Nordic Model

Notwithstanding the positive findings of the NCIS Report, a Norwegian Government report examining the Swedish laws found that whilst street sex work in Sweden had been greatly reduced after the laws came into operation (by just over half) it could not be stated with any certainty that this had resulted in less prostitution and trafficking. It may have just moved underground (Ministry of Justice and the Police (Norway) 2004a). It has also been argued that by outlawing prostitution many sex workers have been impelled to rely on criminal intermediaries and traffickers in order to contact clients: 'This growth in the illegal sector of the industry has actually paved the way for the arrival of more migrant prostitutes as well as more traffickers' (Bernstein 2007, p.154).

Swedish social workers have also complained about the law making it more difficult for them to reach sex workers who have 'gone underground' since its passage. Moreover:

Police report that their efforts to prosecute pimps and traffickers has been made more difficult, because clients who before the passage of the law were sometimes willing to serve as witnesses, are now disinclined to cooperate since they themselves are guilty of a crime (Kulick 2003, p.204).

Another concern expressed about the unforeseen consequences of the law is that it may have resulted in 'normal' or 'respectable' clients being frightened off for fear of being arrested. This could result in women having to take clients from a residual group of 'brutal' men they don't feel safe with.

Some of the "nice" clients have probably learned something about the law and stopped buying sexual services on the streets and, left behind, are the special clients... 'more abuse takes place than previously as the women cannot afford to say "No" to clients they have their doubts about'... We know little about the clients who

use the indoor market. Probably those clients who use mobile telephones, the Internet and the indoor market are affected to a lesser degree by the law (Ministry of Justice and the Police (Norway) 2004a, pp.13, 49).

Swedish police officers and prosecutors have argued that the law is difficult to enforce and police. The amount and cost of resources needed for effective undercover work is also prohibitive. In particular, providing documentary evidence of the payment of sexual services is complicated. Many charges have been dropped because of the difficulties in obtaining such evidence (Kulick 2003; Ministry of Justice and the Police (Norway) 2004a).³⁸⁰

It has also been argued by sex worker support groups that the Nordic Model is not a legitimate strategy to prevent or combat sex trafficking but rather a draconian interference with the human rights of sex workers. On this point, Ms Elena Jeffreys, National Coordinator of Scarlet Alliance, told the Committee:

Internationally it's [the Nordic Model] seen as being totally abhorrent to the human rights of sex workers... The Swedish Government has created an environment where you can no longer choose where you do sex work, you can no longer choose how you do sex work because clients are so incredibly criminalised that they are not prepared to take the risk to come to you. As a worker, you must go to the clients, to their venue of choosing, paying their price of choosing, in their model of work they're choosing. It has absolutely taken the power of negotiation out of sex workers' hands and placed it in the hands of the clients.³⁸¹

Another perceived problem with the Nordic model is that whilst it may have reduced the amount of sex work and sex trafficking in Sweden itself, there is always the possibility of a displacement effect. In other words, sex workers and sex traffickers may move their trade to neighbouring countries where men are not subject to penalties for soliciting sex workers. Research is needed to establish whether such displacement is occurring.³⁸²

Clearly, there is still much debate over the success or otherwise of the Nordic Model in reducing trafficking.

³⁸⁰ Ekberg, however, argues that the efficacy of the laws should not be based merely on how many arrests or convictions are secured. 'It is important to remember that the main purpose of the law is normative. If we were to base the effectiveness of laws on the number of convictions in relation to the number of crimes committed, then rape laws, laws against other forms of male violence against women and laws against financial crimes would have to be discarded as mostly ineffectual...' (Ekberg 2004, p.1209).

³⁸¹ Ms Elena Jeffreys, Coordinator, Scarlet Alliance, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

³⁸² It should also be noted that governments in the other Nordic and Baltic countries are currently examining ways in which their laws with regard to sex work, trafficking and gender equality can be harmonised, thus negating any potential displacement at least within the immediate region (Ekberg 2007). However, unlike Sweden and Norway, Finland has not criminalised the purchase of sexual services generally. A 2006 law does criminalise a special category of sex purchases: from minors or trafficking victims. In Denmark, whilst the selling and purchasing of commercial sexual services has been decriminalised, individual municipalities may ban sex work within their jurisdictions. This has happened recently in the largest of the local government areas – the capital city of Copenhagen. It has also been suggested that Denmark will follow the lead of Norway and Sweden and completely ban the purchase of sexual services in the near future. See *Nordic Prostitution Policy Reform: A comparative study of prostitution policy reform in the Nordic countries* at <http://nppr.se/2009/12/03/the-framing-of-sex-workers-as-victims-in-denmark/>

Penalising the purchasers who knowingly purchase sexual services from trafficked women

Some countries rather than placing a blanket prohibition on the purchase of sexual services have sought to take a midway position. In this case a client who knows the sex worker may have been trafficked or is reckless or indifferent to that fact may be subject to criminal penalties. The Phillipines, South Africa, South Korea and Finland have taken such an approach. In many of the American states where sex work is illegal, purchasing sex from a trafficked woman may become an aggravated factor leading to a greater penalty.³⁸³ The European Convention on Action Against Trafficking in Human Beings also criminalises the use of services of trafficked persons (Article 19). Most recently the United Kingdom has passed legislation (*Policing and Crime Act 2009*) making it a crime to pay for the services of a prostitute who has been subjected to force or exploitation.³⁸⁴ What is particularly notable about the British legislation is that unlike previous versions of their laws it is deemed irrelevant as to whether the purchaser of the sexual service is aware of the force or exploitative conduct on the part of the trafficker.³⁸⁵ This goes further than similar legislation that requires the purchaser to know or at least be reckless as to whether he has had sex with a trafficked woman.

Not all commentators in Victoria are as impressed with this compromise position. For example, Professor Sheila Jeffreys of the University of Melbourne calls this the ‘dolphin-free tuna approach’.

In some countries legislation has been passed, or is in the process of being passed e.g. the UK, which penalizes men who buy ‘trafficked’ women, who are under force or duress, but not men who buy ‘freely’ prostitution women. This is the ‘dolphin-free tuna’ approach, asking the customer to discriminate in favour of the more ethically sourced product. There is, however, evidence to suggest that male buyers in prostitution are not the most caring of consumers and have little concern for the origin of the products they buy. ...these approaches do not target the demand by male buyers that lies at the foundation of the [sex] industry’.³⁸⁶

In evidence to the Committee, Professor Jeffreys also stated that this approach has been singularly ineffective. In Finland, for example, which has had similar legislation since 2004, there has not been a single case prosecuted.³⁸⁷

³⁸³ Dr Anne Gallagher likens this to the position of someone who receives stolen goods. In some countries the onus is on the purchaser of sexual services where the circumstantial evidence of trafficking is strong to prove he was not culpable:

‘If you buy a new plasma TV for 40 bucks, the onus is on you to show that you were not receiving stolen goods. We do know enough about trafficking to know that there are indications: this is someone who is not able to communicate with you in English; someone whose movements are obviously constrained – someone who is not, for example, able to meet you as a client outside; someone who is engaging in unsafe sexual practices. All of these kinds of things are indicative of a coercive and exploitative environment’ (Dr Anne Gallagher, Asia Regional Trafficking in Persons (ARTIP), Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 9 November 2009).

³⁸⁴ *Policing and Crime Act 2009*, Section 14 amending *Sexual Offences Act 2003*.

³⁸⁵ *Policing and Crime Act 2009*, Section 14 amending *Sexual Offences Act 2003*.

³⁸⁶ Submission of Professor Sheila Jeffreys, University of Melbourne, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

³⁸⁷ Professor Sheila Jeffreys, University of Melbourne, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

However other groups within Australia have urged lawmakers to adopt penalties for purchasers who have knowingly or recklessly bought sexual services from trafficked women. For example, in a submission to this Inquiry, Project Respect recommends:

That knowingly or recklessly obtaining sexual services from trafficked women is criminalised. The use of trafficked persons should be a high-risk activity for clients in brothels, as well as the traffickers. Such a measure challenges the demand for trafficked women. The burden of proof in relation to various relevant offences should be examined. For example, if a man has sex with trafficked women he should bear the onus of proving he did not do so knowingly or recklessly.³⁸⁸

Ms Kathleen Maltzahn, founder of Project Respect, considers at the very least purchasers of commercial sexual service should ascertain the active consent of the woman providing the service, particularly if there are indicators of a trafficking situation:

If you have sex anywhere else other than in a brothel essentially you have to be pretty sure the person is consenting, but it is like brothels are sort of no-go zones, and the assumption is that if the receptionist has taken your money, the woman has consented. I do not know that that is a great assumption to make generally, but with trafficking it is really dangerous, so I would say that if you are going to have sex with a woman, you should know that she is willing to do so. I think there should be an onus on brothel customers to ascertain that the woman they are having sex with is not a sex slave. We would say that we think that you should have, as part of the Prostitution Control Act and/or the Sexual Servitude Act, something that deals with knowingly and recklessly having sex with a woman. If you are then someone who has come in and you have said to the woman, 'Is this all right?', and she says, 'Yes, it's fine' because she is too scared, then you are covered.³⁸⁹

Having assessed the arguments both for and against penalising the purchasing of sexual services from trafficked women, the Committee believes it is appropriate to recommend that the act of intentionally, knowingly or recklessly obtaining sexual services from trafficked women is a criminal act in Victoria.

The Committee believes that such a 'demand focused' recommendation whilst not prohibiting the purchase of sexual services per se will act as a deterrent to men who may be tempted to knowingly purchase sex from trafficked women. On balance the Committee does not believe a reverse onus of proof should apply. In other words, the Crown will still need to prove that the defendant obtained sexual services from the woman knowing that she had been trafficked or reckless as to that fact. To do otherwise could deter men who might otherwise have voluntarily provided information about women suspected of being trafficked from doing so.

The penalty for such a provision should be severe, acknowledging the criminality of the conduct.

³⁸⁸ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009. See also the recommendations in the submission of Soroptimist International of Victoria, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

Professor Sheila Jeffreys, University of Melbourne, made a similar recommendation in evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

³⁸⁹ Ms Kathleen Maltzahn, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

Other (non-criminal) strategies to penalise men who purchase sex from (trafficked) women

In some countries, particularly the United States, some strategies have been developed to address the demand for the purchase of commercial sex services. Whilst these programs and interventions are not specifically aimed at men who have sex with trafficked women, they are viewed as useful adjuncts to incidentally help in reducing the demand for women in sexual servitude.

Car confiscation programs

In many of the American states and cities programs have been implemented to impound or confiscate the motor vehicles of men who have been arrested for soliciting sex workers or otherwise seeking to purchase sexual services.³⁹⁰ These programs vary from state to state but in many cases the car will not be returned unless the defendant attends some type of education program on trafficking or violence against women.³⁹¹

Community efforts to reduce demand

The United States has also seen an expansion of community efforts to reduce the demand for commercial sexual services including those suspected to be using trafficked women. A variety of neighbourhood programs across the country have come into existence, some of which have the dual aims of shaming men into ceasing to use commercial sex services and assisting women with exit strategies to leave sex work. Many of these programs have been assisted by the publication of *The Neighbourhood Safety Organisation Guide to Reduce Street Prostitution*. This guide was published to assist neighbourhood committees in their efforts to reduce the demand for commercial sexual services, particularly through impeding or driving away prospective customers.

Other methods of naming and shaming being used in the United States to reduce demand include the naming of men on community billboards and in local newspapers, and publishing the names of men found in the 'black books' of traffickers, pimps and brothel owners. The black books are the records of the names, addresses, phone numbers, sexual preferences and credit card details of men who patronise their operations. When police raid these operations the records are often seized as evidence. On occasion the records have been turned over to the local press and in some cases published (Hughes 2004).

The problem with such methods according to Hughes is that they can border on vigilantism, with trafficked and non-trafficked women alike being harassed and even physically assaulted in addition to male customers being 'shamed' (Hughes 2004, p.41). Nonetheless the prospect of being 'named and shamed' or even the use of the media to 'out' or list the names of men arrested for purchasing sexual services is an effective strategy to reduce demand and deter other potential offenders according to some commentators, although it is unlikely that such neighbourhood strategies could be sustained in the long term (Hughes 2004, pp.30, 43).

It is also unlikely that these strategies could be effective in jurisdictions where sex work is not illegal unless the link with trafficking could be established.

³⁹⁰ California and Florida being some key examples. See Hughes 2004.

³⁹¹ See Chapter 14 for further discussion.

Treatment programs

Finally, some programs, usually faith based, have been established in the United States to address a set of behaviours that may lead to some men purchasing sexual services from trafficked and non-trafficked women. The findings from some of the programs indicate that many of the men, including those arrested in circumstances where the woman may have been a trafficking victim, have preconceived ideas about sex work and sex workers: ‘The men are often shocked that women are actually repulsed by the men and the sex acts they perform for money’ (Hughes 2004, p.47).

However, it is again debatable as to how effective such programs may be in a situation where sex work is legal. Although the American programs certainly include men who may have purchased sex from trafficked women, many of the men have simply solicited sex workers with no connection to trafficking.

Conclusion

The discussion thus far has examined the ‘stick’ approaches to addressing demand – the programs, laws and strategies which penalise the clients who knowingly or otherwise purchase sexual services from trafficked women. The other side of demand strategies are those that focus on educating the customer on the basis that this may make him think twice before purchasing sexual services from a woman who may have been trafficked or bound in sexual servitude. The need for education programs to raise the awareness of not only purchasers but also other people who may come into contact with trafficked women is crucial.

Recommendation

The Committee recommends that intentionally, knowingly or recklessly obtaining sexual services from trafficked women is criminalised in Victoria. (*Recommendation 6*)

The Committee believes that such a ‘demand focused’ recommendation whilst not criminalising the purchase of sexual services per se will act as a deterrent to men who may be tempted to knowingly purchase sex from trafficked women. On balance the Committee does not believe a reverse onus of proof should apply. In other words the Crown will still need to prove that the defendant obtained sexual services from the woman knowing that she had been trafficked or reckless as to that fact. To do otherwise could deter men who might otherwise have voluntarily provided information about women suspected of being trafficked from doing so.

The penalty for such a provision should be severe, acknowledging the criminality of the conduct.

14. Awareness of Sex Trafficking: The Need for Information, Education and Training

Introduction

Throughout the course of this Inquiry one of the common themes to arise is that few people seem to be aware of the issue of sex trafficking. For those people who *do* claim to have an understanding of the problem, sometimes their views can be ill-informed, based on preconceptions, stereotypes and media imagery. It is not unusual for members of the community to believe that a trafficked woman is one found in, and rescued from, conditions of absolute and extreme physical slavery. Such a view is not restricted to members of the general public, they may also be found amongst law enforcement professionals – even members of the judiciary presiding over a trafficking trial.

The corollary may be that when a woman is found in a condition of sexual servitude without these stereotypical features many people may consider that she has not been trafficked. This can become crucially important when it is members of the jury hearing a trafficking case who have an incomplete understanding of what trafficking is.

Awareness of the complete picture of trafficking – its extent, the nature of the crime and the consequences for the women involved – is therefore crucial in addressing strategies to properly address it. Education and awareness campaigns may be general or they may be targeted for discrete groups. Some of the groups identified that may benefit most from education and awareness training in this area include:

- Clients or prospective clients of sex workers
- Trafficked women
- The sex industry
- The general public
- The police and other law enforcement/regulatory officials
- Local government officials
- The judiciary, prosecutors and jurors
- Staff from non-government organisations (NGOs), professionals and other service providers.

Educating the purchasers of commercial sex services

Providing the clients or customers of sex workers with information on sex trafficking is a common ‘demand focused’ strategy that has been employed in many western countries in recent years. The Palermo Protocol makes it clear that sovereign states should implement strategies that reduce the demand for trafficked women, through a range of interventions including educational strategies. Article 9, Clause 5 of the Protocol, for example, requires state parties to:

Adopt or strengthen legislative or other measures, such as educational, cultural and social measures...to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.

Education and awareness strategies are seen as a more positive or proactive part of a raft of demand side measures. These approaches may be used instead of, or alongside, more punitive approaches such as the criminal penalties discussed in the previous chapter.

For example, the Stop Demand Foundation, a New Zealand based NGO that fights child sex trafficking, believes that although law enforcement is a critical part of any approach to address sex trafficking: 'there are not now and never will be enough police resources to pursue enough trafficking cases to make a difference' (Iselin in Ritchie 2009, p.51). Stop Demand believes it is therefore absolutely crucial to develop programs to change the attitudes of men with regard to the 'buying and selling of women and children'.

Studies that identify attitudes of sex buyers to trafficked victims have found many buyers to be unconcerned.³⁹² [There is however] a small group of buyers who demonstrate concern who should be a key target for demand reduction measures. These strategies should target casual sex buyers who are not as committed, by...providing information to potential buyers (Ritchie 2009, p.51).

Such clients may be willing to speak of their experiences, become actively involved in promoting the work of anti trafficking NGOs or cooperate with law enforcement authorities in the investigation and prosecution of suspected traffickers.

Finally, raising awareness amongst the clients of sex workers is essential as there have been several instances where such men have helped women escape from their captors once the customer has been apprised of the true situation (Parliamentary Joint Committee on the Australian Crime Commission (PJCACC) 2004). Project Respect has stated that an appropriately targeted awareness campaign aimed at customers may 'play a valuable role in getting men who use sex workers to actively ensure that they are not buying women who are trapped in these situations' (Kathleen Maltzahn in PJCACC 2004, p.45).

Signage in brothels

In Victoria one intervention that has been used recently in some local government areas (LGAs), has been the posting of signs in brothels alerting customers to the issue of sex trafficking. Pioneered in the municipalities of Yarra, Melbourne and Moreland, these have been viewed by many anti-trafficking advocates as an inexpensive and effective way of bringing the issue of trafficking to the attention of men who purchase commercial sex. For example, Ms Nina Vallins, Project Respect, told the Committee the signs could work on two levels. For men 'of conscience' it may give them some warning signs of how to identify trafficked women and report their whereabouts to the authorities. For men who may have little sympathy for or are indifferent to the plight of trafficked women the signs may act as warnings, reducing their sense of impunity and getting them to rethink their actions.³⁹³ Victoria Police has also supported the idea of signage in brothels. A Victoria Police representative who gave evidence to the Committee, however, warned that whilst these signs are a good idea in principle, in reality it is

³⁹² For example when Ms Kathleen Maltzahn, Founder of Project Respect, gave evidence to a Commonwealth Parliamentary Inquiry on sex trafficking she gave evidence about a trafficked woman who had said that of the 500 customers she had 'serviced' only four men had asked her if she was OK:

'It is interesting that obviously 496 people had approached her as if her welfare was entirely irrelevant to what they were buying and as if their right to whatever service they wanted overrode [her] as a person' (Maltzahn quoted in PJCACC 2004, pp.45-46).

³⁹³ Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

difficult in some brothels to even locate signs required by law to be displayed, for example signs about safe sex. He does not believe signage with regard to trafficking would be treated any differently.³⁹⁴

In addition, some brothel owners have been unenthusiastic about the requirement to have trafficking signs on their premises, arguing that it adds another onerous and expensive requirement to an already overregulated industry. One brothel owner told the Committee in this respect:

It is just another regulation or rule that no-one will take any notice of. I think it is completely ridiculous and absurd. I know a brothel owner who is usually so compliant and so lawful, but she is not going to do it. She is in Collingwood, so she is in a location where she has to, but she is not going to do it because she finds it so ridiculously absurd. It will not change a thing.³⁹⁵

Ms Kathleen Maltzahn, Founder of Project Respect, refuted this view by stating that it is a relatively low cost initiative that may in conjunction with other measures act to prevent sex trafficking:

I do not know that that will transform the situation, but if it can help one woman, it is a pretty low-cost way, I think. A sign could be drawn up, and...that is not a lot of money, and then brothel owners could be compelled to put it up. I cannot see how that would be a problem for people who are running a decent brothel, and if you do not want it happening, I wonder about what sort of brothel you are running.³⁹⁶

Until recently, the more common criticism of placing anti-trafficking signs in brothels has been that although it is a local government response only a handful of LGAs have put them in their localities. There was therefore no consistency across the state in their placement or content. In other words, a brothel in one municipality may have had the signs but in the neighbouring area there were none, despite there being approximately the same number of brothels in both municipalities. However, this has been resolved since the passing of the *Consumer Affairs Legislation (Amendment) Act 2010* amending the *Prostitution Control Act 1994*. Licensees in all brothels are now under an obligation to prominently display signage with regard to sex slavery and sexual servitude. Governor in Council regulations will fix the size, content and appearance of the signage.³⁹⁷

³⁹⁴ Det Snr Sgt Murray Aldred, Victoria Police, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

³⁹⁵ Brothel owner, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Melbourne, 6 November 2009. The identity of the witness remains anonymous for reasons of confidentiality.

³⁹⁶ Ms Kathleen Maltzahn, Founder of Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

³⁹⁷ See *Consumer Affairs Legislation (Amendment) Act 2010*, section 60 inserting a new Section 60A into the *Sex Worker Act* as follows:

60A Display of prescribed signage relating to sexual slavery

- (1) A licensee must keep the prescribed signage relating to sexual slavery displayed on the premises of the sex work service providing business in such place or places that it may be read by any person on the premises.
 - 10 penalty units.
- (2) The Governor in Council may make regulations prescribing—
 - (a) signage in relation to sexual slavery for the purposes of subsection (1); and
 - (b) the locations where that signage is to be displayed.

Websites and advertisements

One measure used to warn and/or educate the purchasers of commercial sexual services on the issue of sex trafficking is the placement of advertisements or signs in locations where customers of sexual services are most likely to see them. In the Netherlands for example, public notices are placed on websites that (legally) advertise sex work. These notices request regular and prospective customers to report evidence of sex trafficking when soliciting sexual services. Such websites:

...advise[d] that trafficked women could be identified by bruising, fearfulness, and a lack of responsiveness to the client... The effectiveness of such an approach is questionable given that reluctance and bruising are easily found amongst 'free' prostituted women...thus making it difficult to discern those that have been trafficked from those that have not.³⁹⁸

In Australia, the Australian Federal Police (AFP) has initiated a series of advertisements alerting readers to the existence of sex trafficking. These notices contain an AFP hotline number that people with concerns and/or information about suspected cases of trafficking can contact. These advertisements are usually placed in the personal services sections of national, state and local newspapers. An example of such an advertisement is reproduced below.

