

HUMAN TRAFFICKING

A Report into Human Trafficking in Australia



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Many Australians would be shocked to know that human trafficking and slavery is taking place in their cities and communities. This report looks at human trafficking in the context of Australia, as a destination country for victims of human trafficking and demonstrates the extent to which it is occurring in Australian states and territories. Over recent years, the federal government, various state governments and non-governmental organizations have prioritized human trafficking as an issue that needs further attention and preventative strategies. Whilst significant gains have been achieved, it is evident that more action to prevent and eradicate human trafficking needs to be undertaken, given the transnational nature of the crime.

This report was undertaken by Madelaine Curnow for Australian Catholic Religious Against Trafficking in Humans as part of a student work placement with La Trobe University in 2012.

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INTRODUCTION

Slavery and human trafficking are not common terms most Australians would associate with their country, yet modern-day slavery exists closer to home than we may think.

Human trafficking is a crime and a contemporary form of slavery. Free trade markets, the demand for cheap labour and services have allowed human trafficking to flourish in an increasingly competitive global market. It poses a threat to human security and is a great human rights challenge that faces the world today. Due to the transnational nature of human trafficking, trafficking in persons affects people in nearly every country of the globe and often involves a number of network facilitators across a number of countries.¹ Over the past decade, human trafficking as an international issue has gained considerable public and political attention and recognition, to which there has been an increase in preventative responses across a number of countries. The trafficking of human beings is a billion dollar illegal industry that involves complex facilitators and networks across the globe. Due to the nature of human trafficking, there remain considerable limitations and gaps in research and knowledge about trafficking on a local and global scale and also a lack of understanding in many areas.² Because trafficking in persons is an illicit organized crime it is often difficult to retrieve and gain information.

This research report will primarily focus on human trafficking in Australia and the corresponding federal and state responses to the crime. Each Australian state and territory will be explored in regards to their response on the crime of human trafficking. This will range from state laws, services for victims of human trafficking, state inquiries into trafficking and current resources each state has to combat and primarily help victims of people trafficking.

¹ Shelley, L, 2007, 'Human Trafficking as a form of transnational crime,' In *Human Trafficking*, Ed. Lee, M, Willan Publishing, UK.

² Larsen, J, Lindley, J & Putt, J, 2009, 'Trafficking in Persons Monitoring Report July 2007-December 2008', *Australian Institute of Criminology*, AIC Reports: Monitoring Reports 06.

WHAT IS HUMAN TRAFFICKING?

The United Nations Office on Drugs and Crime (UNODC) defines trafficking in persons as the; “recruitment, transportation, transfer, harbouring or receipt of persons, by means or 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 and 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 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.”³

Forms of trafficking

All types of trafficking involve exploitation and human rights abuses. The main types of trafficking in persons include:

1. Sexual exploitation
2. Forced labour
3. Slavery-like-practices
4. Organ removal

People can also be trafficked for the purposes of: illicit adoption, street begging or forced recruitment into militia/ armed forces. These are relatively new forms of trafficking.⁴

Sexual Exploitation

There is no set definition of the term sexual exploitation in the UN trafficking protocol as there is much disagreement on the meaning of the term. The common definition is that sexual exploitation is the result of a person being coerced or forced into sexual servitude.⁵

Forced labour

Forced labour refers to forms of trafficking where the intended exploitation involves either work or service that is demanded under penalty or work that is undertaken involuntarily. Characteristics of forced labour may include physical or sexual violence, threats, restrictions on freedom and withholding wages.

³ United Nations (UN), 2000, ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime’, <http://www.unhcr.org/refworld/docid/4720706c0.html>.

⁴ Australian Government, ‘Trafficking in Persons: The Australian Government Response,’ January 2004- April 2009, p. 4.

⁵ Australian Catholic Religious Against Trafficking in Humans (ACRATH), 2011, ‘Resources’, Viewed 12 August, <http://acrath.org.au/resources/learn/definitions/>.

Slavery-like-practices

Slavery-like-practices may include debt-bondage, servile marriage and serfdom. These concepts are relevant to certain forms of trafficking, such as labour trafficking and sex trafficking.⁶

Organ removal/trafficking

This may refer to the harvesting, recruiting or transportation of a person for the purposes of internal organ removal.

Who is vulnerable to trafficking?

There are many factors that can impact on an individual's vulnerability to trafficking. These factors may include one or more of the following:

- a) Poverty
- b) Lack of employment
- c) Political instability
- d) Environmental degradation
- e) Factors resulting in displacement- e.g.) natural disasters
- f) Lack of education
- g) Violence from war and civil unrest.⁷

It is thought that if a person finds himself or herself in one or more of these situations or circumstances he or she has a greater risk of being trafficked, particularly if female or a child. Globalization has also propelled human trafficking as a transnational crime, facilitated by greater movement in people across borders and communications technology, such as the Internet. There is also a greater demand for cheap labour, particularly in the Western world.