Figure 14.1: Australian Federal Police hotline advertisement



'John schools'

In some countries official 'John schools' have been established as an educative measure to address the behaviour of men who seek to purchase sex, usually on the streets or in public places where such soliciting is illegal. 'John' is the slang term used in the United States and other countries to describe the purchaser or customer of sexual services. In some countries 'John schools' are also used as an educative measure to instruct clients

³⁹⁸ Submission of the Coalition Against Trafficking in Women Australia (CATWA) (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

about the issue of sex trafficking and the suffering that may result for the women involved. In South Korea, for example, awareness training for ‘johns’ exists alongside monetary penalties imposed on men who are guilty of purchasing sex:

[t]he Korean government has sought to address demand by educating male buyers of prostitution on the harms that this involves for women. The Korean Ministry of Justice currently runs 39 ‘John schools’, which convicted male buyers can attend in place of criminal punishment... According to the 2009 US State Department *Trafficking in Persons* report, 17,956 first-time offenders attended these seminars.³⁹⁹

‘John schools’ are increasingly popular interventions across the United States and Canada where they are often ‘faith based’. These programs offer rehabilitative services and counselling aimed at educating men who purchase sex about the harm their behaviour causes women, particularly in the context of trafficking. Often these programs may be teamed up with programs that assist women with exit strategies to leave sex work (Hughes 2004). Many of the American ‘John school’ programs and courses are offered as diversion programs, alternatives to fines or possible prison sentences for men convicted of crimes associated with the purchase of sex acts. Other men may be required to attend a course after they have been convicted as a condition of their probation:

Usually, men enter the ‘john school’ thinking prostitution is a ‘victimless crime’ or that they are the victims of entrapment by the police. Most john schools are composed of the same basic educational units. They differ in their pedagogical approaches to changing men’s attitudes and behaviour. Some programs use a confrontation ‘shaming ritual’ that includes a description of the damage and pain they have caused. Survivors of prostitution [including trafficking] usually present this unit of the curriculum where they describe their histories and what it was like to be bought for sex acts. Other instructors believe that most of the men that purchase sex acts are so self-centered that it is more effective to appeal to the men’s self interest to stop participating in an activity that will hurt them (Hughes 2004, p.32).

In her survey of such programs Hughes argues that the ‘John schools’ have generally been successful, with re-arrest/recidivism rates for crimes associated with soliciting sex workers very low (2004). However it is still open to question whether the low incidence of re-arrests of men who attend a ‘John school’ can be causally attributed to the education programs, as few quality evaluations have been conducted. Particularly as the re-arrest rates for men who *have not* attended such a program are also very low (Hughes 2004; Monto & Garcia 2002; Shiveley et al 2008).

Indeed, some commentators have doubted the effectiveness of these strategies in changing the opinions of men who would purchase commercial sexual services in the first place. Professor Sheila Jeffreys, for example, refers to efforts to make customers more discriminating or ethical in their behaviour when ‘buying’ women as superficial, ineffective and just paying lip-service to the main issues.⁴⁰⁰

There is also a question as to how ‘John schools’ could effectively operate as an educative measure in countries where sex work has been decriminalised. One possible approach is that they are utilised as an available sanction in circumstances where the client has been charged with an offence of purchasing sex from a woman he is aware is

³⁹⁹ Submission of CATWA (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁴⁰⁰ Submission of Professor Sheila Jeffreys, University of Melbourne, Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

in a trafficked situation.⁴⁰¹ Such an order could be in addition to or an alternative to more traditional and punitive dispositions.

Making information available for trafficked women

It is hoped that initiatives such as signage in brothels and advertisements will alert the prospective buyers of sex to the issue of trafficking. It is also recognised that it is equally, if not more, important to notify the victims of trafficking that sexual servitude is a crime in Victoria and that there is help available to support women after they have left the brothel in which they may have been placed. According to Ms Kathleen Maltzahn, raising awareness is the most important priority for women in the sex industry, both trafficked and non-trafficked women. Although acknowledging that accessing such women can sometimes be difficult, Ms Maltzahn says that once the message is 'put out', either through community outreach, advertisements or signage:

[p]eople talk. It may only be one in a hundred or one in a thousand, but those women may be able to get information. So if you can get information out there that has a hotline number, they may be able to access it.⁴⁰²

Multi-lingual information

Clearly, one major problem in drawing attention to the protections available to trafficked women is the cultural and linguistic barrier. Many witnesses to this Inquiry have spoken about the high levels of misperceptions and ignorance many trafficked women have had about Australian laws, customs and society in general. Countries characterised by the highest levels of poverty tend to be also those where people are least aware of their rights in the source country or country of destination. For example, in their work, Trafficking Safe House staff from The Salvation Army have observed a relationship between low socio-economic status of migrants and awareness of their rights, thereby increasing their vulnerability to a range of exploitative practices throughout the entire migration experience.⁴⁰³

Repatriation and re-trafficking

Sometimes, there is a risk that if a woman is repatriated back to her country of origin she will not be given sufficient information, support or assistance to reduce the risk of her being re-trafficked. Anti-trafficking programs and repatriation programs for the victims of trafficking run by the International Organisation for Migration (IOM) are based on providing victims and potential victims of trafficking with information that will lessen their chances of being exploited in the destination country or re-trafficked once they have returned to the country of origin:

Awareness raising is important as the more information potential migrants have the lesser the chance they may find themselves in vulnerable and potentially exploitative situations upon arrival in the destination location. Awareness raising may not prevent trafficking but it will provide information about it...The aim of awareness raising is

⁴⁰¹ See the example of such a penalty in the United Kingdom discussed in Chapter 13.

⁴⁰² Ms Kathleen Maltzahn, Evidence to Commonwealth Joint Parliamentary Inquiry into Sex Trafficking, Parliamentary Joint Committee on the Australian Crime Commission (PJACC) 2004, p.45.

⁴⁰³ Support Worker, The Salvation Army, Safe House for Trafficked Women, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

to ensure that at the core of all prevention activities is an aim to reduce vulnerability to exploitation (Bonneau 2009, p.13).

Information on Australian laws, rights and responsibilities

Dr Christine Harcourt spoke about research with sex workers throughout Australia when she gave evidence to this Inquiry. In particular she referred to the Law and Sex Workers Health Study (LASH) conducted by researchers associated with the National Centre in HIV Epidemiology and Clinical Research and funded by the National Health and Medical Research Council (NHMRC).⁴⁰⁴ Whilst the research did not focus specifically on issues pertaining to sex trafficking it did indicate that a significant number of workers, particularly migrant workers, were definitely uncertain of their rights within the Australian legal system, especially the legal status of sex work within the various states and territories. This is particularly the case in jurisdictions where sex work has not been decriminalised and thus outreach by sex worker support organisations is made more difficult. Such ignorance makes women particularly susceptible to exploitation and trafficking. Conversely the research indicates that the knowledge base of migrant workers improved markedly when such women had access to peer educators from groups such as the Scarlet Alliance or Sex Workers Outreach Project in Australia or the Empower Foundation in Thailand. These organisations produce and provide translated materials informing sex workers about their rights and alerting them to the dangers of trafficking, sex slavery and exploitative working conditions. The Empower Foundation in partnership with Scarlet Alliance places great emphasis on peer group education as a means of reducing trafficking to countries such as Australia.⁴⁰⁵

Commander Ramzi Jabbour of the AFP stressed that as part of these information packages it was important that migrant women were aware that sex work is not illegal in most of the Australian states and territories:

The solution, and it's not an easy one, but if these women realised prostitution is legal in this country they wouldn't need to enter into debt. They wouldn't need to go through the process they currently go through – they wouldn't be trafficked.⁴⁰⁶

Commander Jabbour, however, acknowledged that such an initiative would not always be possible prior to leaving the country of origin, as in many of these countries sex work is illegal. One possible suggestion put forward along these lines is that flyers or information leaflets outlining the dangers of sex trafficking be distributed to migrant arrivals at places of disembarkation (airports, sea terminals etc).

The Committee believes it is essential that women who are vulnerable to being trafficked are made aware of the risks and consequences of sex trafficking both before they leave their countries of origin and once they enter Australia. As such, it is important that relevant educational materials are developed for dissemination at points of disembarkation on arrival to Australia (airports, sea ports etc).

⁴⁰⁴ The LASH study examined different forms of regulation of the sex industry in three Australian states. The study sought to determine whether prohibition of sex work (Western Australia), regulation through licensing (Victoria) or decriminalisation (New South Wales) are associated with differing health and welfare outcomes for sex workers

⁴⁰⁵ Ms Elena Jeffreys, President, Scarlet Alliance, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009

⁴⁰⁶ Commander Ramzi Jabbour, Manager Border Operations, Commonwealth Departments Roundtable; Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009

The Committee also considers it crucial that the Commonwealth Government in conjunction with relevant NGOs liaise with relevant 'source countries' to extend and further develop information packages with regard to the sex industry (including its legal status in most Australian states), sex trafficking and its consequences to deter women in the country of origin from being trafficked to Australia.

Importance of community organisations in providing information and assistance

The Committee believes it is important that organisations such as Project Respect and The Salvation Army are encouraged to continue their outreach and visitation work in brothels, wherever possible with workers who are able to communicate in the language of the victim particularly in the context of raising awareness, giving advice or assistance and disseminating information with regard to sex trafficking. The peer education programs conducted by sex work organisations such as Scarlet Alliance and RhED are also valuable in this respect. At the very least the information and material distributed by such organisations need to be translated into the languages of the source countries from where most trafficked women travel. The newly mandated signage in brothels must also be in these languages if they are to be of any benefit to the victims.

Sex workers and people associated with the sex industry

Any education or training programs aimed at raising awareness of sex trafficking must include those women (and men) working in brothels or other parts of the sex industry. This was specifically recognised as essential in the Australian Communication Awareness Strategy (CAS) discussed below.

Through their newsletters and brothel visitation programs NGOs such as Project Respect and The Salvation Army hope to raise awareness of sex trafficking amongst women who work legally and illegally within the industry. Ms Shirley Woods, Project Respect, told the Committee a concerted outreach effort needs to be made to women within the industry (including brothel owners and managers) to raise awareness of trafficking and recognise the indicators of a trafficking situation.⁴⁰⁷

Anti-trafficking Communication Awareness Strategy (CAS) – Australia

At a national level the Australian Government has developed a CAS as part of its revised anti-trafficking action plans implemented in June 2009. This is a revised version of a strategy first launched in 2007. It is also targeted at the sex industry, and people who come into contact with sex workers such as community health and welfare organisations and NGOs.

Market research indicated that the primary target audiences were local and overseas-born sex workers, with a secondary audience including clients and service providers. To access these primary and secondary groups, a suite of discrete information materials has been produced in six languages: English, Chinese, Thai, Tagalog, Korean and Vietnamese. The materials were developed to be sensitive to the needs of potential trafficking victims and minimise the risk of further exploitation.

⁴⁰⁷ Ms Shirley Woods, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

Overall, the materials in the English language were most requested (26 per cent), followed by Chinese (20 per cent) and Thai (19 per cent).

In addition to the materials, pro bono advertisements encouraging victims and concerned members of the community to call an AFP hotline have been running in the personal services sections of major metropolitan and suburban newspapers since January 2006.⁴⁰⁸

Regular and ongoing consultations with NGOs such as Project Respect have been a feature of the development and implementation of the CAS. Such groups have been crucial in disseminating the information to their member groups and organisations, relevant individuals and other target audiences. As part of the CAS, the Department of Immigration and Citizenship (DIAC) has also participated in a number of forums aimed at raising awareness of sex trafficking in Australia (Attorney-General's Department 2009c).

Finally, just as anti-trafficking signs in brothels and other locations where commercial sex is available may make customers aware of the issue of sex trafficking, it is also envisaged that such signs will promote a similar awareness amongst sex workers, brothel managers and other employees. In particular it is hoped the signs will give those people who work in the industry the requisite level of awareness to recognise the indicators of a sex trafficking situation.

The general public

The importance of raising awareness

Many individuals and organisations that gave evidence to this Inquiry have stressed the importance of drawing attention first to the *existence* of sex trafficking and second to the misery and suffering it causes the women involved. According to these witnesses it seems that many people in Victoria are unaware that sex trafficking may be taking place in this state. For example, when Captain Danielle Strickland of The Salvation Army gave evidence to the Committee she spoke of the somewhat controversial way in which The Salvation Army tried to raise awareness of the issue of sex trafficking. It set up and staffed a stall at the Melbourne 'Sexpo' with information and material pertaining to sex trafficking. Captain Strickland stated that she was struck with the number of people, including people in the sex industry, who came forward saying they had 'no idea' that sex trafficking was taking place in Victoria.⁴⁰⁹

Even if the general public is vaguely aware of the issue of sex trafficking through the media or other sources, much of the time their views may be based on erroneous and stereotypical misconceptions of who trafficked women are and what trafficking consists of. Professor Susan Kneebone of Monash University stated it is essential that the average person hear the stories of the victims of sexual servitude.⁴¹⁰

⁴⁰⁸ Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁴⁰⁹ Captain Danielle Strickland, The Salvation Army (Australian Southern Territory), Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 7 December 2009.

⁴¹⁰ Professor Susan Kneebone, Castan Centre for Human Rights Law, Monash University, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November.

Other witnesses who presented to the Committee also believed it important that members of the public ‘hear the stories’ of trafficked victims but not in a way that is counterproductive.

Dr Anne Gallagher, Technical Director of Asia Regional Trafficking in Persons Project (ARTIP) also believed that whilst awareness raising is important and too few Australians are aware of the evils of sex trafficking, unfortunately the debates on sex trafficking are too often unhelpfully polarised between the neo abolitionist and pro sex worker debates discussed in earlier chapters. What should be taking place according to Dr Gallagher is a more sophisticated public ‘conversation’ in the middle of these two positions. In particular she argues the ‘conversation’ needs to include an acknowledgment that it is not a small group of people who are part of this issue, rather that: ‘This is a very significant percentage of Australian men who are involved in this as consumers and this is something that needs to be addressed’.⁴¹¹

Sister Suzette Clark of the Australian Catholic Religious Against Trafficking in Humans (ACRATH) believes that a modified awareness campaign aimed at drawing attention to the issue of trafficking needs to be targeted at quite young members of the community. ACRATH has therefore created a kit and presentation program for young people within Catholic schools in New South Wales. According to Sister Clark, as there would be no sexual servitude or trafficking without customers it is crucial that these interventions are used in boys’ schools as well as girls’ schools.⁴¹²

Mr Chanderev Singh, a legal worker in anti-trafficking matters, argued that a ‘broad and deep awareness of trafficking and slavery’ is crucial not only at a general level but also for specific communities. He added that:

You can only recognise trafficking or the indicia of slavery, servitude and forced labour if you know what you are looking for, if you know how it might present or how it might be masked...

[Community awareness campaigns] that are relevant and effective in the domestic context is a really critical measure that needs to be taken in Victoria and nationally.⁴¹³

International and national awareness campaigns

In the years since the Palermo Protocol was promulgated there have been a number of community awareness campaigns, both overseas and in Australia, developed to inform the general public and particular groups within it of the issue of trafficking in human beings. Many of these campaigns fulfil the stipulations in Article 9 of the Palermo Protocol that requires countries who are parties to the Protocol to develop national awareness campaigns against the trafficking of women and children.

⁴¹¹ Dr Anne Gallagher, ARTIP, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 9 November 2009.

⁴¹² Sister Suzette Clark, Convenor, ACRATH (NSW), Meeting with Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 30 November 2009.

⁴¹³ Mr Chanderev Singh, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November, 2009.

'Hidden in Plain Sight' campaign – United States

The United States Immigration and Customs Enforcement unit (ICE) has a media initiative to inform the public about the horrors and the prevalence of human trafficking and 'modern-day slavery'. As part of ICE's continued efforts, the agency has unveiled an outdoor public service announcement campaign, 'Hidden in Plain Sight', to draw the American public's attention to the plight of human-trafficking victims in the United States. The campaign message explains that human trafficking includes those who are sexually exploited or forced to work against their will.

Posters, billboards and transit shelter signs have been rolled out bearing the slogan 'Hidden in Plain Sight'. They are displayed in major cities throughout the United States including Boston, Los Angeles and New York. The campaign aims to raise public awareness about the existence of human trafficking in communities nationwide, and asks members of the public to take action if they encounter possible victims. In launching the campaign in November 2009, a Department of Homeland Security spokesperson said:

ICE is asking for the public's help to remain alert to recognize and identify victims of modern-day slavery who are in our midst. They are domestic servants, sweat-shop employees, sex workers and fruit pickers who were lured here by the promise of prosperity. ...ICE is committed to giving them the help they need to come forward and help us end human trafficking with vigorous enforcement and tough penalties. As a primary mission area, ICE has the overall goal of preventing human trafficking in the United States by prosecuting the traffickers, and rescuing and protecting the victims.⁴¹⁴

A key aspect of the information/awareness campaign is to publicise the existence of a toll-free information hotline number where members of the general public can receive information on human trafficking and also report any incidences of behaviour they suspect are indicative of sexual servitude or other forms of trafficking.

The Blue Blindfold Campaign – United Kingdom

The Blue Blindfold Campaign was launched in December 2007 by the United Kingdom Human Trafficking Centre (UKHTC) with the bi-partisanship support of the All Party Parliamentary Group on Trafficking. The aims of Blue Blindfold are to:

- Encourage police authorities, front line professionals and the public to open their eyes to human trafficking
- Raise awareness, provide training and encourage information sharing worldwide
- Support victims of human trafficking.⁴¹⁵

The UKHTC describes the objectives of Blue Blindfold in the following terms:

⁴¹⁴ See 'ICE gives voice to victims of human trafficking in the United States. "Hidden in plain sight" theme shines a light on the problem of thousands estimated being held as modern-day slaves in the USA'. Accessed at <http://www.ice.gov/pi/nr/0911/091102washingtondc.htm> 12 April 2010.

⁴¹⁵ See <http://www.blueblindfold.co.uk/>

The Blue Blindfold represents how people are blind to the fact that human trafficking is happening near them. If people see something, we want them to take positive action. To open their eyes. To call Crimestoppers anonymously. Or report it to their local police.⁴¹⁶

Blue Blindfold has a comprehensive website with information on the signs to look for in suspected trafficking cases, victims' stories, online forums and a specialist 'Crimestoppers' hotline to report suspected cases or other information to the authorities. A public awareness campaign, which is launched regularly in cities across Britain, includes the use of posters, billboards, public service TV and radio announcements and notices on buses and other forms of public transport, particularly in areas of high risk. The Blue Blindfold logo is fast becoming an internationally recognised symbol of help for trafficking victims.⁴¹⁷

A Home Office Review of the United Kingdom Action Plan on Trafficking in October 2009 supported the use of the Blue Blindfold campaign as a major initiative that raises awareness of trafficking in source, transit and destination countries such as Britain. The Review focused on strengthening the campaign, particularly by working in closer cooperation with local government authorities to promote information campaigns at local level.⁴¹⁸

The Blue Blindfold Campaign is also being adopted at international level in partnership with the United Nations Office of Drugs and Crime (UNODC). The United States Department of State highlighted the Blue Blindfold Campaign as one of the most commendable international initiatives in the fight against human trafficking. In its most recent Trafficking in Persons Report (2009) it wrote:

The UK government's Blue Blindfold campaign's message is that human trafficking can happen in any town, community or workplace. Its materials are free and available for use by any government or organisation wanting to raise awareness...The UK government realises that symbols are very powerful and are recognised worldwide immediately without the need for words. The goal of the campaign is to work multilaterally with other countries to establish an international human symbol for human trafficking and promote a unified campaign that reaches across borders. The hope is that the blindfold symbol with a trusted phone number will become identifiable in source, transit and destination countries and will help break the control traffickers have over victims (United States Department of State 2009, p.42).

The Committee acknowledges that strategies of primary prevention, such as broad and targeted education campaigns that address the issue of sex trafficking, should be developed as recommended in Article 9 of the Palermo Trafficking Protocol.

⁴¹⁶ Accessed at www.ukhtc.org/aboutukhtc/ 12 April 2010.

⁴¹⁷ <http://www.blueblindfold.co.uk/>

⁴¹⁸ A goal of the updated Action Plan is for the Home Office, in collaboration with the UKHTC and Blue Blindfold, to:

'[f]ocus our work on communities that may be more affected by trafficking to encourage reporting. Actions here include efforts to: undertake publicity and awareness raising measures aimed at reducing demand in conjunction with local authorities; disseminate messages at regional and local levels, including to communities most affected by trafficking; and investigate ways in which to best encourage greater local authority involvement in the identification and provision of support for victims of all human trafficking' Accessed at <http://www.crimereduction.homeoffice.gov.uk/humantrafficking004f.pdf>, 13 April 2010.

The Committee therefore recommends that the Victorian Government develop a comprehensive, best practice public education campaign to increase public awareness about sex trafficking, including its nature, extent, causes, myths and consequences. The Sex Industry Regulation, Policy and Coordination Unit, discussed in Chapter 16, should coordinate such a campaign and target it to a wide range of audiences. The Blue Blindfold Awareness Campaign (UK) discussed in this section may serve as a suitable model for such a campaign.

Blue Heart Campaign – United Nations Organisation on Drugs and Crime

To rally world public opinion against human trafficking, the UNODC has launched the Blue Heart Campaign. It is open to all those who want to participate and wear the Blue Heart as a symbol of their support for stopping trafficking of human beings.

The key aspects of the Campaign are:

- An awareness raising initiative to fight human trafficking and its impact on society.
- The Blue Heart Campaign seeks to encourage involvement and inspire action to help stop this crime.
- The campaign also allows people to show solidarity with the victims of human trafficking by wearing the Blue Heart.⁴¹⁹

The Blue Heart represents ‘the sadness of those who are trafficked while reminding us of the cold-heartedness of those who buy and sell fellow human beings’. The use of the blue UN colour also demonstrates the commitment of the United Nations to this cause.⁴²⁰

In the same way that the red ribbon has become the international symbol of HIV/AIDS awareness, the campaign aims to make the Blue Heart into an international symbol against human trafficking. By ‘wearing’ the Blue Heart it is envisaged that supporters will raise and spread awareness of human trafficking.

The publicity material for Blue Heart states that a key aim of the initiative is to encourage as many awareness-raising activities as possible around the globe through inviting individuals, non-profit organisations, the private sector, intergovernmental organisations and Member States to become part of the Blue Heart campaign by:

- Joining the Blue Heart Facebook group and “wearing” the Blue Heart on your Facebook profile.
- Visiting the campaign’s website and “wearing” the Blue Heart on your site or on your awareness-raising materials (www.unodc.org/blueheart).
- “Wearing” a link to the campaign on your website and “wearing” the Blue Heart in your newsletters, websites and blogs when you inform about the campaign.
- Spreading the word about the campaign through your own networks and contacts.
- “Wearing” the Blue Heart when organising and participating in awareness-raising activities around the world to mark key anti human trafficking related dates, e.g. in Europe to mark the EU anti-trafficking day on 18 October or one of the international days related to slavery, women or children.

⁴¹⁹ Accessed at <http://www.unodc.org/blueheart/> 14 April 2010.

⁴²⁰ Accessed at <http://www.unodc.org/blueheart/> 14 April 2010.

- Donating funds or making in-kind contributions to the campaign and related events.⁴²¹

Stop the Traffik – International and Australia

The Stop the Traffik coalition is a non-government activist and support organisation aimed at raising awareness of the issue of sex trafficking and the misery it causes. It is an international organisation with a chapter based in Australia. It consists of many member organisations, which unite to help achieve the objectives of its campaign against sex trafficking. The three main objectives of the organisation are: Advocacy, Education and Fundraising. Its campaign material states that these objectives are exemplified by:

- **Advocacy** – When people act things change. Engaging with those who have the power to minimise the trafficking of people.
- **Education** – Spreading the message, creating an understanding of people trafficking.
- **Fundraising** – Financing anti-trafficking work around the world and working with those who have been trafficked.⁴²²

Organisations currently involved in Stop the Traffik Australia include:

- The Salvation Army
- The Uniting Church of Victoria and Tasmania
- The Good Shepherd Social Justice Network
- Anti-Slavery Society
- Australian Catholic Religious Against Trafficking in Humans (ACRATH)
- The Oaktree Foundation
- Project Respect
- Baptist World Aid Australia
- United Nations Association of Australia
- Caritas Australia
- The A21 Campaign
- National Council of Jewish Women Australia (NCJWA Victoria)
- Compassion Australia
- Starfish Ministries Australia
- Childwise Australia.⁴²³

Anti-Trafficking Communication Awareness Strategy (CAS) – Australia

As discussed earlier in this chapter the Australian government has developed a CAS to address the issue of sex trafficking in this country. In addition to targeting sex workers and those who work in and with that industry it also aims at raising awareness in the general public, by providing accurate information on sex trafficking and the means of identifying a trafficking situation. Like the British and American campaigns it also provides information on how to seek assistance or report sex trafficking through the use of AFP hotlines, website materials and occasional advertising campaigns.

⁴²¹ Blue Heart Campaign Publicity Leaflet. Accessed at <http://www.unodc.org/blueheart/>

⁴²² Accessed at <http://www.stopthetraffik.org.au/stt/what/> 9 April 2010

⁴²³ Accessed at <http://www.stopthetraffik.org.au/stt/what/> 9 April 2010

Prosecutors, judges, lawyers and jurors

Awareness training for prosecutors, magistrates and judges

The magistrates and judges who preside over sex trafficking trials and hearings and the lawyers responsible for the prosecution of the cases are a particularly important group of personnel for whom education and awareness about trafficking is essential. An understanding of sex trafficking and its dynamics is crucial, as these are the legal professionals who must explain and instruct complex material to juries that may have preconceived ideas as to how an ‘appropriate’ or ‘true’ trafficking victim might present.⁴²⁴

The qualities of the criminal justice officials involved in the case, including judges, will determine the extent to which such issues affect credibility. The essential qualities include an understanding of how trafficking works, in particular how psychological coercion is exercised. The prosecutors’ ability to present this in court and the judges’ ability to consider the evidence in an informed way are both crucial (Gallagher 2009b, p.5).

The need for judges and prosecutors to have a better understanding of the concept of sex trafficking is evident from comments allegedly made by the judge in one of the first sexual servitude cases heard in Victoria. In the *Glazner* case the judge:

[a]sserted that Glazner [the accused] had acted ‘decently towards the women, citing the fact that Glazner allowed ‘Michelle’ [one of the victims] to buy out her contract...It appeared that the judge had accepted the legitimacy of the contract and believed Thai women are “somehow intrinsically different from Australian women, that for them a contract such as this was acceptable”.

Furthermore the judge ‘joked’ about free passes that had been seized at Glazner’s premises and tendered as evidence (offering men a free service with ‘the lady of their choice’ – that is Glazner’s trafficked ‘contract girls’) stating that ‘there are eight gentlemen of the jury – do we have eight freebies for them?’ (Ford 2001, p.25).

Such a comment bears out Professor Jeffreys’ comments that no legislation aimed at reducing the harms of (sex work and trafficking) will be effective without training of the police, judiciary and all those who come into contact with women in trafficking and sex work.⁴²⁵ Admittedly the comments in the *Glazner* case come from a case heard some years ago. Nonetheless, as recently as 2008 Gallagher and Holmes have recognised the need for ensuring that judges, prosecutors and lawyers receive awareness training on trafficking ‘that focuses on the applicable legal framework, identifies their particular role and responsibilities, and highlights emerging good practices’ (2008, p.328). The authors argued that to date the judiciary and prosecutors have not been a priority target for training efforts. However, increasingly states and intergovernmental organisations in Europe, Asia and Australasia acknowledge the importance of training measures for criminal justice officials (Gallagher & Holmes 2008). In Sweden for example, considerable resources are devoted towards the training of police and judicial officials involved with sex trafficking (Ekberg 2007). In Australia, the National Judicial College

⁴²⁴ In particular the juries may have views with regard to the nature of ‘consent’, ‘force’ and ‘exploitation’ that do not reflect the reality of sex trafficking. See Chapter 4 of this Report for further discussion.

⁴²⁵ Submission of Professor Sheila Jeffreys, University of Melbourne, to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

is developing resources to assist judges, prosecutors and juries with information and materials regarding sex trafficking (Attorney-General's Department 2009c).⁴²⁶

There has also been a trend in recent years for the emergence of a small centralised group of specialist anti-trafficking prosecutors who have benefited from technical training which they can then pass on to more generalist colleagues as needed (Gallagher & Holmes 2008). In Australia, whilst there have been no specialist prosecution units per se established, there are teams of lawyers within the various state offices of the Commonwealth Director of Public Prosecutions (DPP) who are regularly being assigned trafficking cases and thus building up relevant expertise in the area.⁴²⁷

Awareness training for legal workers

Solicitors and legal workers outside the DPP may also benefit from training with regard to trafficking issues. For example, the Federation of Community Legal Centres (FCLC) (Victoria) has identified sex trafficking as one of the areas in which their member organisations need and would like to have more awareness training:

Community legal centres strongly identified that they would like to have more capacity to be able to assist Project Respect (and interstate anti-trafficking organisations) to assist mutual clients in legal matters. However, in order to do so, community legal centres require additional training to support clients who may not disclose that they are victims of trafficking, or in fact, may not know that they are victims of trafficking.

Community legal centres would benefit from training in trafficking, sexual slavery, indicator recognition of trafficking victims and referral pathways for clients who have been trafficked.⁴²⁸

Awareness training for jurors

Finally, one section of the community for whom a detailed knowledge of the dynamics of sex trafficking is essential is those people who sit on juries in trafficking cases. As was discussed in Chapter 8, too often jurors may cling to stereotypical views of sex work and sex workers and what counts as a 'real' or 'deserving' trafficking victim. Commander Jabbour of the AFP told the Committee that in his experience it is difficult for juries to understand why a person may 'choose' to work in harsh and exploitative conditions and why such a person may even 'choose' to return to the sex industry even after their trafficker is charged with an offence.⁴²⁹

⁴²⁶ The Judicial College of Australia for example hosted its first 'Twilight Seminar' on sex trafficking for judicial officers in Sydney in June 2009. The seminar explored the difficulties that arise for judicial officers presiding in legal proceedings in people trafficking cases. See <http://njca.anu.edu.au/Professional%20Development/programs%20by%20year/2009/Programs%202009.htm>

⁴²⁷ See David 2008a and the discussion in Chapter 8.

⁴²⁸ Submission of Fitzroy Legal Centre (on behalf of the FLC and member community centres) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁴²⁹ Commander Ramzi Jabbour, Manager Border Operations, Commonwealth Departments Roundtable, Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

Police, immigration and state regulatory officers

An awareness of sex trafficking and sexual slavery for police and immigration officers is clearly an essential part of combating trafficking and sexual servitude offences. There have been a number of effective approaches to police training at both the international and local levels.

International examples

In Sweden, training for the National Criminal Police on sex trafficking issues is done in collaboration with the government's Division for Gender Equality and in conjunction with local and regional police forces. The division has established education programs which Ekberg claims had 'noticeable and immediate effects' including a major increase in arrests a year after the program began in 2003. Ekberg claims that in part this was due to the police's deeper comprehension of conditions that make women vulnerable to trafficking in addition to the development of better investigation methods (Ekberg 2004).

In the Netherlands each police district has a coordinator for trafficking in human beings. Standardised courses are also held in all Dutch police colleges on the investigation of trafficking. In addition to the four-day course for general officers, a three-week examination course for officers specialising in investigating trafficking is obligatory. The course diploma may be demanded in cases where officers appear in court as witnesses (Ministry of Justice and the Police (Norway) 2004a).

In the United States, Illinois is a good example of a state based initiative to train law enforcement officials to combat sex trafficking in their jurisdiction. The Illinois Department of Human Services in conjunction with Illinois State Police, the Chicago Police Department, the Heartland Alliance for Human Rights and other state and local agencies have produced a computer based training video for law enforcement professionals involved with human trafficking cases. The video/DVD *Anti Human Trafficking for Law Enforcement* includes topics such as the history of trafficking, state and federal laws, the roles of law enforcement and social services, victimisation and how to recognise human trafficking. Copies of the video are regularly sent to all law enforcement agencies in Illinois. The DVD also addresses the myths of trafficking including the erroneous idea that individuals must be moved around in order to be victims of trafficking or that citizens of the United States cannot be victims.⁴³⁰

Australian responses at federal and state level

In this country it has been recognised that effective training on trafficking issues is necessary for both the specialist officers of the AFP/DIAC and particularly for the police at state and territory level who provide frontline support and backup. For example, whilst Project Respect appreciates that the training for specialist AFP officers is comprehensive, they argue that the knowledge and understanding of general police in Victoria can be inadequate:

Project Respect is aware of at least one case of trafficking which came to the attention of the Victorian Police at a local police station which was identified by them as an extortion case and not trafficking. The victim was therefore not referred

⁴³⁰ See <http://www.ncdsv.org/images/governor%20blagojevich%20announces%20new%20anti.pdf>, Accessed +13 April 2010.

to Project Respect for specialist support until much later, long after her contact with Victoria Police had ended.⁴³¹

The importance has been stressed of local or frontline police having an awareness of the relevant federal laws in this area, particularly as they will often be the first to respond to a trafficking situation: 'Without this awareness they would not know to bring suspected trafficking cases to the AFP's attention' (David 2008a, p.42).

The AFP's Transnational Sexual Exploitation and Trafficking Team (TSETT) conducts the major program on police awareness of trafficking, with the participation of expert NGOs such as Project Respect, the Centre Against Sexual Assault (CASA) and Scarlet Alliance. State and territory police are also invited to take part in this training on an annual basis.⁴³² Similarly, DIAC compliance officers receive specialist training on trafficking through modules taught in the Compliance Training Program at the DIAC College of Immigration. As with the AFP, an important part of this training are the presentations given by NGOs such as Project Respect, the Anti-Slavery Project and Scarlet Alliance.

At state level, however, it is not only the police who require awareness training on the indications of trafficking. A variety of other agencies have regular contact with the locations in which trafficking may take place such as legal and illegal brothels. These include officers from local government, health inspectors, planning and enforcement officers and inspectors from Consumer Affairs Victoria.⁴³³ Such people need to be given the training to recognise signs of sexual slavery, refer their suspicions to the relevant authorities such as the AFP, DIAC or local police and respond effectively to victims where appropriate.

NGOs, service providers and other professionals

There are clearly specialist NGOs and activist groups that advocate for and support trafficked women. Project Respect, the Australian Red Cross, The Salvation Army and the Coalition Against Trafficking in Women are important examples. Such organisations and groups *provide* information and training on issues pertaining to trafficked women rather than are in need of it. However, there are many other community service organisations that come into contact with migrant women that may need to have a heightened understanding of sex trafficking. Staff at The Salvation Army Safe House for trafficked people are currently developing a social work research project on victim support and people trafficking, and the relationship that victim support has to the criminal justice system. It is hoped that the research will result in an overall consideration of migrant and community service providers' awareness of people trafficking, how to increase victim identification and protection across all labour sectors and develop appropriate prevention strategies for the Australian context. be a set of recommendations to community service providers as to what to look for in a potential

⁴³¹ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁴³² Issues relating to police training and awareness are discussed at length in Chapter 12.

⁴³³ As discussed in Chapter 12, the training given to Consumer Affairs Victoria officers on issues pertaining to human trafficking has been criticised by some community organisations. In particular, the lack of a specialist inspectorate for brothel monitoring has been questioned.

trafficking situation and also how they can provide referrals and assistance to trafficked women through a collaborative service approach.⁴³⁴

Professionals that may come into contact with trafficked women, particularly health professionals such as doctors, nurses or dentists, could also benefit from being educated about sex trafficking. This is especially the case given that these may be some of the few people that trafficked women may ever meet outside their 'captivity'.

Conclusion

Prevention and demand based approaches aimed at informing the general public and targeted groups within it about sex slavery are useful strategies to draw attention to the plight of trafficked women. Such measures are usually the result of public and community education campaigns, sometimes delivered through the media but more often through the work of NGOs and activist/support groups. Whether such campaigns are appropriate or effective is debatable given there has been little evaluation done of the few campaigns in this area.

Nonetheless NGOs such as Project Respect should be encouraged to extend their outreach, training and awareness raising programs throughout the state and to as many different types of groups as possible.

The Committee acknowledges that strategies of primary prevention must be adopted, including broad social education campaigns that address demand for trafficked women as recognised in Article 9 of the Palermo Trafficking Protocol. Explicit in this public education must be the promotion of equal and respectful relationships between women and men.

Recommendation

The Committee recommends that the Victorian Government develop a comprehensive, best practice public education campaign to increase public awareness about sex trafficking; including its nature, extent, causes, myths and consequences. Such a campaign should be coordinated by the Sex Industry Regulation, Policy and Coordination Unit and targeted to a wide range of audiences. (*Recommendation 12*)

The Blue Blindfold Awareness Campaign (UK) discussed in Chapter 14 may serve as a suitable model for such a campaign.

⁴³⁴ Support Worker, The Salvation Army, Safe House for Trafficked Women, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

Recommendation

The Committee recommends that such a campaign be accompanied by an appropriate dedicated website with suitable educational materials. (*Recommendation 13*)

Recommendation

The Committee recommends that the Sex Industry Regulation, Policy and Coordination Unit place advertisements warning prospective customers of sexual services as to the existence of the crime of sex trafficking. Such notices should be placed prominently in the Personal or Adult Services sections of state, territory and local newspapers and any websites advertising sexual service providers, as appropriate. (*Recommendation 14*)

Recommendation

The Committee recommends that training on sex trafficking and its consequences be made an essential and recurring part of the vocational training programs of generalist and specialist groups likely to encounter people who have been trafficked. The Sex Industry, Regulation, Policy and Coordination Unit should coordinate this training. Groups that would particularly benefit from such training include:

- primary health care workers (including general practitioners, practice nurses, community health workers);
- sex industry personnel including sex workers, brothel managers and owners;
- social service workers;
- mental health workers (including psychiatrists, mental health nurses and mental health support workers);
- general police (ie. not from the dedicated unit) and emergency services;
- immigration officials (in conjunction with the Commonwealth); and
- journalists. (*Recommendation 15*)

The Committee recognises the role the media plays in disseminating information on important issues and its contribution to social policy debates. It is therefore essential that the media be included in any training or information sessions pertaining to the sexual trafficking in human beings.

Recommendation

The Committee recommends that police, the City of Melbourne, local councils through the VLGA and/or MAV, health inspectors and Sex Industry Regulation, Policy and Coordination Unit inspectors are given specialised training to recognise sexual slavery, to refer such a matter to appropriate authorities and services, and to respond adequately to victims of trafficking, servitude and debt bondage. (*Recommendation 16*)

It is particularly important that local councils ensure relevant workers are trained to recognise the signs of sexual slavery. This is especially crucial given municipal officers often may be the only people to have access to legal (and illegal) brothels through their planning powers etc. The proposed Sex Industry, Regulation, Policy and Coordination Unit could assist the VLGA/MAV in organising this training. NGOs on the Trafficking Advisory body such as Project Respect would be suitable organisations to conduct such training.

Recommendation

The Committee recommends that appropriate NGOs who support trafficked women be provided with additional resources to continue and extend their involvement in the training of police, municipal officers, sex industry regulators and other relevant persons. (*Recommendation 17*)

Recommendation

The Committee recommends that members of the magistracy, judiciary and legal profession be given appropriate training on the issue of trafficking where it is reasonable to expect such professionals may become involved with trafficking cases. Such training could be provided by NGOs with relevant experience working in conjunction with representative legal bodies such as the Victorian Judicial College (judges and magistrates), the Victorian Law Institute (solicitors and legal workers), the Victorian Bar Council and/or the Commonwealth Office of Public Prosecutions [Victoria] (Prosecutors). (*Recommendation 18*)

Recommendation

The Committee recommends that the Commonwealth produce relevant educational and information materials informing visitors to Australia on the risks and consequences of sex trafficking be developed for dissemination at points of disembarkation on arrival to Australia (airports, sea ports etc). *(Recommendation to the Commonwealth 1)*

Recommendation

The Committee recommends that the Commonwealth Government in conjunction with NGOs liaise with relevant 'source countries' to extend and further develop information packages with regard to the sex industry (including its legal status in most Australian states), sex trafficking and its consequences to deter women in the country of origin from being trafficked to Australia. *(Recommendation to the Commonwealth 2)*

Part 6 – Cross-jurisdictional Responsibilities

15. Victim Support

Introduction

Alongside prevention programs and the prosecution of traffickers, support and assistance for the victims of trafficking⁴³⁵ is the third major approach to address the issue of sex trafficking in Australia. The Commonwealth and state governments and non-government organisations (NGOs) provide this support to victims.

Criticisms of victim support approaches

Despite the generally laudable intentions behind victim support packages, criticism has been levelled that much of the support given to trafficking victims is linked to their status as witnesses in trafficking prosecutions. Victim support, many have argued, should be given not as a means to encourage a woman to give evidence but ‘as something of value in itself’ (Maltzahn in Parliamentary Joint Committee on the Australian Crime Commission (PJCACC) 2004, p.38). Mr Brian Iselin, a former Commonwealth investigator in trafficking matters, argues that the core of government responses to trafficking victims must be *restorative justice* similar to that in sexual assault cases.⁴³⁶ In restorative justice the emphasis is on assisting the victim first: ‘If a criminal prosecution can be launched then that is all the better but it is secondary to helping the victim’ (Iselin in PJCACC 2004, p.38).

The Australian Human Rights Commission (AHRC) has also expressed regret that trafficking victims’ rights, prevention strategies and support ‘have taken a back seat to law enforcement’. Ms Elizabeth Broderick of the AHRC has explained that:

⁴³⁵ Whilst the Commonwealth victim support package is available for all types of trafficking, the overwhelming majority of its recipients to date have been victims of sex trafficking or sexual servitude offences (Attorney-General’s Department 2009c).

⁴³⁶ The theories of restorative justice are those promoted famously, although not exclusively, by criminologist John Braithwaite in the 1980s and 1990s. As People and Trimboli (2007) point out there is no single definition of this term, but a commonly used one is that of Marshall which states:

‘Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future’ (Marshall 1999, p.5)

Zehr and Mika (1998) note that the key elements of restorative justice include:

- ‘Crime is fundamentally a violation of people and interpersonal relationships
- Restoration is a continuum of responses to the needs and harms experienced by victims, offenders and communities
- Maximisation of public participation, especially of victims
- Providing offenders with opportunities and encouragement to understand the harm caused and to make amends
- Maximisation of voluntary participation, minimisation of coercion and exclusion
- Community responsibility to support victims and integrate offenders
- Mutual agreement and opportunities for reconciliation/negotiation take precedence over imposed outcomes
- The prioritisation of healing, recovery, accountability and change over punishment’ (Zehr & Mika 1998 in Muncie 2004, p.280).

International Law recognises that a person's status as a victim of crime is not dependent on a successful prosecution. Instead, if you believe someone has been trafficked then you should treat that person as a victim unless and until there is a good reason to decide otherwise...Put simply, trafficking victims deserve protection and support, regardless of whether their traffickers are charged or convicted.⁴³⁷

Another criticism has been that too often victim support packages do not address the specific problems victims of trafficking suffer from. For example, Segrave, Milivojevic and Pickering argue that their research indicates that 'welfare support has primarily been developed to enhance the investigative and prosecutorial functions of criminal justice rather than to meet the welfare related needs of clients' (2009, p.195).⁴³⁸

Recent improvements to guidelines for supporting victims

Despite such criticisms, in recent years international legal standards have emerged to support victims of trafficking. Chief amongst these are the *United Nations Principles and Guidelines on Human Rights and Human Trafficking* (2002) and the International Organisation for Migration's (IOM) *Basic Principles for Protection and Direct Assistance of Victims of Trafficking* (2007).

The United Nations and IOM have also been active in supplying relevant professionals (health care workers, social workers and human trafficking advocates) with guidelines, information and materials on supporting trafficked women once they have been taken from the trafficked situation. A recent example is the handbook *Caring for Trafficked Persons: Guidance for Health Care Professionals* published jointly by the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), the IOM and the London School of Hygiene and Tropical Medicine (IOM 2009b).

At a local level the recently produced *Guidelines for NGOs Working with Trafficked People*, a publication of the Commonwealth Roundtable on People Trafficking, aims to give both specialist anti-trafficking NGOs and generalist assistance organisations the tools to be able to effectively work with and support trafficked people (Attorney-General's Department 2008b).

The following elements are viewed as a fundamental part of a best practice model to assist trafficking victims:

- Respect for human rights at the centre of all policy and practice in supporting victims of trafficking
- Rapid and accurate identification
- Immediate and unconditional protection and support (including a reflection period), and where children are concerned, that their best interests are paramount at all times

⁴³⁷ 'Slavery in 21st century Australia – A Human Rights Issue', Speech by the Sex Discrimination Commissioner, Elizabeth Broderick, Australian Human Rights Commission, 16 October 2008. Accessed at http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008, 20 October 2009.

⁴³⁸ The authors argue that in many jurisdictions, including Australia, the recognition (and state sanctioning) of women as victims depends on how far their actions deviate from those expected of an 'innocent' woman: 'It is only through "choosing" victimisation and agreeing to participate as a witness that women can access any kind of assistance in the country of destination...Effectively the provision of support can be identified as a "lure" to encourage women's participation and cooperation' (Segrave, Milivojevic & Pickering 2009, pp.80, 82). However the situation in Australia in relation to such a claim has arguably improved since reforms to the victim support package discussed in this chapter were introduced in 2009.

- Additional protection for victims who chose to cooperate with authorities, including witness protection and special court procedures to reduce the risk of re-traumatisation as a result of testifying
- Non-punishment of victims for status-related offences, such as illegal entry to the country, breach of visa conditions, prostitution
- Access to crimes compensation
- Safe, and to the extent possible, voluntary repatriation, with respect for the principle of *non-refoulement*⁴³⁹ (Gallagher & Holmes 2008 in Australian Institute of Criminology (AIC) 2009c, p.4).

The AIC states that a strategy involving these elements would need to consider the following:

[t]he continuing, institutionalised training of all frontline services in identifying and dealing with victims; the utilisation and funding of a range of organisations to ensure comprehensive support services; extra protection measures for victims cooperating with police; the non-prosecution of victims of trafficking for status related offences [such as illegal sex work or drug abuse]; and ensuring that provisions allowed for in law, with respect to the safe return of a trafficked person to her/his origin country, are carried out in practice (AIC 2009c, p.4).

Commonwealth support for trafficked women

Similar to the efforts made at international level, there have been initiatives in Australia in recent years to formally evaluate how well various victim support schemes work, whether they are underpinned by the international principles discussed earlier and what victim perspectives might be on the services provided by such schemes (AIC 2009c). As a result of these findings and lobbying by activists in the field, a series of reforms to the Commonwealth Victim Support Scheme were made in June 2009.

The initial Victim Support Scheme

Prior to 2004 there was no trafficking victim support package. As such, AFP investigators ‘assumed much more of the welfare role for victims of trafficking’. Whilst the investigators performed this role conscientiously, they argued it was important to separate the investigative role from the welfare role, particularly as they were not trained social workers (David 2008a, p.36).

Therefore, the initial Commonwealth victim support package, introduced in 2004 as part of the first Anti Trafficking Action Plan, was viewed as a positive step. However, both trafficking investigators and support workers highlighted some problems with the scheme including:

- ... the package did not cover suspected victims of trafficking who agree to give a statement but who first want to return home. Accordingly, AFP investigators needed to proactively seek out other avenues of support. In several cases, AFP investigators organised for Thai social workers to travel from Thailand with the

⁴³⁹ *Non-refoulement* is a principle in international law, specifically refugee law, that concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened. Unlike political asylum, which applies to those who can prove a well-grounded fear of persecution based on membership in a social group or class of persons, *non-refoulement* refers to the generic repatriation of people, generally refugees into war zones and other disaster areas. See generally Guy S. Goodwin-Gill & Jane McAdam *The refugee in international law*, Oxford: Oxford UP, 2007.

victim to support them through the process of giving a statement. The CDPF funded these actions and DIAC facilitated the necessary visas.

- The package did not cover family members of suspected victims of trafficking who may be required in Australia to give evidence.
- The visa framework that accompanies the package is available to ‘immediate family members’ but [did] not accommodate situations where the victim of trafficking is in a same-sex relationship.
- The visa framework [was] available to immediate family members in Australia. However, sometimes the children of suspected victims of trafficking [were] not in Australia but have remained in the victim’s home country (David 2008a, p.37).

In addition to general criticisms with regard to service delivery of the program, a major complaint about the 2004 package was that provision of victim support, at least initially, was linked to the victim’s willingness to give evidence or otherwise participate in criminal prosecutions (Burn 2009). Such a position is contrary to the *United Nations Principles and Guidelines on Human Rights and Human Trafficking*, which state that ‘access to adequate physical and psychological care shall not be made conditional on the capacity or willingness of trafficked persons to cooperate in legal proceedings’.⁴⁴⁰ In response to these concerns and the joint efforts of participants to the Commonwealth’s People Trafficking Roundtable, major reforms to victim support were introduced in June 2009.

The 2009 reforms

The new Victim Support package announced in June 2009 provides assistance to both male and female victims of trafficking. The Program is demand driven based primarily on case referrals from the AFP (Australian National Audit Office 2009). It has ‘the aim of providing appropriate social support, promoting independence and financially supporting victims at a level similar to existing income support programs’.⁴⁴¹

The Program is divided into the following phases:

- **Assessment Stream** – intensive support for up to 45 days to all identified victims of trafficking irrespective of whether they are willing or able to assist police. If the person does not have a valid visa, they can be granted a Bridging F visa for 45 days. This provides an extended recovery period and time for victims to assess their options. Victims have access to the following support as needed: secure accommodation; a living allowance; a food allowance; an amount for the purchase of essentials such as clothing and toiletries; access to health care, including counselling; access to interpreters; and access to legal services.

⁴⁴⁰ United Nations High Commissioner for Human Rights 2002, *Principles and Guidelines on Human Rights And Human Trafficking* E/2002/68/Add.1.

⁴⁴¹ Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

- **Extended Assessment Stream** – provides access to up to a further 45 days support for victims of trafficking who are willing, but not able, to assist with an investigation and prosecution of a people trafficking offence. Before 1 July 2009, victims who were not able to assist with an investigation and prosecution of a people trafficking offence were assisted to return to their country of origin, unless they could satisfy criteria of another visa enabling them to remain in Australia. Under the new arrangements, victims of trafficking who are willing, but not able, to participate in the criminal justice process may be eligible for up to 90 days support under the Program (45 days support under the Assessment Stream and 45 days support under a new Extended Intensive Support Stream). This extended period of support will be provided on a case-by-case basis and is designed to provide additional assistance to victims suffering from medical conditions like trauma. If the suspected victim of trafficking does not hold a valid visa, a second Bridging F visa for up to 45 days may be granted.
- **Justice Support Stream** – less intensive support until the investigation and prosecution of a people trafficking matter is finalised. In the Justice Support Stream clients have access to the following support as needed: Special Benefit, Rent Assistance and a Health Care Card administered by Centrelink (if needed and if they meet eligibility requirements); assistance with securing longer-term accommodation; assistance to purchase essential furniture and household items; access to the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme; access to legal services and interpreters; assistance to obtain employment and training (including English language training) if desired; and links to social support; and
- **Temporary Trial Support Stream** – intensive support (similar to that provided under the Assessment Stream) for victims who return to Australia to give evidence pertaining to a ‘trafficking in persons’ prosecution. Recipients are entitled to short-term accommodation and a weekly living and food allowance.

There is also a 20-day transition period of support for victims leaving the Program.⁴⁴²

The Commonwealth Office for Women administers the Program, which is delivered by the Australian Red Cross. Individual case managers are allocated to possible trafficking victims when they enter the Program and they arrange the appropriate delivery of support services to meet clients’ individual needs:

This includes such things as assisting them to establish social and community supports, to obtain legal, migration, financial and other advice, and counselling and medical support. Dependent children living with a parent who is on the Program receive indirect support, as the case manager may assist with arranging child-care or schooling, or accessing parenting support. The Program also offers access to English language and skills-based training to facilitate clients’ rehabilitation and reintegration with the community whether they return home or stay in Australia after they leave the Program.⁴⁴³

⁴⁴² Information provided in Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁴⁴³ Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

The new victim support package, in addition to the other visa related reforms introduced in 2009,⁴⁴⁴ have generally been well received by investigators, support staff and anti-trafficking activists.⁴⁴⁵ In particular, removing the link between victim support and giving evidence in criminal cases, at least in the initial stages of the process, has been seen as a major step forward (Burn 2009). Since January 2004, 141 people have received support under either the previous or present support programs, and 51 are currently receiving support (as at 28 September 2009). Sixteen have been victims of labour trafficking outside of the sex industry.

The Program has provided support to both male and female victims of trafficking, though the great majority have been women (nine men and 132 women in total). No male clients were identified in the sex industry. Australian police have not received any credible referrals of child victims trafficked into Australia since the Government's anti-trafficking strategy was established in 2003. The majority of identified trafficking victims to date have been located in New South Wales.⁴⁴⁶

Victims as witnesses – The need for protection and support

The need for protection

Protecting the victim prior to and during the period of giving evidence in trafficking prosecutions is seen increasingly as an essential area of victim support. Part Two of the Palermo Protocol mandates the adoption of measures and procedures for the protection of trafficking victims. Criticisms, however, have been made that the stipulations in the Protocol are 'in rather vague terms that do not place strong obligations on State Parties'. There are also few remedies available where states do not incorporate such protections into their domestic laws:

Clauses in Part II frequently begin with or contain permissive language, such as 'shall endeavour to', 'shall consider', 'shall give appropriate consideration', and '[i]n appropriate cases and to the extent possible under domestic law'. This drafting approach obviously grants State Parties considerable flexibility to determine how and to what extent victim protection measures are established within that state, but also permits State parties to take no action in this respect. During negotiations for the *Trafficking in Persons Protocol*, there were discussions about creating mandatory protection and assistance provisions. This was decided against, as a result of concern over the cost that would be imposed by mandatory requirements, particularly on developing countries (Schloenhardt 2008, pp.27–28).

Fear of testifying without adequate support

Not surprisingly many trafficked women are fearful of the process and consequences of appearing as a witness in a criminal prosecution. On the basis of international experience it would seem that in countries where comprehensive support is offered, victims are more likely to cooperate with the authorities in long, complex and arduous trafficking investigations and prosecutions. For instance, Project Respect's submission to a Commonwealth Parliamentary *Inquiry into Trafficking of Women for Sexual Servitude*

⁴⁴⁴ See discussion in Chapter 7.

⁴⁴⁵ Information provided in Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, October 2009.

⁴⁴⁶ Although such reforms do not go far enough according to some commentators who would like to see visas given to trafficked women no matter what the circumstances. See discussion in Chapter 7.

drew attention to British research suggesting that only a small minority of victims testify in trafficking cases in countries where few protections are offered. The rest apparently ask to be deported, preferably within 48 hours, apprehensive that the traffickers will think that they have given evidence against them, and carry out threats made to themselves and their families (PJCACC 2004).⁴⁴⁷

The need to support victims during the investigation

Another problem raised by victim support services was that trafficking investigators questioned victims too soon after their initial 'rescue'. Whilst acknowledging that investigators may have good reasons for wanting to move quickly to interviews, for many victims, most of whom would be frightened and confused about their situation, the interview process is long and arduous: 'Case managers feel they need time with victims to help clarify their situation before interviews commence. They feel this may assist with the quality of the information given in initial interviews' (David 2008a, p.59).

Recognising these concerns the AFP changed its approach to delay initial interviews where appropriate to up to a week. This practice was formalised in the 2009 reform package whereby trafficked persons may be given a temporary period of 'rest and reflection' before they are required to assist the authorities with their investigations.⁴⁴⁸

The need to support victims during prosecutions

Concerns about supporting victims as witnesses are not only relevant in the context of the investigation stage; they also apply to the witness/victim appearing in court. Victims of trafficking '[w]ill be understandably reluctant to give evidence if this means being identified by the media or standing up in a public courtroom, often in view of their exploiter and talking about traumatic personal experiences' (Gallagher & Holmes 2008, p.333).

Victim impact statements

Supporters of trafficked women have also expressed concern that there is insufficient provision for victim impact statements to be given by Commonwealth witnesses in

⁴⁴⁷ This preference to return to the country of origin has been particularly noticeable in countries where the 'support services' consist of placing victims in shelters. In some cases these shelters have little to distinguish them from forcible detention camps or prisons. In some cases basic services such as food, hygiene and accommodation have been of poor quality. In addition, the woman's freedom of movement has been seriously restricted arguably in contravention of United Nations principles, although the Palermo Protocol is silent on this point.

In Thailand for example, some women 'are afraid of the shelters provided for victims of trafficking and prefer to be deported as illegal immigrants rather than identify themselves as victims' (Kneebone 2009, p.10).

The United States State Department in its most recent *Trafficking in Persons Report* has commented that detaining trafficking victims in shelters or other forms of 'detention' is 'bad practice' and victims should be removed from such detention and placed in appropriate care facilities as soon as possible (US Department of State 2009, p.35).

For a more detailed discussion of the issues and problems associated with placing trafficked women and children in government or non-government run shelters see Gallagher and Pearson 2008 and Segrave, Milivojevic and Pickering 2009. The latter source is particularly insightful for its discussions of such shelters in Serbia.

⁴⁴⁸ See discussion in Chapter 7.

trafficking trials.⁴⁴⁹ This was a recommendation of the PJACC in its ‘Inquiry into the trafficking of women for sexual servitude’ in 2004. A supplementary report of that Committee in 2005 regretted that this still had not been implemented.

However information provided to this Committee by the Commonwealth Attorney-General’s Department claims that in fact there is provision to take into account the experiences of trafficking victims when sentencing their perpetrators. The general sentencing principles contained in section 16A(2) of the Commonwealth *Crimes Act* provide that, in addition to any other matters, the court must take into account where relevant and known to the court, the personal circumstances of any victim of the offence, as well as any injury, loss or damage resulting from the offence.⁴⁵⁰

It would seem however that the use of impact statements is not mandatory or as of right in such cases.⁴⁵¹

New initiatives

Along with its general reformed victim support package introduced in 2009, the Commonwealth has introduced some new initiatives in the way victims as witnesses are supported. Whilst the Commonwealth does not have a Charter of Victims Rights as found in some state jurisdictions,⁴⁵² the Commonwealth Director of Public Prosecutions (CDPP) does have a Victims of Crime Policy and Code of Conduct which it uses when dealing with victims of federal crimes, including trafficking.⁴⁵³ Moreover, according to a submission to this Inquiry, a substantial amount of Commonwealth funding has been allocated to provide training to develop prosecutors’ skills when dealing with victims.⁴⁵⁴

Finally, in November 2008 the CDPP commenced a Pilot Witness Assistance Service employing one full-time Witness Assistance Officer, based in Sydney:

⁴⁴⁹ Part 1AD of the *Crimes Act* 1914 (Cth) (the Act) currently provides protections for children in court proceedings for sexual offences, including offences of trafficking, slavery, sexual servitude and child sex tourism.

‘These protections include: alternative methods of giving evidence (for example, closed circuit television, the presence of a support person or the exclusion of people from the courtroom); protection from inappropriate or aggressive cross-examination; and prohibitions on publishing names of complainants without the leave of the court’ (Information provided in correspondence to the Drugs and Crime Prevention Committee by Dr Dianne Heriot, Commonwealth Attorney-General’s Department, Canberra, 30 April 2010).

⁴⁵⁰ Information provided in correspondence to the Drugs and Crime Prevention Committee by Dr Dianne Heriot, Commonwealth Attorney-General’s Department, Canberra, 30 April 2010.

⁴⁵¹ In order to better protect all victims of trafficking in court, the Standing Committee of Attorneys-General has established a Working Group on Evidence to consider, among other things, the development of model provisions for the protection of vulnerable witnesses, including all victims of trafficking. The Working Group is likely to consider model provisions based on the protections currently available in Part 1AD of the Crimes Act with regard to child witnesses.

The Drugs and Crime Prevention Committee understands that the Working Group is also examining the issue of victim impact statements.

⁴⁵² Although Mr Brendan O’Connor, the Minister for Home Affairs, flagged such a Charter as a possibility when commenting on the 2009 reform package. A Standing Committee of Attorneys-General Working Group is examining these and other issues as a way of improving the coordination and standard of support services available to victims. See Attorney-General’s Department 2009c.

⁴⁵³ A Senior Legal Officer, Commonwealth Department of Public Prosecutions (NSW), Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 1 December 2009.

⁴⁵⁴ Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

The Witness Assistance Officer is available to provide information and some support to victims or witnesses of Commonwealth crimes prosecuted by the CDPP. This may include providing information about the court process, providing a court familiarisation. The CDPP has also developed materials for victims and witnesses that explain the criminal justice system and their place in it. These materials are available on the CDPP website.⁴⁵⁵

Repatriation, reintegration and resettlement

Not all women who are the victims of trafficking want to assist the authorities to prosecute their traffickers. They may not even self-identify as victims. Nor do they necessarily want to stay in the destination country. As David states: ‘One person’s rescue from exploitation is another person’s interrupted contract of employment with ramifications for capacity to repay debt and support a family’ (2008a, p.3). Repatriation to the country of origin may therefore be voluntary as well as involuntary.⁴⁵⁶ Whatever the motivation, it is no doubt true to state that:

‘For the majority of victims of trafficking, regardless of whether they have progressed through the criminal justice system, repatriation to the country of origin is the unavoidable final outcome of state policy responses’ (Gallagher 2005 in Segrave 2009b, p.252).⁴⁵⁷

In both cases it is the responsibility of the Commonwealth government in conjunction with government and NGOs in the country of origin to repatriate the victim and assist her with resettlement.

Fear of reprisal

In repatriating a woman to her country of origin, the issue of possible ‘reprisals’ needs to be taken into account. Article 18 of the United Nations High Commissioner for Refugees (UNHCR) Trafficking Guidelines states:

⁴⁵⁵ Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁴⁵⁶ In legal terms repatriation is to be distinguished from deportation. In the former case it is seen as a (benevolent) way in which the state assists the non-citizen to return to the country of origin, usually ‘voluntarily’. Often material assistance will be provided to achieve that end. Segrave (2009b), however, implies that in effect most people would realise their return to the country of origin is a ‘legal necessity’. For further discussion of repatriation in this context and particularly criticism that the repatriation process ensures the ‘responsibility of destination countries begins and ends at the border’ (2009b, p.258) see Segrave 2009b and Yea 2004.

⁴⁵⁷ For a critical account of the concept of repatriation when it applies to trafficking victims, see Segrave, Milivojevic and Pickering 2009 (Chapter 6). The authors argue that repatriation is almost always framed as a process where the women not only desire to return home but also need to do so in order to ‘rehabilitate’ and recover. The unspoken assumption is that for a person to become ‘rehabilitated’ she must leave the sex industry. Women who do take up opportunities to learn new skills disassociated from sex work are characterised as true or ideal victims of sex trafficking (2009, pp.178, 191).

From the destination country’s perspective repatriation is a ‘symbolic and figurative relinquishing of any further duty towards victims of trafficking’ (2009, p.161). It is seen as a highly benevolent act on the destination country’s part and a desired outcome for the victim. However, once the woman is returned home there is a significant gap between the rhetoric of well intended processes and the lived experience once home. Most significantly, any responsibility for recovery or resettlement assistance by source or destination countries is always temporary. State programs do little to assist in any meaningful way women with long-term integration into their societies (Segrave, Milivojevic & Pickering 2009).

Trafficked women and minors may face serious repercussions after their escape and/or upon return, such as reprisals or retaliation from trafficking rings or individuals, real possibilities of being re-trafficked, severe community or family ostracism or severe discrimination (UNHCR in McSherry & Kneebone 2008, p.80).

Whilst some women may prefer to return to the country of origin rather than be involved in criminal justice proceedings, others may have good reason to fear the consequences of returning home. There may be fear of individual traffickers when the 'deal' falls through, particularly if a debt is still outstanding, and/or fear of the ostracism they might suffer from friends, family or society at large, particularly in countries where sex work is illegal or socially frowned upon. Therefore careful investigation is required when repatriating victims – 'The safety of victims upon return is a live issue in light of their experiences' (Kneebone 2009, p.20).

Australian repatriation and reintegration programs

Whilst repatriation is the act of returning victims to their home countries, reintegration involves assisting them when they return to their communities. Many Australian repatriation and reintegration programs aimed at resettling trafficked women in their countries of origin are administered through the government agency AusAID, often in conjunction with NGOs in both Australia and the source country.

For example, AusAID has funded a number of return and reintegration programs in the Asia region. Many of these were delivered in conjunction with the IOM.⁴⁵⁸ AusAID also supports a number of NGO projects that aim to prevent trafficking and assist victims:

These include the World Vision 'Assistance, Support and Protection for Migrant and Trafficked Women and Children' project in Burma-Thai border areas (2005–2011) and 'Mekong Delta Regional Trafficking Strategy 2' (2008–2011) which focuses on child trafficking; UNICEF's 'Children in Need of Special Protection' (2005–2009) in the Philippines, that includes protection of children from trafficking; and Union Aid Abroad APHEDA 'Trafficking Prevention & Support for Returned Trafficked Women' in Vietnam (2007–2009).⁴⁵⁹

AFP and consular officers posted to overseas missions also work closely with local government and NGOs to provide support to trafficking victims returning home.

⁴⁵⁸ Two important projects recently completed are the Regional Pilot Project for Returning Victims of Trafficking from Australia to Thailand (*Thai Returnees Pilot Project*) and the *Return & Reintegration of Trafficked Women & Children Project*.

The *Thai Returnees Pilot Project* provided support for Thai victims of trafficking identified in Australia, by encouraging them to seek reintegration assistance in Thailand. Australian funding was directed to strengthening information dissemination and peer support networks; improving access to vocational training and job-referrals; and providing access to legal services.

The *Return & Reintegration of Trafficked Women & Children (Phase II)* aimed to develop sustainable support mechanisms and structures for the identification, return, recovery and integration of victims of trafficking, in and between selected countries of the Mekong region (Thailand, Cambodia, Vietnam, Burma and Lao PDR). Australia's contribution assisted in strengthening the capacity of government agencies and NGOs in Lao PDR and Burma. This included the capacity to cooperate nationally and across borders, between sending and receiving countries, on issues related to return and integration of victims of trafficking. (Information provided in Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.)

⁴⁵⁹ Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

This may include the management of victims providing evidence as witnesses in Australian trials.⁴⁶⁰

The 'push down pop up' phenomenon⁴⁶¹

Finally, some women may return to the country of origin but soon after are prepared to be re-trafficked back to the same or a different destination country. In some cases the 'rescue and rehabilitation model' clearly fails women, particularly in countries 'where vulnerable persons have limited options to earn sustainable incomes' (McSherry & Kneebone 2008, p.82).⁴⁶² For example, a community outreach worker told the Committee that searching for alternative vocational opportunities for trafficked women, whether they stay in Australia or return overseas, can be 'a little tricky'. Such women, particularly if they have been earning relatively good incomes as sex workers, '[didn't] want to be rescued and [didn't] want to learn to sew again' (Healy 2009, p.54).⁴⁶³

Evidence to a Commonwealth Parliamentary *Inquiry into Trafficking of women for Sexual Servitude* also indicated that re-trafficking of women was a real possibility. One witness to the Inquiry from the AHRC noted that many women working on second or subsequent sex contracts in Australia may well have been re-trafficked:

From my contacts in South East Asia, in the Mekong region particularly, it appears that a lot of the women are not able to be successfully repatriated on the programs that are available because they do not really lead to any general increasing acceptance of the women repatriating to their home communities. So there is really no place for them when they go back (PJCACC 2004, p.19).

⁴⁶⁰ The AFP liaison officers in Bangkok have played an important role to ensure provision of support and assistance to suspected victims of trafficking returning to Thailand. This involves close cooperation between the AFP liaison officers and the Thai Department of Social Welfare and Development. In many cases, the suspected victim of trafficking has not wanted their family to know about their experiences in Australia so their situation has had to be carefully managed. Victims' security is also a critical issue; traffickers have recruited the victim, so they know exactly where she and her family live (Attorney-General's Department 2009c, p.41).

Project Respect told the Committee that the AFP also have more informal networks set up with NGOs in countries such as South Korea to be able to support women who return to that country. Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 5 November 2009.

This indirect form of assistance may be particularly important, as sex work is illegal in that country and women could be at risk of arrest if accessing assistance through official government channels.

For further details of AusAID assisted reintegration and repatriation programs see People Trafficking and Child Exploitation – Australia's Aid Program Response, Accessed at <http://www.ausaid.gov.au/country/peopletraffick.ctm>, 17 August 2010.

⁴⁶¹ The term is that of Phil Marshall and Susu Thatun (Marshall & Thatun 2005).

⁴⁶² Segrave, Milivojevic and Pickering argue that women's groups working independently of government reintegration programs are critical of official repatriation and resettlement programs such as those run by the IOM:

'Predominantly the criticism levelled at state funded reintegration programs that worked within the IOM model was that they are founded upon a narrow characterisation of trafficking victims. In part, ...this results in an investment in support and training programs that are of limited relevance' (2009, p.182).

⁴⁶³ Healy was speaking in the context of 400 sex workers in Cambodia who had gathered to protest against some anti-trafficking resettlement measures they did not see as being in their best interests.

Mr Lance Bonneau of the IOM gave similar evidence to the Drugs and Crime Prevention Committee. He said that whilst Australia has a good reputation in terms of its repatriation programs this cannot guarantee that re-trafficking will not happen.⁴⁶⁴

An investigator from the AFP told the Commonwealth Committee that the risks of re-trafficking were particularly acute in cases where the victim was deported rather than repatriated. As deportees they were not eligible for even minimal support before, during or after their return to the country of origin.

Partly in response to these concerns, the Commonwealth Committee recommended that all women accepted onto the victim support program be exempted from compulsory return to the country of origin.

Supporting victims of trafficking in Victoria

A number of witnesses to this Inquiry stated that the support and protection of trafficked victims is one area in which the Victorian state government, local municipalities and state NGOs can play a useful role in what is otherwise largely an area of Commonwealth jurisdiction. Indeed the 'Victorian Government became the first Australian jurisdiction to introduce a victim support program' when it funded Project Respect, the first community agency established to support trafficked women (David 2008a, p.3).

Victim support agencies

Today, a variety of organisations and services work at state level to supplement the support provided by the Commonwealth Office of Women through the Australian Red Cross. These include both generalist and specialist services. Generalist services such as organisations that provide housing or other forms of material support, sexual assault and domestic violence services, community legal centres and refugee advice centres all play an important role in addressing the needs of trafficked victims.

However it is specialist agencies that have the most involvement with and therefore awareness of the needs and problems facing women trafficked into sexual servitude. Project Respect based in Melbourne is the chief of these.

Project Respect

Project Respect is a non-profit community-based organisation that aims to empower and support women in the sex industry including women trafficked to Australia.

⁴⁶⁴ Mr Lance Bonneau told the Committee: 'It's very difficult [for a trafficked woman] to go back to a job that may not have as much income [as sex work]. So some of them, even though they had suffered abuse and exploitation, have thought, well next time I know better. I won't let this happen again. But unfortunately, we know from IOM and our experience working with trafficking that all too often it will happen again' (Mr Lance Bonneau, Senior Regional Programme Development Officer, IOM (Canberra), Meeting with Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009).

Ms Kathleen Maltzahn founded the organisation in 1998 to conduct outreach to women in the sex industry. Since 2000 it has provided intensive support through activities such as outreach, counselling, education assistance, referrals for legal and financial support, and social activities for peer support and relaxation.

In 2003 Project Respect spearheaded a national campaign to encourage the Australian government to recognise people trafficking as a problem in Australia and to respond to it. This campaign resulted in the Government providing a \$20 million counter-trafficking package announced in October 2003.

Since then Project Respect, with some financial assistance from the Victorian Government, has continued its outreach to women in the sex industry and has also contributed to policy formation, legislative reform and research to benefit women, including trafficked women into the sex industry. In 2004 Project Respect established a training program that offers regular training on trafficking for law enforcement agencies, government departments and NGOs.

Providing comprehensive victim support services

In providing services to trafficked women, Project Respect believes the most effective programs are ‘wraparound’ services that ensure comprehensive service delivery and referral.⁴⁶⁵

These programs recognise the need to provide individualised services to women; not every woman will require the same level of assistance. These services contain (but are not limited to) the following types of assistance:

- housing;
- psychological and social support;
- medical support including health checks and care;
- legal advice and support;
- immigration advice and counsel;
- education, including language classes and vocational training.⁴⁶⁶

Furthermore, Project Respect believes that a rights-based approach in supporting trafficked women is integral to an effective victim support system: ‘Support programs that respect the rights of trafficked women (such as freedom of movement) and avoid further victimising actions are effective mechanisms to foster empowerment and recovery’.⁴⁶⁷

Project Respect also works in conjunction with other agencies to provide adequate support to women in the sex industry, including trafficked women. This support includes access to accommodation, health care, legal support, compensation, and alternative employment pathways:

The services for victims of trafficking are highly individualised, meeting multiple and complex needs. The work is time and resource intensive, requiring hundreds of

⁴⁶⁵ The International Organization for Migration (IOM) has published a comprehensive handbook on support for victims of trafficking, *Handbook on direct assistance for victims of trafficking*, 2007b.

⁴⁶⁶ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁴⁶⁷ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

hours, in order to most sensitively support traumatised women. Support includes assisting women meet immigration lawyers and apply for visas; accompanying women to appointments with police and lawyers; support with civil law matters, such as victims of crime compensation or child custody hearings; finding long-term stable accommodation; accessing material aid; referrals to specialist sexual assault counselling; undertaking education and training courses, including English classes; going to the doctor and negotiating the Australian health care system; and social and recreation activities.⁴⁶⁸

Project Respect also runs a small refuge for trafficked women who have left the trafficking situation.⁴⁶⁹ This fully furnished apartment in a secret location can accommodate four women at any given time who on average may stay for a period of four months. All women resident at the support accommodation are offered the services of a caseworker to provide intensive case management support.

Project Respect believes it is essential that good referral networks operate for trafficked women once they have been removed from the trafficked situation:

Referring these women to the relevant services is the first step in the women's rehabilitation and recovery process, be they victims of sexual exploitation, exploitation within the marriage process or labour exploitation.⁴⁷⁰

⁴⁶⁸ Project Respect *Annual Report* 2008-2009, p.13.

⁴⁶⁹ This is the only such service in Victoria. In New South Wales the Salvation Army runs a shelter for trafficking victims of all types, including labour trafficking. The shelter is a 10-bed refuge where victims can stay up to one year receiving a variety of material and other supports and services. For further information see Martin 2008.

A network of similar services has been established in Britain to support women trafficked into that country. These include the *Poppy Project*, which since 2003 has been providing accommodation and other support services to trafficked women. It has 54 beds available for trafficked women in houses throughout the UK. Women are allocated a senior support worker on arrival at a safe house who will coordinate a range of specialist support services offered to the woman. These include:

- Provision of a food/subsistence allowance;
- A health and needs assessment;
- Registration with a GP in order to receive any necessary medical treatment;
- Access to counselling services;
- Access to education and English classes;
- Integration and/or re-settlement support including, where applicable, support with the voluntary return scheme;
- Education sessions covering areas such as equal opportunities, welfare benefits and healthy relationships;
- Help contacting family and friends;
- Support accessing legal advice, including information relating to immigration status and applications for asylum;
- Liaison with police and immigration services; and
- Risk assessments and safety planning.

(Accessed http://www.eaves4women.co.uk/POPPY_Project/Accommodation_and_Support.php 10 May 2010)

The Tara Project (Trafficking Awareness Raising Alliance) performs a similar role in Scotland. (See <http://www.saferglasgow.com/services/reducing-violence-against-women/tara.aspx>)

⁴⁷⁰ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

Project Respect therefore recommended to the Committee that at state level a referral mechanism should be implemented whereby all persons or organisations involved with a trafficked victim become part of a multidisciplinary referral network. The aim of such a network would be to easily link a trafficked victim into a particular service (sexual assault, housing, counselling etc). Thus if a trafficked woman came to the attention of the Victoria Police, the officer would know immediately where to refer that woman for comprehensive support and assistance.⁴⁷¹

Other support services

Another organisation offering a support service is The Salvation Army, which initiated a brothel visitation program in Victoria in 2008. The program involves visits to 20–30 brothels regularly around Melbourne and its suburbs by seven teams of The Salvation Army volunteers. The primary aim of the program is to ‘establish contact with women in the sex trade and offer support and services that might be of help to them’.⁴⁷² In doing so the program’s workers have noticed indicators of the presence of trafficked women in some of these brothels. They then try and support these women whilst they are still in the brothel and/or after they have left.

The support group Australian Catholic Religious Against Trafficking (ACRATH) primarily works as a lobbying and awareness raising/education group in the area of anti-trafficking. However, in conjunction with the Australian Red Cross, it also provides a level of accommodation,⁴⁷³ welfare, court and witness support and other forms of personal support to women who have been trafficked.⁴⁷⁴

RhED, the support agency for Victorian sex workers, also offers support, advice and assistance to all sex workers, some of whom may have been trafficked. Through their outreach programs they may be more readily able to access brothels. As such they can provide medical, immigration or financial advice to women, including women who may have been trafficked. Organisations such as the IOM have acknowledged the value of sex worker organisations such as Scarlet Alliance, RhED or Sex Workers Outreach Project (SWOP) in Sydney in disseminating information to potentially trafficked women, particularly with regard to possible vocational and training opportunities available to the women in the countries of origin should they wish to be repatriated.⁴⁷⁵

There are also agencies that, although not exclusively dedicated to assisting trafficked women, provide valuable support services in conjunction with other organisations such as the Australian Red Cross and Project Respect. These include the Centre for Sexual Assault (CASA) (sexual violence), Foundation House (torture and trauma related issues)

⁴⁷¹ These types of referral networks operate on a national level in Europe. See submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009 and the discussion in Chapter 16.

⁴⁷² Submission of The Salvation Army (Australian Southern Territory) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁴⁷³ Groups such as ACRATH and the Australian Red Cross have told the Committee that whilst the types of government shelter found in countries such as Thailand or South Korea discussed earlier in this chapter are not necessarily ideal, there is nonetheless a real problem in accessing alternative forms of accommodation for trafficked women once they leave the trafficked situation. Beds are few in community refuges and trafficked non citizens are not eligible for public housing. Therefore many trafficked women may have to find accommodation in the commercial rental market or in substandard hotels.

⁴⁷⁴ Submission of ACRATH to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁴⁷⁵ Lance Bonneau, IOM, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

and the Fitzroy Legal Centre/Refugee and Immigration Legal Centre (provision of legal advice and representation).

Exit strategies

Numerous people working directly with trafficked women stressed to the Committee the need for funded programs that will assist trafficked women to leave the sex industry if they so wish.⁴⁷⁶ A United Nations Association of Australia (UNAA) submission, for example, raised the possibility of deriving funding for exit programs from registered brothels' licence fees.⁴⁷⁷

Much of the discussion on the provision of 'exit programs' for sex workers, however, has taken place in the context of the overall sex industry. For example, a recent research report commissioned for Consumer Affairs Victoria (CAV) identified the need for better vocational training, education and opportunities for sex workers to leave the industry at a time of their own choosing.⁴⁷⁸ Some of the employment and vocational paths identified in the CAV report included ongoing study, learning computing or business skills, various trades such as hairdressing, hospitality or horticulture and professional courses including teaching, social work and nursing. One exit path that was commonly raised for some sex workers was the possibility of a 'sideways' move to a managerial or administrative position within the brothel they had worked in or another part of the sex industry.⁴⁷⁹

Whilst the opportunities for trafficked women, particularly those who are not citizens, are probably fewer than those of resident Australian sex workers, it has nonetheless been recognised that alternative opportunities are needed specifically for trafficked women to rebuild their lives once they have left the sex industry.⁴⁸⁰ Such opportunities are important whether the women stay in Australia temporarily whilst any criminal

⁴⁷⁶ Some commentators have been more critical of the idea of 'exit strategies' arguing that in many cases inappropriate alternative training or employment is offered to women from the sex industry in exchange for cooperating in trafficking cases and/or being repatriated back to the country of origin. These 'lures' need to be distinguished from situations where women genuinely want to leave the sex industry. See, for example, Segrave, Milivojevic & Pickering 2009.

⁴⁷⁷ Submission of the UNAA (Victoria Chapter) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

⁴⁷⁸ *Working in Victorian Brothels*, an independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector. Prepared by Sharon Pickering, Jane Maree Maher and Alison Gerard. Monash University, June 2009. Accessed at [http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines_2/\\$file/CAV_Monash_Report_Brothels.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines_2/$file/CAV_Monash_Report_Brothels.pdf)

RhED, the support organisation for Victorian sex workers, has recently applied for funding to establish a case management program for women who are contemplating or planning to leave the sex industry.

⁴⁷⁹ *Working in Victorian Brothels*, an independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector. Prepared by Sharon Pickering, Jane Maree Maher and Alison Gerard. Monash University, June 2009. Accessed at [http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines_2/\\$file/CAV_Monash_Report_Brothels.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines_2/$file/CAV_Monash_Report_Brothels.pdf)

⁴⁸⁰ In Sweden, providing a comprehensive raft of support services to trafficked women is seen as a 'right' once those women have 'escaped' prostitution:

'On a structural level, Sweden recognises that to succeed in the campaign against sexual exploitation, the political, social and economic conditions under which women and girls live must be ameliorated by introducing development measures of, for example, poverty reduction, sustainable development, and social programs focusing specifically on women...including counselling, education and job training' (Ekberg 2004, pp.1189, 1192).

proceedings are pending or occurring, on a longer-term basis after having been granted residency, or after having being repatriated to the country of origin.⁴⁸¹

Skills and vocational programs

NGOs have been instrumental in developing and implementing various alternative skills and vocational programs for women removed from trafficking situations. For example, Project Respect has recently received seed funding to establish a 'Noodle Bar' staffed by former trafficked women and ACRATH is keen to support micro-financing projects for trafficked women both here and overseas. Ms Christine Carolan of ACRATH described some of these projects when she gave evidence to the Committee:

We have been involved with barista training, because in Thailand people are really interested in coffee now. There are little coffee carts in Bangkok. Information technology is a really big skill that a young woman can go into, as is language training. We are also really interested in how we can support micro-finance so that people can decide what their own community needs and then get into it.⁴⁸²

The Good Shepherd Community Circle does similar work throughout Asia. Sister Suzette Clark of ACRATH described their work to the Committee:

The Good Shepherd Sisters are a religious congregation that have in various countries in Asia developed community circles where they provide the goods for people to engage in various forms of handcrafts. They buy them back at a legitimate price and then they bring them into Australia and sell them at a legitimate price here.⁴⁸³

These programs may not always solve one of the key obstacles preventing women from taking up alternative means of livelihood, namely the need to send a lot of money home to immediate and extended families. Nonetheless, according to community workers, something as basic as English lessons or a TAFE vocational course can serve as an important first step in providing a better life for these women and by extension her family back home.

Captain Danielle Strickland of The Salvation Army believes that an exit strategy needs to be a composite intervention to address all the needs of the trafficked woman, material, physical and spiritual. Thus whilst job retraining is essential so is secure housing and, most importantly, emotional support. Above all exit strategies need to be comprehensive yet flexible.

⁴⁸¹ In Thailand for example the Foundation for Women, an NGO working in conjunction with the IOM, provides a variety of alternative vocational and training supports to Thai women who have returned to their home country after having been trafficked overseas. These may include apprenticeships in hairdressing, cooking or Thai massage or involve training in numeracy and literacy, business studies or computing skills. Micro-financing projects to allow former trafficked women to establish cottage industries have also been considered. See <http://www.womenthai.org/eng/index.htm>

In South Korea, women placed in shelters for trafficked persons are given 18 months of vocational training, counselling and support to enable them to make new lives for themselves outside of sex work. Given the illegality of sex work in Korea it is seen as absolutely crucial that alternative career paths are available to these women. (See Evidence of Professor Sheila Jeffreys given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009).

⁴⁸² Ms Christine Carolan, Executive Officer, ACRATH, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Public Hearing, Melbourne, 6 November 2009.

⁴⁸³ Sister Suzette Clark, ACRATH, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Sydney, 30 November 2009.

Crimes compensation

In some jurisdictions a victim of trafficking may be entitled to financial redress as part of a state funded compensation fund for victims of crime. Most trafficking and sexual servitude crimes in Australia are Commonwealth based. Even states such as Victoria that do have an offence of sexual servitude on their statute books in most cases will refer cases of trafficking to the AFP. The federal government, however, does not have a national system of crimes compensation for Commonwealth crimes. This is in part because most Commonwealth offences are offences against the Crown, in other words the Commonwealth is the victim. It is therefore up to the individual states and territories to decide whether trafficking is to be included as an eligible offence under state compensation schemes.⁴⁸⁴

Compensation rarely awarded

To date New South Wales is the only state that has awarded compensation. This was in the case of Jetsadophorn ('Ning') Chaladone, a young woman who was trafficked to Australia from Thailand at the age of 13 ostensibly to work as a nanny. On arrival she was made to work in a brothel in Sydney as a sex worker.⁴⁸⁵ Whilst the brothel owners were never prosecuted, the New South Wales Victims Compensation Tribunal upheld Chaladone's claim. The post-traumatic stress disorder and severe depression she had suffered as a result of her experiences as a trafficking victim were among the reasons she was awarded compensation.⁴⁸⁶

A number of submissions to this Inquiry have argued that trafficked victims should be able to access material assistance, including compensation, but that currently the obstacles are too difficult. Whilst there is the possibility at state level that victims could seek a compensation order under sentencing legislation, this would be dependent on the compensation being linked to another committed crime such as sexual assault. As yet no orders have been made consequent to a conviction for sexual servitude in state law and it is unclear as to whether Victorian courts would or could make an order subsequent to a federal trafficking charge being heard in the state jurisdiction. Although Belinda Lo, solicitor with the Fitzroy Legal Service has stated that arguably there is nothing in the *Victims of Crime Assistance Act 1996* that precludes a person from applying for compensation if the categorisation of the criminal act falls within Commonwealth or State jurisdiction.⁴⁸⁷

⁴⁸⁴ As discussed in Chapter 8, although federal offences trafficking cases are for the most part heard in state courts where state laws and procedures governing the trial will apply.

⁴⁸⁵ 'Ning's' story was the subject of a 2005 documentary *Trafficked*, which also examined the case of Ms Puangthong Simaplee, who died in immigration detention in Villawood (Sydney) in 2001. The director of the film, Mr Luigi Acquisto, travelled to Thailand to track down Ning, accompanied by a Chris Payne, a former AFP investigator involved in anti-trafficking operations in the early 1990s. The men found Ning, who by then was 25, married and with a young son.

⁴⁸⁶ See Debeljak et al 2009; Natalie Craig, 'Sex slave wins abuse claim', *The Age*, 29 May 2007, p.4.

⁴⁸⁷ Ms Lo states further that in the Fitzroy Legal Service's opinion VOCAT applications should be available to anyone who has suffered an injury from a violent criminal act that has occurred within Victoria. Whilst the act of violence has to have had occurred in Victoria, arguably the injury does not need to have occurred in Victoria:

'It is arguable that trafficking for the purposes of sex slavery, will, by its very nature be a criminal act that involves violence. It is possible that other Commonwealth crimes may not include violence, and therefore, not be eligible under the Victims of Crime Assistance Act'.

Information supplied by Ms Belinda Lo, Solicitor, Fitzroy Legal Service in correspondence with the Drugs and Crime Prevention Committee, 3 May 2010.

Given these legal uncertainties, the Australian Human Rights Commission has argued that:

The UN Trafficking Protocol requires Australia to ensure trafficking victims are offered the possibility for obtaining compensation...We need to consider the need for new avenues for trafficked persons to obtain compensation. To date, (July 2008) prosecutors have not sought orders for reparations from convicted offenders.⁴⁸⁸

The anti-trafficking support group ACRATH also submits that crimes compensation should be more readily available to victims of trafficking, pointing out that the Chaladone case in New South Wales depended on a former AFP investigator personally seeking compensation on Ning's behalf. Whilst the officer's campaign was admirable, '[c]rimes compensation should come automatically to any person trafficked into Australia and not be reliant on the generous intervention on the part of a concerned Australian who understands the system'.⁴⁸⁹

Ms Fiona David remarked that if women came to this country to earn money because of family obligations and desperate poverty in the country of origin then compensation can be really important.⁴⁹⁰

Problems in obtaining compensation

Professor Jennifer Burn argues that one of the reasons few claims for compensation may have been made is that people who could be entitled to compensation lack sufficient information about the visa options available to them to pursue compensation or civil remedies. It is essential therefore, that culturally appropriate information on changes to the visa system introduced in 2009 is made available to trafficking victims and their advocates (Burn 2009).

Recognising the need for trafficked women in Victoria to obtain compensation, the Fitzroy Legal Service (FLS) based in Melbourne has worked with a small number of trafficked women on a variety of claims in conjunction with support agency Project Respect. The FLS is endeavouring to obtain crimes compensation in two cases currently before the Victorian Victims of Crime Assistance Tribunal (VOCAT). FLS argues that:

[f]ear of retaliation by their traffickers has prevented our trafficked clients from reporting their situation to police. While it is not a requirement under the VOCAT Act that applicants provide evidence of their report to police, it is our experience that it is virtually impossible to make a successful VOCAT claim in the absence of a police statement. If an application is submitted without a police statement, the Tribunal will require reasons why the applicant has not reported the incident to police. It is a concern that trafficked women who do not feel comfortable or safe to report their experiences to police will be disadvantaged because their applications may not include a police statement.

⁴⁸⁸ 'Slavery in 21st century Australia – A Human Rights Issue', Speech by the Sex Discrimination Commissioner, Elizabeth Broderick, Australian Human Rights Commission, 16 October 2008, Accessed at http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008. This speech was provided to the Drugs and Crime Prevention Committee by the AHRC in lieu of a formal submission.

⁴⁸⁹ Submission of the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁴⁹⁰ Ms Fiona David, Research Consultant, Meeting with Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

In these circumstances, the Tribunal will need to make a determination on whether the evidence our clients have provided is sufficient to constitute a crime of violence pursuant to the legislation. In the cases that FLS deals with, our clients have only confided in Project Respect workers and trusted counsellors about the history and nature of the trafficking. Hence, there are limited forms of evidence that our clients can rely upon to support their VOCAT application. This could jeopardize their abilities to claim compensation under this legislation.⁴⁹¹

FLS argues that because of these factors VOCAT should be empowered to immediately accept a trafficked victim's application if she can have a supporting report from a specialist organisation that deals with trafficking issues (such as Project Respect) or sexual assault issues related to trafficking (such as CASA):

If these organizations were formally recognized as specialist services to assist the Tribunal in matters of VOCAT trafficking matters, this would also ensure that victims of trafficking receive appropriate support whilst being assisted by the VOCAT process. We would also support these organizations being funded with additional resources to be able to undertake this specific work.⁴⁹²

Another impediment to trafficked women getting compensation may be the 'character test' under section 54 (a) of the *Victims of Crime Assistance Act 1996* (Vic). FLS argues that under this section a person's character (including past criminal activity) is a consideration for Tribunal members in determining whether or not to make an award of assistance (or in determining the amount of assistance awarded).

As trafficked victims may have been living in Australia on illegal visas, it is theoretically possible that such factors could be used to the detriment of the victim. FLS recommends that 'the Tribunal's requirement to consider a person's character in terms of past criminal conduct be at least waived in circumstances where the applicant is a victim of trafficking'.⁴⁹³ If such a change was to be made however, FLS believes it is essential that VOCAT members are sufficiently aware of the issues facing trafficked women whose applications they might determine.

Private suits in the civil courts

Another way in which a trafficked victim can seek financial reparation is through the civil courts. Actions could theoretically lie in negligence, false imprisonment or even breach of contract. No cases have been brought in Australia to test whether such claims are actionable. In the United States, however, federal courts have ordered traffickers to pay restitution awards totalling more than USD 4.2 million.

The United States courts and the government can also order forfeiture of any proceeds from or material possessions involved in the trafficking crime. The *Trafficking Victims Protection Act* allows victims to sue traffickers for both compensatory and/or punitive damages (US Department of State 2009).

⁴⁹¹ Submission of the Fitzroy Legal Service to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁴⁹² Submission of the Fitzroy Legal Service to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁴⁹³ Submission of the Fitzroy Legal Service to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

Gallagher and Holmes argue that whilst restitution and compensation remedies such as these are globally still very rare ‘there is a clear trend toward making [these remedies] a legal and practical possibility’ (2008, p.331).

Conclusion

Clearly it is paramount to implement strategies that will prevent and reduce trafficking. It is equally essential that once trafficking has occurred the perpetrators be brought to justice. But as sex trafficking is a crime against humanity it is also imperative that strategies to support the victims of this crime in meaningful ways are put in place. More importantly such support must be accessible, individualised and delivered in ways that women, many of whom will speak little English, can understand.

Anti-trafficking activists argue that strategies to support trafficked victims should be based on what a trafficked woman really wants and needs rather than what a bureaucrat may think is in her best interests.

Victim support services must be not only comprehensive but also of high quality. This is important not only because of any humanitarian imperatives but also for conducting an effective investigation into sex trafficking cases and successful prosecutions.

Recommendation

The Committee recommends NGOs be encouraged and resourced to establish and further develop (in cases where already happening) exit strategies to support trafficked women wanting to leave the sex industry. Such a program would be aimed at providing such women with alternative skills and employment. (*Recommendation 19*)

Recommendation

The Committee recommends that the proposed Sex Industry, Regulation, Policy Coordination Unit encourages and resources the development of exit strategies and programs for women who wish to leave the sex industry, particularly trafficked women. (*Recommendation 20*)

It is envisaged the Sex Industry, Regulation, Policy Coordination Unit would perform this role in conjunction with sex industry advocacy organisations and relevant NGOs that support trafficked women.

Recommendation

The Committee recommends that the Sex Industry, Regulation, Policy Coordination Unit assesses and monitors these exit programs to ensure best-practice models are followed. *(Recommendation 21)*

Recommendation

The Committee recommends that the Victorian Government establish appropriately funded refuges for trafficked women in Victoria.

The Committee believes that The Salvation Army Safe House in Sydney could serve as an appropriate model. (Recommendation 22)

Recommendation

The Committee recognises that victims of trafficking need comprehensive assistance and support.

Therefore the Committee recommends that relevant NGOs working with trafficked women be further resourced to provide appropriate services to trafficked women including but not restricted to:

- free legal assistance to be able to assist trafficking victims in acknowledgement of the complexity and seriousness of legal issues that a trafficking victim faces;
- counselling;
- safe and appropriate accommodation;
- medical, psychological and allied health assistance;
- material support;
- education and training opportunities; and
- outreach services, including those of a culturally appropriate nature.

Such assistance should take into consideration where appropriate the victim's age, gender, educational level, English language proficiency and any special needs. *(Recommendation 23)*

Recommendation

The Committee recommends that any person found to have been a victim of trafficking in Australia be eligible for crimes compensation under the relevant state compensation scheme. (*Recommendation 24*)

The Committee believes that a person's 'character' not be a crucial reason to disqualify a victim from receiving crimes compensation if this relates to criminal misconduct as a result of the trafficking experience. For example, that a person's status as a sex worker per se or behaviour such as drug taking as a result of her experience should not be a sufficient a priori reason to disqualify her from receiving compensation.

Recommendation

The Committee recommends that the use of victim impact statements in all cases of sentencing be adopted in Commonwealth crimes involving sex trafficking. (*Recommendation to the Commonwealth 3*)

16. Sex Trafficking: The Need for Coordination of Policy and Services

Introduction

Since the ratification of the Palermo Protocol ten years ago and its adoption by Australia four years later, the issue of human trafficking has become increasingly prominent. This has resulted in a number of various government and non-government agencies (NGOs) working to address and combat the sexual trade in women. As such it is crucial that there be coordination of these strategies and approaches to avoid duplication and/or unnecessary gaps in service delivery. A submission from Project Respect argues in this regard:

Considering the complexity of the crime of trafficking in persons and the diverse and multiple needs of victims of trafficking, formal, structured collaboration between government and non-government agencies is essential.⁴⁹⁴

However, the Committee heard on many occasions that whilst there are many good initiatives, programs and interventions aimed at eradicating or reducing the problem of human trafficking, too often they are uncoordinated, with different agencies or units responsible for various aspects of addressing the issue. It appears this may be a problem at international, regional and local levels (Gallagher & Holmes 2008; Moskowitz 2008; Australian Institute of Criminology (AIC) 2009c).

There are a number of different methods of formalising collaboration at international, national and local levels. These include the use of treaties, regional agreements, consultative bodies, interdepartmental committees, and/or memoranda of understanding. To what extent such governance arrangements are successful in achieving an effective and coordinated approach to preventing sex trafficking, prosecuting the traffickers or supporting their victims is unclear. Particularly as few comprehensive evaluative studies have been undertaken in this area.

Global and regional coordination

On a global level there have been many laudable initiatives aimed at preventing and addressing the international market in women and children for sexual servitude, particularly as a result of member states becoming signatories to the Palermo Protocol. Yet concerns have been expressed that the lack of an overall international coordinating body meant 'much duplication and little exchange between individual agencies [was] occurring' (Piper 2005, p.214).

Despite this reservation, the United Nations Special Rapporteur on Sex Trafficking has recognised that a number of important initiatives have been developed resulting from bilateral or multilateral agreements in recent years. As a consequence countries have agreed to a variety of measures to share information and cooperate in the fight against human trafficking:

⁴⁹⁴ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

These include agreements between neighbouring countries as well as between sending, transition and destination countries. Importantly, in a number of instances, law enforcement agencies from different countries work together under the auspices of bilateral agreements. Specific procedures have to be agreed on, in a country-by-country context. However, trafficking will only be fought successfully, if “we work in partnership, across borders and across all parts of society” (United Nations (UN) General Assembly 2009, p.21).⁴⁹⁵

In a promising development the Special Rapporteur has committed to using her office to enhance cooperation with other existing mechanisms at international and regional levels such as the African Commission on Human Rights, the Inter-American Commission on Human Rights, Asian regional consultative bodies and the Council of Europe and European Union mechanisms.

Furthermore, the Special Rapporteur will ‘work together with Governments, national human rights institutions, intergovernmental organisations and specialised agencies to promote cooperation and concerted action at international, regional and national levels’ (United Nations (UN) General Assembly 2009, p.21).⁴⁹⁶

At a regional level a number of initiatives have been implemented to coordinate approaches to combating sex trafficking. These include establishing coordinating bodies such as the United Nations Inter Agency Project on Human Trafficking (UNIAP). UNIAP was established in 2000 with a central focus on trafficking in persons and a mandate to facilitate a stronger and more coordinated response to trafficking in persons in the Greater Mekong Sub-region.⁴⁹⁷

Similar consultative bodies have been established in other regions. In Europe these include those brokered by the Organisation for Security and Cooperation and the Council of Europe (OSCE). The OSCE has developed a set of standards to be used by member states in establishing national referral mechanisms on trafficking (NRM). Project Respect claims the NRM process is highly valuable in coordinating actions and processes to combat sex trafficking:

The OSCE has developed a national referral mechanism handbook, which defines such an NRM as ‘a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society’. NRMs provide guidance on how to identify victims of trafficking; set up a referral network; and provide an institutional framework of multidisciplinary participation to exchange information, maintain understanding and expertise about trafficking, and monitor and evaluate the NRM and its constituents.

⁴⁹⁵ The Special Rapporteur was quoting from the President of the United Nations General Assembly’s statement to the General Assembly Special Thematic Debate on Human Trafficking, New York, 3 June 2008.

⁴⁹⁶ The Special Rapporteur was quoting from the President of the United Nations General Assembly’s statement to the General Assembly Special Thematic Debate on Human Trafficking, New York, 3 June 2008.

⁴⁹⁷ <http://www.no-trafficking.org>

UNIAP is the only inter-agency coordinating body on human trafficking of its kind within the United Nations system.

The development of an NRM requires a process of collaboration between relevant anti-trafficking agencies, elaboration of a memorandum of understanding governing cooperation, and a monitoring council and coordinator.⁴⁹⁸

In Africa, the African Union's Ouagadougou Action Plan to Combat Trafficking in Human Beings has coordinated anti-trafficking projects across the region. In the Asia-Pacific region, regional organisations and arrangements such as the Asia Regional Trafficking in Persons Project (ARTIP), the Co-ordinated Mekong Ministerial Initiative against Trafficking (COMMIT) and the Bali process have also done valuable work in streamlining approaches to reducing sex trafficking within the region.⁴⁹⁹

Notwithstanding these initiatives, some people working in the field continue to express concerns about a lack of regional coordination amongst NGOs and between NGOs and government agencies (Brown 2007). As discussed in Chapter 3, this is particularly the case with regard to establishing effective information dissemination and data collection mechanisms.

National coordination

The national response to sex trafficking into Australia has been relatively streamlined since the National Anti Trafficking Plan (the Action Plan) was implemented in 2004. Prior to that date and Australia's ratification of the Palermo Protocol, the response was relatively ad hoc and uncoordinated.

Organisational issues

An early Commonwealth Parliamentary *Inquiry into Trafficking of Women for Sexual Servitude* in 2003 found that the existing organisational arrangements to combat trafficking were inadequate. During that Inquiry the Commonwealth implemented its first National Action Plan to Combat Trafficking in Women and established an Interdepartmental Committee on Trafficking (IDC). Whilst the Plan at that time was embryonic and the IDC had not been long established, the Inquiry nonetheless found that even these reforms '[do] not include any centralised authority or responsibility for implementing the anti trafficking measures and the role of the interdepartmental Committee is not clearly defined' (Parliamentary Joint Committee on the Australian Crime Commission (PJCACC) 2004, p.ix). The PJCACC was somewhat sceptical of this form of 'management by Committee'. In particular it stated that the problem with these organisational arrangements was the 'absence of any single officer who is ultimately answerable for the Commonwealth government response to the trafficking of women'

⁴⁹⁸ The Council of Europe also established the Convention on Action against Trafficking in Human Beings in 2005. This promotes collaboration between organisations and authorities in and between Member States in trafficking prevention, victim identification and protection, and trafficking investigations and prosecutions. Project Respect also lauds this as an example of best practice in coordinating complex processes at a regional level:

'The monitoring and evaluation and reporting mechanisms (implemented by the Group of Experts on action against trafficking in human beings [GRETA]) is an effective tool to foster the development of sustainable and best-practice efforts to tackle trafficking and support those who have been trafficked. The Convention ensures a shared common standard between States Parties in combating trafficking, and allows greater regional specificity in the Convention than only adhering to the United Nations Protocol' (Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009).

⁴⁹⁹ See discussion in Chapter 7.

(PJCACC 2004, p.32). It consequently recommended formalising organisational arrangements through the creation of a charter. It was suggested the charter include:

- A statement of the IDC's formal responsibility for coordination issues
- A statement setting out its authority to issue recommendations to any relevant authority to address defects in the system
- A requirement that the IDC issue a response to matters referred to it within a stipulated timeframe (PJCACC 2004, pp.ix, 31–32).

The Government rejected these recommendations as being outside the remit of the Inquiry's Terms of Reference. It also stated that the existing IDC did not need to become more formalised:

Individual agencies are responsible for the delivery of their parts of the package. This structure does not mean that “the objective of a ‘whole of government approach’ may be undermined by the absence of any single final authority” or that “there is no-one responsible for making sure that the overall system actually works”. On the contrary, the structure ensures that the overall strategic direction of Australia's anti trafficking measures is carefully monitored, while agency experts implement individual components. Problems arising are taken up, when appropriate in the IDC. Solutions are developed and individual agencies implement them.⁵⁰⁰

Notwithstanding the rejection of the Inquiry's recommendation, the workings of the IDC and other coordination bodies have been streamlined and updated since the implementation of the Action Plan. The Parliamentary Committee recognised at that time that despite its criticisms it was probably too early in the history of the anti-trafficking Plan to make any final judgements (PJCACC 2004).

Since the Action Plan was implemented, the major organisational and institutional arrangements for coordinating the anti-trafficking response has been through the continued operation of the IDC,⁵⁰¹ with relevant agencies and departments responsible for the administration of individual components of the strategy. Thus, for example, the Office of Women will be responsible for the day-to-day administration of the Victim Support program whilst the Australian Federal Police (AFP) will have the primary role in investigation and operational policing (Attorney-General's Department 2009c).

A submission to this Inquiry stated that since the implementation of the Action Plan in 2004, the IDC in conjunction with individual agencies has endeavoured to continually improve monitoring and reporting mechanisms and organisational and operational measures under the Strategy.⁵⁰² To assist it in this task an Operational Working Group (OWG) was established.

The OWG is chaired on a rotational basis and meets periodically to discuss emerging operational issues including individual cases. Policy issues emerging from such discussions can then be brought before the IDC (Australian National Audit Office (ANAO) 2009).

⁵⁰⁰ Government Response to Recommendation 2 of the Parliamentary Joint Committee on the Australian Crime Commission, 'Inquiry into the trafficking of women for sexual servitude', 2004. Accessed at http://www.apc.gov.au/senate/committee/acc_ctte/completed_inquiries/2002-04/sexual_servitude/Gov_response/trafficking_of_women_for_sex_servitude.pdf, 15 April 2010.

⁵⁰¹ A discussion of the IDC and its current composition is given in Chapter 7 of this Report.

⁵⁰² Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

Moreover, to ensure that relevant community and other groups with a legitimate interest in addressing sex trafficking can contribute to the planning, coordination and governance of policy and service delivery the Government has convened a National Roundtable on People Trafficking (NRPT). This consists of IDC departmental representatives and a variety of NGOs with an interest in sex trafficking. The primary purpose of the NRPT is to establish a comprehensive consultative mechanism on trafficking issues, particularly newly emerging issues.⁵⁰³

The NRPT, as part of its role in coordinating a uniform approach to policy and programs, formed a subsidiary working group to develop guidelines for NGOs in dealing with trafficking victims.⁵⁰⁴ Prior to this initiative different NGOs may have been providing service delivery for trafficked victims in inconsistent and ad hoc ways. This comprehensive document was subsequently launched in 2009 and from all accounts has been well received.⁵⁰⁵

In 2009, an audit of the Action Plan and the institutional arrangements to coordinate Commonwealth responses was undertaken. Whilst overall the audit found 'the whole of government oversight arrangements are broadly effective in sharing information and making decisions' (ANAO 2009, p.14),⁵⁰⁶ there were some concerns expressed that these individual agencies responsible for service delivery under the Plan varied in their management effectiveness and their ability to meet objectives against their performance indicators.

State and local coordination

In Victoria there is no centralised or coordinating body or agency that addresses sex trafficking or associated matters. Victoria Police works in tandem with Commonwealth agencies such as the AFP or the Department of Immigration and Citizenship (DIAC) on the investigatory aspects of trafficking. State NGOs such as Project Respect provide victim support in conjunction with federal programs run by the Commonwealth Office for Women.⁵⁰⁷ Regulation of the sex industry and the locations where trafficked women may be found is the responsibility of a number of state and local government departments and agencies, most notably Consumer Affairs Victoria (CAV).⁵⁰⁸

Some evidence given to this Committee, whilst generally commending the efforts of law enforcement and government officials, has suggested therefore that a greater degree of coordination between local, state and federal authorities to address all aspects of sex trafficking is needed.⁵⁰⁹ For example, the Coalition Against Trafficking in Women

⁵⁰³ Submission of Joint Commonwealth Departments to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009. See also (Attorney-General's Department 2009c, p.35).

⁵⁰⁴ See 'Guidelines for NGOs working with trafficked people', a publication by the Working Group of the National Roundtable on People Trafficking, Accessed at <http://www.hreoc.gov.au/>, 18 September 2009.

⁵⁰⁵ See discussion in Chapter 15 for a discussion of the Guidelines.

⁵⁰⁶ It was acknowledged however that some aspects of the Plan were not audited or evaluated, including the Community Awareness Strategy (ANAO 2009, p.15).

⁵⁰⁷ See Chapter 15 for a discussion of victim support.

⁵⁰⁸ See Chapters 11 & 12.

⁵⁰⁹ One model that has been commended for its coordinated approach to addressing sex trafficking is that of the United Kingdom Human Trafficking Centre (UKHTC), which was formally opened in 2006. It is a multi-agency centre bringing together expertise from a number of disciplines as part of an Association of Chief Police Officers (ACPO)-led initiative. The responsibilities of the centre include all forms of trafficking in persons 'with the objective of improving and coordinating the law enforcement response to human trafficking' (United Nations Office on Drugs and Crime (UNODC) 2009, p.291). Additionally, a number of United

Australia (CATWA) stated: 'Greater collaboration and partnership with the Australian Government, the AFP, the Victorian Government and the Victoria Police would help to ensure an integrated coordinated response'.⁵¹⁰

Project Respect expressed similar concerns:

Project Respect believes, based on our experience as well as preliminary consultations conducted by the Springvale Monash Legal Service, that there is a lack of understanding and coordination between various agencies that may come into contact with victims of trafficking. This is a particular issue for the sex industry, where multiple agencies have jurisdiction for various responsibilities, and there appears to be an insufficient level of networking to support victims and to identify and prosecute traffickers and exploiters.⁵¹¹

To rectify this, Project Respect recommended that a state-wide policy or action plan be established to address sex trafficking at state level. There was agreement that such a plan should be accompanied by appropriate infrastructure such as a monitoring Committee. This could work in a similar way to the Commonwealth Roundtable which many community groups commended as an appropriate means to combine ideas on initiatives to address people trafficking and support the victims.⁵¹²

Coordination issues at operational level

It has been argued that at both state and federal levels a lack of coordination and/or cooperation between different authorities responsible for addressing sex trafficking can lead to a disjointed and ultimately ineffective approach in tackling the problem. For example, as was discussed in Chapter 8 there may be a divide between police and prosecutors each defending their own 'turf' in the conduct of a sex trafficking case, although this appears to be less of a problem in Australia than in some countries in the region, particularly in South-East Asia (Moskowitz 2008). Moreover, the recently formed Commonwealth OWG of the IDC may help in this respect.

Issues at Commonwealth level

At a Commonwealth level, research undertaken by Ms Fiona David for the AIC indicates that whilst individual AFP investigators have developed considerable experience and expertise, including how to work effectively with victims of trafficking, '[I]t is important that key lessons learnt are documented, so this can be passed on to newer investigators and to investigators in other parts of the country where there is no Transnational Sexual Exploitation and Trafficking Team [TSETT] unit'. She expressed a particular concern

Kingdom police forces have operational teams dedicated to the investigation of trafficking in persons. See <http://www.soca.gov.uk/about-soca/about-the-ukhtc>

⁵¹⁰ Submission of CATWA (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

A submission from The Salvation Army also stated in this regard:

'It is obvious to our volunteers that a coordinated approach is necessary. Intelligence, research, demographic studies and the like are all necessary in combating the realities of sex trafficking in Victoria' (Submission of The Salvation Army (Australian Southern Territory) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009).

⁵¹¹ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁵¹² See for example, Submission of The Salvation Army (Australian Southern Territory) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

that the AFP does not have a protocol or set of standard operating procedures that cover interviews or other interactions with victims of trafficking (David 2009c).⁵¹³

Issues at state level

Whilst acknowledging that the specialist units of the AFP generally do a commendable job in investigating sex trafficking at state level, several witnesses to the Inquiry believe the state policing response could be better focused and targeted.

An earlier Commonwealth Parliamentary Inquiry into sex trafficking in Australia heard that there were serious problems with regard to agency cooperation at a local/state operational level. This led to a form of ‘institutional myopia’ whereby each agency or department focused on its own particular task without addressing the problem of sex trafficking in a more holistic way. That Inquiry, whilst recognising that sex trafficking is a complex issue requiring interventions at international, national and state levels, warned that this lack of a coordinated response ran the risk of traffickers slipping through the ‘jurisdictional cracks’ (PJCACC 2004, p.34). For example, one problem area cited was the need for state law enforcement agencies to become aware of the potential existence of trafficked women in brothels and other locations where commercial sex is provided:

Since prostitution is legal in most states and territories in Australia, police no longer routinely enter or search brothels. They therefore rely on information from agencies, groups or individuals that do routinely go inside brothels to alert them to the possible presence of trafficked women. However, the evidence suggests that at least some of the time, the necessary cooperation and information sharing do not happen. In Victoria, for example, the Yarra Council gave evidence of the need for effective backup for Council officers (PJCACC 2004, p.33).

Whilst to a certain extent these problems may have been overcome, they have not been completely solved. Project Respect believes that in addition to a state-wide plan to oversee responses to trafficking, specific protocols between agencies are needed to ensure secure and timely flow of information and consequent actions.⁵¹⁴ As such they recommend that the Victoria Police should develop clear protocols regarding communication and collaboration with relevant NGOs. Such a protocol would be particularly useful in guaranteeing NGOs such as Project Respect access to brothels⁵¹⁵ for the purpose of their outreach and support work.

⁵¹³ David cited with approval the Victoria Police’s detailed *Code of practice for the investigation of sexual assault* as a model that could be adapted for trafficking cases. The aims of this code are to:

- ‘provide a coordinated approach to handling sexual assault cases by police, Centres Against Sexual Assault and other victim assistance programs
- increase the confidence of sexual assault victims and the public in the police management of sexual assault cases and minimise trauma experienced by sexual assault victims during the investigation and court process
- increase the apprehension of offenders
- maximise successful prosecutions’ (Victoria Police 2005 in David 2009c, p.68).

⁵¹⁴ To a certain extent this has been achieved through memoranda of understanding (MOU) with CAV, Victoria Police and the Municipal Association of Victoria (MAV). However it is too early to state how effective these are in practice.

⁵¹⁵ See Chapter 12 for a discussion of the problems associated with gaining access to brothels.

Project Respect argued that such protocols should be reviewed on a yearly basis to ensure that staff maintain awareness about trafficking and sexual servitude.⁵¹⁶

Other groups have argued that oversight of trafficking and sex work should be removed from CAV and that Victoria Police should have sole jurisdiction.⁵¹⁷ CATWA, for example, recommends establishing a specialist Victoria Police Crimes Unit to deal with trafficking and sex work. Such a unit may be able to liaise and coordinate more effectively with their federal counterparts and local NGOs.⁵¹⁸

Conclusion

The Committee believes there is a clear and close connection between sex trafficking and the legal and the unregulated sex industry. As such, it is the Committee's view that a specialist unit should be established which will have the responsibility for monitoring sex trafficking as part of its wider oversight role of the Victorian sex industry. The Committee therefore recommends that the Government should establish a whole of government 'Sex Industry Regulation, Policy and Coordination Unit', to be located under the responsibility of the Attorney-General in the Department of Justice.⁵¹⁹

Whilst the Committee does not consider that a specialist police unit is warranted in Victoria to address sex trafficking in this state, it does believe that trafficking in persons be regarded as a higher priority policing issue. Therefore dedicated officers within the Victoria Police Sexual Offences (Theme Desk) should be given responsibility to liaise with other members of Victoria Police, relevant state and Commonwealth government officials including AFP officers and the proposed Sex Regulation, Policy and Coordination Unit in operational and organisational matters pertaining to sex trafficking.

⁵¹⁶ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁵¹⁷ Currently CAV have put in place a MOU between their department, Victoria Police and the MAV, which provide some level of coordinated response and direction for jurisdictional responsibilities between the agencies responsible for the oversight of the sex industry and trafficking.

⁵¹⁸ See for example submission of CATWA (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

Similar criticisms as to a lack of a coordinated approach between Victoria and the Commonwealth were expressed in evidence by:

- Professor Susan Kneebone, Monash University
- Professor Jennifer Burn, Anti Slavery Project, Sydney
- Mr Charnderev Singh
- Ms Laura Beacroft and Ms Jacqueline Joudo-Larsen, Australian Institute of Criminology.

Ms Nina Vallins of Project Respect found this lack of cooperation and coordination was particularly noticeable with regard to victim support:

'[b]ecause it is an issue which crosses different responsibilities, different jurisdictions, I think there really needs to be collaboration between the different levels of government in terms of victim support... In terms of the trends in collaboration there is generally some kind of formal structure to govern collaboration and make sure that it is happening properly. I think that is another real issue here in Victoria. It has come through really clearly in our work that people do not always know who is responsible for what' (Ms Nina Vallins, Executive Director, Project Respect, Evidence given to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work. Public Hearing, Melbourne, 5 November 2009).

From a different perspective, people associated with the sex industry expressed similar concerns. See discussion in Chapter 12.

⁵¹⁹ For further discussion of the need for a coordinated approach in Victoria to address sex trafficking, see Chapter 12 of this Report.

Recommendation

The Committee recommends that the Government should establish a whole of government Sex Industry Regulation, Policy and Coordination Unit. The Office should be located under the responsibility of the Attorney-General in the Department of Justice. (*Recommendation 1*)

There is a clear and close connection between sex trafficking and the legal and unregulated sex industry. As such, it is recommended that the Sex Industry Regulation, Policy and Coordination Unit has the responsibility for monitoring sex trafficking as part of its wider oversight role of the Victorian sex industry.

Recommendation

The Committee recommends that the role of the Sex Industry Regulation, Policy and Coordination Unit should include:

- the regulation and monitoring of all aspects of Victoria's sex industry (brothels, escort services and all other registered sexual service providers)

Specifically with regard to sex trafficking the Unit's responsibilities should include:

- developing and implementing comprehensive sex trafficking policy advice for the Victorian Government;
- developing a community engagement strategy to indicate how the public, community organisations and sex industry members can have ongoing input into trafficking policy;
- liaising with federal and state agencies, sex industry NGO support and advocacy groups, professionals in the field, community agencies and media;
- disseminating information with regard to sex trafficking;
- developing and coordinating training programs on sex trafficking;
- developing and coordinating a research agenda and commissioning research on trafficking;
- developing in liaison with senior media representatives a protocol on the reporting of trafficking issues;
- liaising with and supporting local government and community agencies to develop responses to trafficking;
- implementing the advice and recommendations of the Trafficking Policy Advisory Group;
- identifying available resources and gaps in service delivery in order to plan a response to trafficking at both state and local levels;
- identifying key personnel and agencies in the community who have expertise in dealing with trafficking in order to establish a comprehensive referral and resource network;
- ensuring that trafficking in persons is also addressed within other state government policies, such as the State Plan to Prevent Violence Against Women; and the
- monitoring of sex trafficking exit programs. (*Recommendation 2*)

Relevant government agencies and department representatives that could be included in this Unit include Consumer Affairs, Human Services, Health, Women's Policy, Planning and Community Development, Victoria Police, Education, and representatives of local government such as the City of Melbourne, members of the Victorian Local Governance Association (VLGA) and the Municipal Association of Victoria (MAV). It is envisaged, as in the Commonwealth body, that the Department of Justice would take the lead role in coordinating and chairing the group.

Recommendation

The Committee recommends that the Sex Industry Regulation, Policy and Coordination Unit should establish and support an expert Sex Trafficking Advisory Group to provide ongoing formal consultation with government and non-government organisations, representatives from the sex industry, and other community groups. (*Recommendation 3*)

NGOs to be represented in the Advisory Group could include specialist organisations such as Project Respect, The Salvation Army and/or ACRATH, RhED/Scarlet Alliance as well as sexual assault centres, community health centres, community legal centres, housing service providers, migrants' services, etc.

Part 7 – The Way Forward

17. Concluding Remarks: Future Directions for Addressing Sex Trafficking – The need for targeted research

Introduction

This Report has demonstrated the complexity of responding to the issue of sex trafficking of women. The complexity arises for a variety of reasons.

First, there are many problems in identifying and investigating what by its very nature is a hidden and clandestine activity. The Committee found it is also an issue of which very few members of the Australian community are aware. Of those who are, their understanding may be based in myth, stereotype and misconception.

Secondly, there are problems associated with getting trafficked women to willingly cooperate with the authorities. This is particularly difficult given that many women have entered Australia illegally.

Thirdly, the issue of sex trafficking is complicated by the shame, stigma and taboo some sections of society direct towards the sex industry, in which trafficked women are placed.

Fourthly, developing policy and programs to address sex trafficking is complicated in this country by its cross-jurisdictional nature. The Commonwealth, Victorian and local governments all have different and overlapping roles and responsibilities with regard to people trafficking. It is therefore essential that a coordinated approach to policy development and service delivery is established.

Fifthly, addressing sex trafficking has become complicated at times by an unhelpful ideological divide between groups with polarised views on the issue and how to address it.

Similarly, in some jurisdictions a policy divide is apparent as to whether human trafficking should be viewed as a migration matter, a criminal justice problem or a human rights issue when in fact each of these approaches are important. Moreover, the way the problem is conceptualised can affect the policy responses to deal with the issue.

Finally, addressing sex trafficking is extremely difficult when there is a lack of data on the extent of the problem and insufficient knowledge of its nature, effects and consequences. Identifying and redressing the research gaps on human trafficking is a crucial component of any strategy to reduce its occurrence.

Researching human trafficking: The need for a better knowledge base

According to some commentators there are still huge knowledge gaps in what we understand about the issue of human trafficking (Piper 2005; Putt 2007; Segrave, Milivojevic & Pickering 2009). As the Director of the United Nations Office on Drugs and Crime (UNODC) recently stated in the *Global Report on Trafficking in Persons*:

Only by understanding the depth, breadth and scope of the problem can we address the issue of how to counter it. So far we have not attained much knowledge and therefore initiatives have been inadequate and disjointed. Policy can be effective if it is evidence based and so far the evidence has been scanty... We still lack a global understanding of [trafficking] and how its components interact to make the whole... (UNODC 2009, pp.6 & 7).

A major review of the existing research and literature on trafficking in South-East Asia and Oceania confirmed the findings of research in other regions that found:

Trafficking in human beings emerges as a complex phenomenon that requires multi-dimensional responses; despite its high and growing profile statistical data and precise figures do not exist; and although our understanding of the processes, dynamics and underlying causes of human trafficking has substantially improved, it remains largely fragmented (Piper 2005, p.205).

As has been previously discussed, 'accurate statistics on many aspects of trafficking persons to Australia are unavailable' (Australian Institute of Criminology (AIC) 2009c, p.2).⁵²⁰ This is not a problem unique to Australia; it is a global issue that has been recognised as such by the UNODC (2009). However, as the issue of data and quantitative research has been extensively covered in Chapter 3 this discussion is limited to an examination of other research gaps in addressing sex trafficking.

A goal of the Commonwealth Government's Anti Trafficking Action Plan is to foster a coordinated and comprehensive research agenda on trafficking into and between Australia and the region. To fulfil this goal it has recently funded the AIC to undertake research in the area.

Australian Institute of Criminology Trafficking in Persons Research Program

The AIC's Trafficking in Persons Research Program (the Program) was established in 2007. The overarching objective of the research program is 'to contribute to the effectiveness of the Australian and international response to trafficking in persons' (Attorney-General's Department 2009c, p.45). The Program is comprised of four key components:

- A quantitative data monitoring project
- Identifying and monitoring emerging trends in the Asia-Pacific region
- Targeted research projects on priority issues, and
- Activities to improve communications, collaborations and networking between the AIC and key stakeholders (Attorney General's Department 2009c, p.46).

There is obviously a need for better systems to collect quantitative data on sex trafficking, particularly to give some accurate estimates of the problem in Australia and the surrounding region. The AIC has undertaken an extensive research project to collate and monitor data on the extent and nature of sex trafficking in and to Australia. It is also seeking to conduct a number of qualitative research projects examining different aspects of human trafficking into Australia.

⁵²⁰ See Chapter 3.

The quantitative and qualitative data collected and recorded by the AIC will be ‘analysed on an ongoing basis and will add to knowledge of various aspects of trafficking in persons including awareness, attitudes, investigations, prosecutions and emerging issues’ (AIC 2009c, p.3). The AIC has also stressed the need to enter collaborative research agreements with regional and international partners who are also undertaking research into sex trafficking. The International Organisation for Migration (IOM) is a key example of an agency doing valuable work in this area.

The Committee welcomes this research and looks forward to the publication of the AIC’s findings over the next few years.

Independent research on sex trafficking

There have also been significant advances in research on sex trafficking undertaken by independent scholars in recent years.

A major research project recently initiated with regard to sex trafficking is that of Dr Andreas Schloenhardt and his research team at the University of Queensland Law School. The research project is titled *Trafficking in Persons and the Exploitation of Foreign Workers in the Sex Industry in Australia*. The specific objectives of this project are to:

- (1) Understand the level, patterns and characteristics of trafficking in persons, especially women and children, in Australia and examine the exploitation of foreign workers in the Australian sex industry and in other forms of forced labour;
- (2) Critically evaluate the legislative, regulatory, and policy responses of Australian governments at federal and state/territory levels in preventing human trafficking, protecting trafficked persons, and prosecuting traffickers;
- (3) Examine the impact of the legislation of the sex industry and (where applicable) the licensing of brothels on the status of foreign sex workers in Australia;
- (4) Explore and analyse international and regional initiatives relating to the prevention, protection, and prosecution of trafficking in persons;
- (5) Propose recommendations to enable Australia to more effectively prevent trafficking in persons and the exploitation of foreign sex workers, protect trafficked persons, and prosecute traffickers (Schloenhardt 2009, p.3).

The methodology of the project is described as follows:

This research into trafficking in persons and the exploitation of foreign workers in the sex industry in Australia involves the study of open source material, collaboration and personal interviews with policy and lawmakers, law enforcement agencies, and community groups, and case examinations. The project involves a comprehensive review of existing academic scholarship, analysis of legislative material, official publications by government sources and international organisations, close examination of reported case law, as well as systematic consultation with justice and attorney-general departments, law enforcement agencies, and regional and international organisations in this field (Schloenhardt 2009, p.4).

Academics from Monash University have also been active in researching issues pertaining to sex and labour trafficking into Australia. In particular the work of criminologists Dr Marie Segrave and Associate Professor Sharon Pickering has been notable for its focus on the human rights aspects of the trade in human beings in the Asia-Pacific region.⁵²¹

Current challenges in researching trafficking

At a global level there have been a number of problems identified with research commissioned and undertaken into human trafficking. An IOM global survey of existing empirical research on human trafficking highlighted some of the gaps and weaknesses. They included:

- Overemphasis on trafficking in women for sexual exploitation;
- Too few studies focusing on trafficking for labour exploitation;
- Lack of research on trafficking of boys and men;
- Lack of empirical research, particularly studies presenting the viewpoints of the victims;
- Too many studies with a short timeframe, low budget, and narrow focus to meet the needs of operational programmes;
- Small and non-representative samples;
- Too few evaluations of policy responses/counter-trafficking programmes;
- Lack of external process and outcome evaluations of assistance programmes;
- Lack of interdisciplinary studies;
- Lack of research capacity in developing countries
- Dispersed research findings, not easily accessible to policy-makers (IOM 2008, p.5).

Furthermore the authors argue that too much international research into trafficking has proceeded on the assumption that each country (source, transit or destination) has had the same sorts of issues, problems or profile when it comes to sex trafficking. This is clearly not the case; for example, the problems pertaining to trafficking in the countries of the former Soviet bloc are very different to those in the Asia-Pacific region:

Research on trafficking focused, for a long time, on the criminal and economic aspects of the issue. Certain methodologies for the study of trafficking were identified as best example and reproduced in different scenarios and countries. This “one size fits all” approach to trafficking research was convenient because it resulted in an increase of studies in countries where researchers lacked the specific knowledge and expertise. Yet, this approach to trafficking was often not able to reproduce the reality of the problem in the population studied because it did not take into account the specificities of the environment where the research was carried out, like the detailed decision making process and the context in which such decisions have been made. Therefore, the importance of taking into account the role of social values, norms and traditions in addition to the economic and criminal side of trafficking in order to produce studies representing the reality of trafficking in the regions studied is key (IOM 2008, p.13).

⁵²¹ Most recently Dr Segrave and Professor Pickering in conjunction with Dr Sanja Milivojevic of the University of Western Sydney have authored a comprehensive account of sex trafficking into and from three countries – Thailand, Serbia and Australia. See *Sex Trafficking; International Context and Response* 2009.

Putt argues that these research problems and the concomitant reasons for a dearth of knowledge on the dynamics of sex trafficking are also apparent in Australia:

Some of the research challenges are akin to the difficulties of investigating other 'hidden' crimes such as child abuse and domestic or sexual violence, while other challenges are commonly associated with research into all types of serious systematic, organised and trans-national crime (Putt 2007, p.5).

Putt has also identified a number of other research gaps regarding sex trafficking in Australia and the local region. Most notably these are:

- A lack of independent evaluation of policies and programs pertaining to trafficking, particularly those involving enforcement, prosecution and victim support services;⁵²²
- Little research into internal or domestic trafficking;
- A lack of information about those involved in trafficking in the region, particularly the factors that increase the risk of and facilitate exploitation (Putt 2007).

Future research

Notwithstanding a commitment from independent and commissioned scholars to ongoing research in the area of trafficking some commentators have noted that 'in spite of the growing interest in trafficking, the current knowledge base about this phenomenon is still exceptionally limited' (Segrave, Milivojevic & Pickering 2009, p.14). However, suggestions have been put forward for developing a comprehensive research agenda with regard to human trafficking.

In particular, a number of academics have stated that social science research in the area of sex trafficking: 'could better attend to qualitative accounts of the nature, extent and impact of sex trafficking, rather than the development of various [and often meaningless] numerical estimates' (Segrave, Milivojevic & Pickering 2009, p.204; See also Piper 2005).

Associate Professor Sharon Pickering of Monash University commented:

[Trafficking Research] also needs to evaluate the impact of state and non state responses to sex trafficking on women and to critically evaluate politically charged estimations of the extent and cost of sex trafficking. Critically research must remain vigilant in its rigorous scrutiny of 'guesstimates' and methodologies informing the various estimates of the size, nature and scope of sex trafficking and the kinds of interventions they enable.⁵²³

New areas of research

There have been a number of areas that have only recently gained prominence in social and political debates on sex trafficking for which research is required.

⁵²² See discussion later in this chapter.

⁵²³ Submission of Associate Professor Sharon Pickering, School of Political and Social Inquiry, Monash University. Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

For example, Project Respect expressed particular concern that insufficient research attention has been paid to the issue of trafficking for sexual servitude in marriage:

From our contacts in community health centres, domestic violence services, and housing organisations, we believe that trafficking for marriage is a significant problem, yet there is very little discussion about it. This may be a situation where a man has married a foreign woman under false pretences and brought her to Australia for the purpose of using her as his servant here; or has brought her to here to make money through illegally prostituting her against her will.⁵²⁴

Trafficking into ‘servile marriages’ is also an area that the AIC is interested in researching. This is pertinent given that *R v Kovacs*, one of the major trafficking cases brought before the courts in recent years, concerned a woman who had been brought to Australia, married under false pretences and effectively treated as a domestic slave.⁵²⁵

Other areas the AIC’s Trafficking in Person’s Research Program has targeted for future and ongoing research include:

- Community attitudes in Australia to trafficking in persons
- Trafficking in children
- Trafficking in the Pacific Region⁵²⁶ (AIC 2009c, p.72).

Participants to an AIC sponsored national research and data forum also identified the following priorities for future research:

- Examination of the reasons for which some victims of trafficking decline assistance to determine the precise needs of victims in these situations
- Examination of the national precursors to becoming a source country for trafficking in persons, with a focus on the Pacific region (AIC 2009c, p.72).⁵²⁷

These are also areas that will be taken up in the AIC’s research program.

Researchers from the AIC also identified other significant research gaps.⁵²⁸ One such area for their attention is that of the traffickers and their accomplices who perpetrate trafficking, and about whom little is known. Who are they? What are their motivations? Are they the same people who are responsible for people smuggling? As academic Ms Liz Kelly states ‘there is remarkably little in either research or more general literature on traffickers’ (Kelly in Segrave, Milivojevic & Pickering 2009, p.11). It is thought answers

⁵²⁴ Submission of Project Respect to the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, November 2009.

⁵²⁵ *R v Kovacs* [2008] QCA 417.

⁵²⁶ The lack of understanding of the extent and nature of sex trafficking in the Pacific Islands and region was spoken about when AIC researchers met with the Committee. They believed that certain vulnerabilities in the Pacific region including climate change and political tension and instability violence made such countries particularly susceptible to sex and labour trafficking, however insufficient research had been done in this area. (Ms Laura Beacroft and Ms Jacqui Joudo-Larsen, AIC, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.)

⁵²⁷ The AIC also saw as one of its major new research areas the need to shift the focus on trafficking into the sex industry only, to consider labour trafficking in a host of other industries. As sex trafficking however is the subject of this Inquiry, there is no need to examine the recommendations with regard to this priority any further. See generally AIC 2009c.

⁵²⁸ These research gaps were brought to the attention of the Committee when they met with AIC researchers in Canberra. Ms Laura Beacroft and Ms Jacqui Joudo-Larsen, AIC, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

to these questions might help inform strategies to address trafficking, however there are ethical and legal obstacles contributing to conducting comprehensive research on trafficking, not the least being access to both trafficked women and perpetrators.⁵²⁹

Researchers from outside the AIC have also called for research on the demand side of human trafficking. Too often source countries of trafficking have been better researched than the countries of destination where the demand is located, often because of United Nations and donor agencies funding priorities (Piper 2005). A focus on demand might require consideration of whether men who purchase, unwittingly or not, trafficked women have a responsibility for its existence and continuation. How do purchasers create the demand for women and children to be used as items of sale? (Hughes 2004).

Finally, in terms of examining the links between trafficking and the demand for sexual services, further research should be undertaken into the nature of the illegal brothel industry in Victoria and its relationship to the regulated sector. Some research commissioned by Consumer Affairs Victoria recently examined some of these issues. However, as the authors acknowledged, much still remains unknown about illegal sex work in Victoria, its relationship to legal sex work and the extent to which sex trafficking takes place in either domain.⁵³⁰

Evaluation

The need for evidence based interventions has been widely recognised and accepted by academics and policy-makers. But what counts as evidence based in turn depends on there being sufficient evaluative studies undertaken of policies, programs and projects to address trafficking (IOM 2008). A recent review of research into trafficking commissioned by the IOM found that:

The importance and need for more evaluation and assessment of counter trafficking programmes and initiatives is widely recognised. Evaluation and assessment should consider not only the impact of such programmes on the intended groups in reducing trafficking (or a particular aspect), but also the impact of prevention measures. Furthermore, there is a need to also consider the potential negative impacts of a programme (IOM 2008, pp.8–9).

Research into ‘what works and why’ with regard to different approaches to trafficking both here and overseas, particularly with regard to local level initiatives, is therefore essential. As Babor et al explain:

Evaluation research is necessary in order to measure whether the policy has any impact, and to provide a ‘reality-check’ to high expectations often attached to promising new initiatives in this area. Evaluation also needs to be ongoing. Evidence from one time period may not necessarily be applicable to situations emerging in another era. And evidence from developed countries may not always be applicable to developing countries. Furthermore, communities often want locally based evidence, or at least evidence that is close to home to justify their interventions rather than relying on dated findings from far afield. While there may be general agreement about the scientific support for a specific strategy, there may be doubt among policy-makers that these findings will apply to their jurisdiction (2004, p.98).

⁵²⁹ Ms Laura Beacroft and Ms Jacqui Joudo-Larsen, AIC, Meeting with the Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, Canberra, 2 December 2009.

⁵³⁰ See *Working in Victorian Brothels* 2009, an independent report commissioned by Consumer Affairs Victoria into the Victorian brothel sector, by Sharon Pickering, Jane Maree Maher and Alison Gerard.

Whilst Babor et al made these comments in the context of research into alcohol and drug use it is equally applicable to the area of anti-trafficking policy. Yet unfortunately, both at international and national levels, ‘very little work has been done on developing effective indicators for measuring change and progress’ in the context of anti-trafficking interventions (Gallagher & Holmes 2008, p.337).⁵³¹

Trafficked women’s stories

Much of the literature, especially on women trafficked for sexual exploitation, portrays the women as having little power in the process (IOM 2008). The IOM argues conducting trafficking research has the potential to empower victims of trafficking through incorporating their stories into their research studies. Future research should consider many women’s stories/voices that have hitherto, according to some commentators, been ‘silenced by a range of interlocutors who have sought to tell the “truth” of trafficking’ (Segrave, Milivojevic & Pickering 2009, p.204).

Research could be considered in which sex trafficking ‘could be more rigorously attendant to women’s diverse decisions to migrate, the means of doing so and the social, cultural, political and economic needs of women from developing nations’,⁵³² as described by these women themselves. A difficulty with such an agenda however is that many trafficked women would be reluctant for a variety of reasons, fear being not the least of them, to tell their stories. Piper argues that research on trafficking is rarely contextualised with other social problems ‘whose research encounters similar problems with regard to the production of data such as drug abuse, domestic violence or rape’ (2005, p.216).

The AIC recognised these problems with regard to their own research into sex trafficking. Putt articulated the problem of conducting research into an issue that has such a deleterious impact on the wellbeing of women. These are women whose lives may have been in some cases wretched long before the decision to come to Australia was made:

[Our] research did not include interviews with one particularly important group of people: victims of trafficking. This is an important gap in the research that will need to be carefully considered in future, so that legitimate concerns about individual privacy and security, and ethics in research, can be balanced against the real need to ensure that those who are most affected by this crime and the response – victims of trafficking – have an opportunity to contribute to the development of knowledge on this issue (Putt in AIC 2009c, p.iv).

⁵³¹ Piper implies that the research agenda and associated recommendations for interventions may be skewed depending on the philosophical/political standpoint of the authors. For example neo abolitionists may concentrate on the need to criminalise prostitution whereas liberationists may see the issue being that of promoting the rights of sex workers. She also states that questions need to be asked about the research process itself. For example, ‘is the research conducted by government departments, NGOs or academic institutions? Is the research conducted in source countries, host countries and/or donor driven’ (Piper 2005, p.209). As Piper states, the answers to these questions will have an impact on the way the issue is framed or defined and the interventions devised to address it. (See Piper 2005, p.209 and the discussion in Chapter 10 of this Report).

⁵³² Submission of Associate Professor Sharon Pickering, School of Political and Social Inquiry, Monash University. Drugs and Crime Prevention Committee, Inquiry into People Trafficking for Sex Work, October 2009.

Such is the dilemma of conducting research into an area as delicate as the global trade in human beings and the sexual commodification of women. Yet things may be slowly changing as courageous women *are* hesitantly coming forward to tell and share their stories with the Australian community.

Conclusion

Trafficking in human beings, particularly the sexual servitude of women, is no ordinary crime. It is not like trading in intangible commodities, in minerals or market produce. It is not even comparable to trading or trafficking in drugs or prohibited animal imports, notwithstanding the seriousness of such crimes.

Like slavery in nineteenth century America, the sexual servitude of women is an act that debases and cheapens the very worth of a human being. As such, it is important that ‘any strategy designed to prevent, disrupt and suppress trafficking in persons, actively assists victims and witnesses and removes common stereotypes, preconceptions and prejudices’ (Schloenhardt 2009, p.29).

Whilst investigating and prosecuting traffickers is clearly important and necessary, it is also essential that any strategies developed to address sex trafficking either at a national or state level have the human rights of the victim at their core. Only a response that addresses the violation of human autonomy and dignity felt by the victims of this present day form of slavery can redress the traffickers’ abuse of power.

**Adopted by the Drugs and Crime Prevention Committee
55 St Andrews Place
East Melbourne
24 May 2010**

Recommendation

The Committee recommends that a Research Advisory Panel on sex trafficking issues be established within the proposed Sex Industry Regulation, Policy and Coordination Unit. Such a panel should include relevant experts in the area from academic, government and community sectors. (*Recommendation 25*)

Recommendation

The Committee recommends that a research agenda and program be established to address sex trafficking into Victoria. This should be coordinated by the Sex Trafficking Policy and Coordination Unit and include input from the Research Advisory Panel as outlined in Recommendation 24. The research agenda should prioritise the research issues that have been identified in the practice and academic literature and also reflected in the expert opinion of those who gave evidence to this Inquiry. These include:

- the development of an independent, empirical evidence base to measure the extent of trafficking in Australia;
- community attitudes in Australia to trafficking in persons;
- trafficking in children;
- examination of the physical and mental health outcomes to determine the effects of the experience on victims and best practice responses;
- examination of the reasons for which some victims of trafficking decline assistance to determine the precise needs of victims in these situations;
- examination of the national precursors to becoming a source country for trafficking in persons, with a focus on the Pacific region;
- trafficking for the purposes of marriage and sexual servitude;
- the extent and circumstances of trafficking in women for sexual exploitation to and within Australia, and on women's experiences of trafficking; and
- evaluation of programs and policies developed to address (sex) trafficking. (*Recommendation 26*)

Recommendation

The Committee recommends that the Drugs and Crime Prevention Committee of the 57th Parliament of Victoria undertake an Inquiry into Human Trafficking for reasons other than sexual servitude. (*Recommendation 27*)

It has come to the attention of the Drugs and Crime Prevention Committee during the course of the current Inquiry that there is growing concern with regard to the nature and extent of other forms of human trafficking into Victoria, especially labour trafficking and trafficking for the purpose of marriage. Such concern has been expressed by witnesses to the Committee and is noted in the academic literature. As such, this Committee believes it is an area that warrants further consideration in the next session of the Victorian Parliament.

Appendix 1: List of submissions

Submission no.	Author	Date
1	Confidential submission	14 October 2009
2	<p>Human Trafficking Working Group, TC Beirne School of Law, University of Queensland</p> <p>Dr Andreas Schloenhardt Associate Professor / Reader University of Queensland</p> <p>Mr Lachlan Cameron Research Assistant University of Queensland</p> <p>Ms Genevieve Beirne Research Assistant University of Queensland</p> <p>Ms Isabel Dowe Research Assistant University of Queensland</p> <p>Mr Angus Graham Research Assistant University of Queensland</p> <p>Mr Jarrod Jolly Research Assistant University of Queensland</p> <p>Ms Sally Stubbington Research Assistant University of Queensland</p> <p>Ms Lisa Y Zhong Research Assistant University of Queensland</p>	22 October 2009
3	<p>Dr Dianne Heriot Assistant Secretary, Border Management and Crime Prevention Branch Attorney-General's Department, Criminal Justice Division</p>	22 October 2009
4	<p>Dr Tahmina Rashid Program Director, International Development School of Global Studies, Social Science and Planning RMIT University</p>	22 October 2009
5	<p>Ms Sheila Byard Convenor, Status of Women Network United Nations Association of Australia</p>	23 October 2009

Submission no.	Author	Date
6	Associate Professor Sharon Pickering Associate Professor, Criminology, School of Political and Social Inquiry Monash University	23 October 2009
7	Ms Elena Jeffreys President Scarlet Alliance	23 October 2009
8	Ms Kathy Chambers Member of Executive Committee Coalition Against Trafficking in Women Australia Dr Meagan Tyler Member of Executive Committee Coalition Against Trafficking in Women Australia Miss Natasha Rave Member of Executive Committee Coalition Against Trafficking in Women Australia Ms Kaye Quek Member of Executive Committee Coalition Against Trafficking in Women Australia Ms Andrea Main Member of Executive Committee Coalition Against Trafficking in Women Australia Ms Erin Richardson Member of Executive Committee Coalition Against Trafficking in Women Australia Ms Anna Jennings-Edquist Member of Executive Committee Coalition Against Trafficking in Women Australia Professor Sheila Jeffreys Member of Executive Committee Coalition Against Trafficking in Women Australia Ms Yunmi Lee Visiting member Coalition Against Trafficking in Women Australia	24 October 2009
9	Mrs Margo Kelly President Sorooptimist International	26 October 2009
10	Ms Bronwyn Byrnes Human Rights Commission	27 October 2009
11	Dr Marie Segrave Lecturer Monash University	27 October 2009

Submission no.	Author	Date
12	Sister Christine Carolan ACRATH Victoria	30 October 2009
13	Ms Nina Vallins Executive Director Project Respect	2 November 2009
14	Ms Robbi Chaplin Chief Executive Officer Inner South Community Health Service	23 October 2009
15	Ms Belinda Lo Legal Projects Officer and Solicitor Fitzroy Legal Service	30 October 2009
16	Ms Kathleen Maltzahn Chairperson and founder Project Respect	6 November 2009
17	Professor Sheila Jeffreys Professor of Political Science University of Melbourne	6 November 2009
18	Ms Jennie Rawther President National Council of Women of Victoria Inc	9 November 2009

Appendix 2: Witnesses appearing at public hearings

Hearings in Melbourne – 5 November 2009

Name	Position	Organisation
Professor Susan Kneebone	Deputy Director	Castan Centre for Human Rights Law
Ms Sandra Gibson	Team Leader RhED Program	RhED
Ms Carolyn Mogharbel	Health, Education and Support Worker	RhED
Detective Sergeant Murray Aldred	Industry Related Crime Theme Desk	Victoria Police
Detective Brett Guerin	Senior Researcher Crimes Group	Victoria Police
Ms Rena De Francesco	Crime Strategy Group	Victoria Police
Mr Craig Kenny	Director Community Programs	City of Yarra
Mr Ken Wolfe	Coordinator Planning Enforcement	City of Yarra
In camera		
In camera		

Hearings in Melbourne – 6 November 2009

Name	Position	Organisation
Ms Christine Carolan	Programs coordinator	ACRATH
Professor Sheila Jeffreys	Professor School of Social and Political Sciences	University of Melbourne
Dr Meagan Tyler	Academic RMIT	Coalition Against Trafficking in Women Australia
Miss Natasha Rave	Activist and PhD student University of Melbourne	Coalition Against Trafficking in Women Australia
Mr Charandev Singh		Independent
Ms Belinda Lo	Legal Projects Officer	Fitzroy Legal Service
Dr Marie Segrave	Lecturer	Monash University
Ms Kathleen Maltzahn	Founder of Project Respect	Independent

Hearing in Melbourne – 9 November 2009

Name	Position	Organisation
Dr Anne Gallagher	Technical Director	Asia regional trafficking in persons project

Hearing in Melbourne – 7 December 2009

Name	Position	Organisation
Captain Danielle Strickland	Social Justice Director Australian Southern Territory	The Salvation Army

Hearing in Melbourne – 1 February 2010

Name	Position	Organisation
Dr Claire Noone	Executive Director Consumer Affairs	Department of Justice
Ms Justine Tyrrell	Program Manager Consumer Empowerment	Department of Justice

Hearing in Melbourne – 22 March 2010

Name	Position	Organisation
Mr George Lekakis	Chairperson	Victorian Multicultural Commission
Ms Gabrielle Castellan	Manager Strategic Policy and Projects	Victorian Multicultural Commission

Appendix 3: Interstate meetings

Meetings in Sydney – 30 November 2009

Name	Position	Organisation
Associate Professor Jennifer Burn	Associate Professor University of Technology Sydney	Anti Slavery Project
Sister Suzette Clark	New South Wales Convenor	Australian Catholic Religious Against Trafficking in Humans
In camera Ms Maria McMahon		formerly of Sex Workers Outreach Project

Meetings in Sydney – 1 December 2009

Name	Position	Organisation
Ms Mary Lagana	Principal Legal Officer	Commonwealth Director of Public Prosecutions Sydney Office
Ms Gina Nott	Senior Legal Officer	Commonwealth Director of Public Prosecutions Sydney Office
Dr Christine Harcourt	Research Consultant	Independent
Ms Elena Jeffreys	President	Scarlet Alliance
Ms Julie Bates	Principal	Urban Realists
Ms Laura Vidal	Support Worker	Samaritan House The Salvation Army
Mr Andrew Miles	Sex Industry Liaison Officer	City of Sydney

Meetings in Canberra – 2 December 2009

Name	Position	Organisation
<i>Round Table</i>		
Dr Dianne Heriot	Assistant Secretary Border Management and Crime Prevention Branch Criminal Justice Division	Commonwealth Attorney-General's Department
Mr James Carter	Deputy Director	Commonwealth Director of Public Prosecutions
Commander Ramzi Jabbour	Manager Border Operations	Australian Federal Police
Dr Sally Moyle	Women's Branch Manager	Commonwealth Office for Women
Ms Jeanie Bruce	Director Employer Compliance and Trafficking Section	Department of Immigration and Citizenship
Mr Michael Outram	Executive Director Serious Organised Crime	Australian Crime Commission

Meetings

Mr Lance Bonneau	Senior Regional Programme Development Officer	International Organization for Migration
Ms Laura Beacroft	Research Manager	Australian Institute of Criminology
Ms Jacqui Joudo-Larsen	Research Analyst	Australian Institute of Criminology
Ms Lauren Renshaw	Research Officer	Australian Institute of Criminology
Ms Fiona David	Research Consultant	Independent

Appendix 4: Forums and conferences

Forums and conferences	Date
Monash University Castan Centre for Human Rights Law, Legal and Criminal Justice Responses to Trafficking in Persons in Australia: Obstacles, Opportunities and Best Practice (Workshop), held in Melbourne	9 November 2009
United Nations Association of Australia (UNAA) Status of Women Network & UNAA Victorian Division, Roundtable on Trafficking in Persons, held in Melbourne	6 October 2009
Project Respect seminar, Prostitution Control Act (1994): What's happened in 15 years?, held in Melbourne	20 October 2009
'Sex on Demand' seminar, The Salvation Army, held in Melbourne	19 May 2010

Appendix 5: Women's statements: An open message of thanks to the Justices of the High Court of Australia



A open message of thanks to the Justices of the High Court of Australia

On the 28th of August, in a 6-1 decision, the High Court found that brothel owner Wei Tang was guilty of five counts of using and five counts of possessing a slave.

On the 14th of November 2008, Project Respect ran a seminar with nine Thai and Chinese women who had been trafficked to Australia for prostitution, where Hui Zhou from the Fitzroy Legal Service outlined the key findings in the High Court judgement on the Queen v. Tang.

On the 15th and 16th of November, Project Respect had a weekend away for women in the sex industry, where the women who attended the seminar the previous day developed this shared statement. This is their message:

We make this statement in response to the 28 August 2008 High Court decision on the Queen v. Tang. We had the same experience as the women in the Wei Tang case.

What happened to us was a nightmare. We can never forget. It comes back to us in dreams. This will affect us til we die. It has changed us.

We were treated very badly. We worked from 11am to 3 or 4 am. We slept only three or four hours a night. Sometimes some of us worked for 24 hours. For four or five months, all we did was prostitution. Even when we had our period, we had to work. Sometimes we worked until we couldn't walk. We had to work until we were very very sick and the customers refused to take us. Only then were we allowed to rest, for one day.

Some owners were not so cruel, but even when they were friendly, they still treated us as slaves.

We were made to feel like animals. Customers were violent. Some of the customers were crazy. They treated us like animals. We were sexually abused, we were dragged, we were hit. Some of us were given drugs so we could work all the time. Some of the women we know have become drug addicts and now they have to keep doing prostitution to pay for drugs.

It was like we were in jail – we had no free time, we couldn't go anywhere, we never had freedom. The traffickers treated us as slaves. We didn't have anywhere to go.

It felt like we survived and died at the same time. We had to keep doing what the traffickers said, for ourselves, and for the people we loved. The traffickers threatened us – we were scared they would hurt us and our families. Some of us thought we could be killed. We blamed ourselves for what happened, because we had wanted to come to Australia.

This changed our lives.

After we had been trafficked, if we met a good man, some of us thought we didn't deserve to be with him, that he deserved someone better. Some of us knew we deserved better, than to be trafficked, but men we loved treated us badly and told us we were dirty and couldn't expect anything better. It was hard to speak when we were treated like that.

Before this High Court decision, we felt the public didn't know what happened to women like us and that they would judge us, and we felt that people like us didn't deserve anything better.

But just because we have been prostitutes doesn't mean we are not good people – we had no choice. We did this to survive.

www.projectrespect.org.au

PO BOX 1323 | Collingwood | VIC | 3066 | P: (+61 3) 9416 3401 | F: (+61 3) 9417 0833 | info@projectrespect.org.au
ABN: 41 909 510 696

Even if women chose to do prostitution, they shouldn't be treated this way.

When we were told about the High Court decision, we felt glad. We felt relieved, we felt released. Now we have walked out from the darkness. We can again have a good life, like we did before we came to Australia. We can start a new life now.

We feel now that people believe we are real and understand what we have been through. We feel that the High Court Justices respect and understand us. Because of what happened to us, we didn't trust people. Now it seems there are good people in the world. People outside have believed what happened to us. We feel more valuable.

We agree with the Justices when they say that the situation of the women in the Tang case was slavery. We feel good because the Justices say it doesn't matter what the women did – it was the agents' fault. What they did was slavery.

What should happen now?

We see that even though the government has laws, traffickers still find ways to bring women here. Because each of us has been hurt by slavery, we want to stop other women from being trafficked. We don't want other women to experience what we experienced. We want the government to find more ways to stop slavery.

To help women who have already been hurt by slavery, we want the government to give everyone a new chance. In the past, we felt that people wouldn't give us a chance. Visas are the best thing. Secondly, we need education, so we know how to communicate, so we know how to live in Australia, so we can start a new life. We want help so we can find new jobs, otherwise we have to do the same thing, prostitution. No-one wants to stay with that many men. Of course, we can make a lot of money from prostitution, but it feels there is no respect, no love there.

The High Court judgement has made us happy. We feel we have come from the darkness to the brightness.

The High Court decision is important. Before, all of us were scared to talk. Now, we have hope. We can trust again. We are real. The High Court judgement feels like a blessing, something very good.

Thank you from the heart to the Justices.

16th November 2008

The following day, one of the women rang and said she had more to say for the statement. Her additional statement is included here, and supplements the previous statement, which she contributed to and endorses:

It is important that people understand that the experience of being trafficked is absolutely the worst thing you can ever imagine. I want people to know that this is happening in Australia.

Before I came, I had a nice life in Thailand, a nice job. I was tricked by a family member to come here, who sold me.

I experienced the most extreme brutality. I was in a 24-hour brothel, where I was woken at any time to see customers. They didn't wake me up by speaking to me - they kicked me. They made me take speed, so I could keep working. I had a gun pointed at my head.

The people who brought us here are so bad, they damaged not just one but so many lives. It never goes away. They have made it hard for me to trust anyone again.

When someone treats you like a dog for a long time, you start to believe you are a dog. You never get your voice back. You lose your confidence. You feel like you are an animal.

Afterwards, sometimes I felt like I was too dirty to touch my own son. That kind of experience made me feel like I'm not human, makes me feel so dirty, even too dirty to touch my own baby.

Thanks to the Judges, they help so much, they can help people to understand what we have been through.

These statements have been developed and endorsed by the women mentioned above (they have endorsed the statement having read it in their first language as necessary, as well as English). The women have endorsed that these statements be sent to the High Court Justices, and to politicians, journalist and the wider community, and to women in brothels who may themselves be in slavery or who may be able to help other women they meet in brothels who are.

If you would like to write a response to the authors of this statement, please email info@projectrespect.org.au.

Other information

The Queen v Tang judgement - The Queen v Tang [2008] HCA 39 (28 August 2008) - <http://www.austlii.edu.au/au/cases/cth/HCA/2008/39.html>

Project Respect - www.projectrespect.org.au

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