Feminization of Poverty

A disproportionate amount of the world's poor are women and girls. The Global Poverty Project suggest that 70% of the world's poor are women.⁸ For a majority of women in poverty, injustice, discrimination and inequality affects their everyday lives and access to basic needs, such as education, employment, medicine and health care and adequate shelter and infrastructure. Lack of education affects their ability to gain employment and in most developing countries women turn to informal forms of employment, which may include agricultural work, the garment industry, home

⁶ David, F, 2010, 'Labour Trafficking,' *Australian Institute of Criminology*, Research and Public Policy Series, AIC Report 108.

⁷ Larsen, J, Lindley, J & Putt, J, 2009, 'Trafficking in Persons Monitoring Report July 2007-December 2008', *Australian Institute of Criminology*, AIC Reports: Monitoring Reports 06.

⁸ The Global Poverty Project, 2012, 'Women and Poverty,' <http://www.globalpovertyproject.com/infobank/women>.

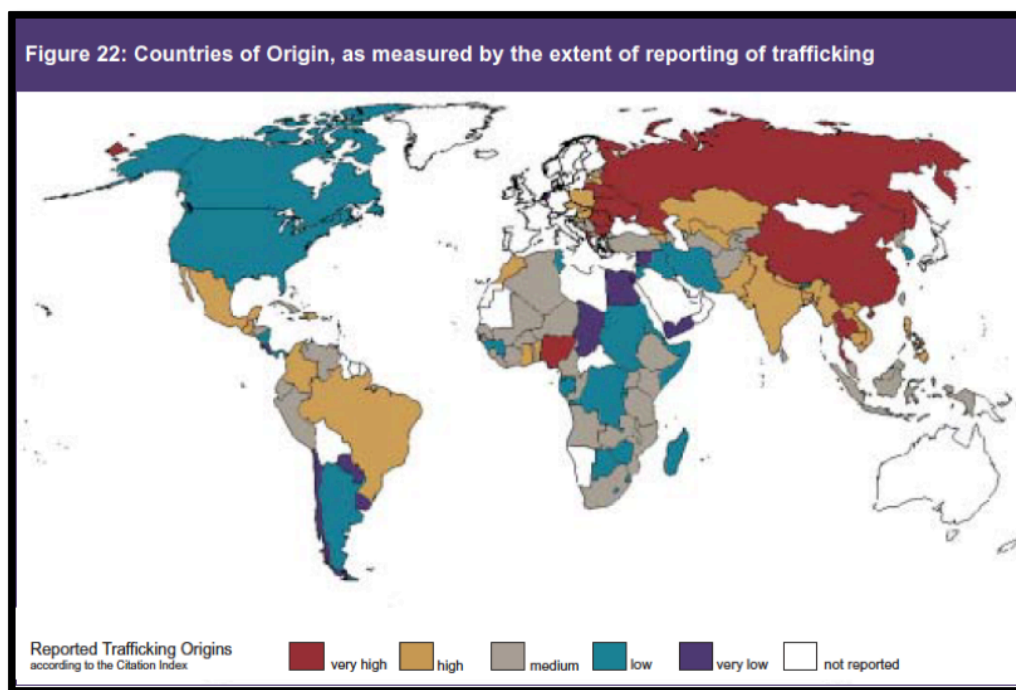
work, or selling goods to make a living at markets or on the street. Often the informal employment sector is characterized by low wages and a lack of social protection, which make women vulnerable to exploitation.⁹ Human trafficking flourishes in a world where vulnerability thrives as people, especially women, try to survive by making a living to provide and feed their families. Sometimes it is such that women are deceived and misled into the prospects of a better life and better paid jobs, in which they often get caught or forced into prostitution and sex slavery and other forms of trafficking. This is the reality for many women across the globe.

⁹ Bertulfo, L, 2011, 'Women and the Informal economy,' *Aus AID, Australian Government Office of Development Effectiveness*, http://www.ode.usaid.gov.au/current_work/documents/women-informal-economy-lota-bertulfo.pdf.

GLOBAL TRAFFICKING TRENDS

The drug trade remains the most profitable feature of transnational crime, yet it is evident that there has been a significant growth of human trafficking on a global scale in the last few decades. Every country, in different measures, is affected by people trafficking; either as a source, host or transit country. Some countries can be classified as all three categories.¹⁰ Global statistics of people trafficking are usually vague and unclear. The International Labour Organization (ILO) estimates that there is at least 12.3 million victims of forced labour worldwide.¹¹ The UNODC Global Report on Trafficking in Persons indicates that sexual exploitation and servitude is the most commonly identified form of human trafficking across most countries. Females and children are therefore usually the main victims of trafficking. Whilst sexual servitude is the most common form of trafficking, it is not the only type. Numerous state authorities also detect forced labour and other forms of exploitation and slavery-like practices in a number of countries. It is thought that labour trafficking is harder to detect and therefore less frequently detected. Most victims of forced labour work in hidden locations. It is evident that labour trafficking is less detectable than trafficking for the purposes of prostitution.¹²

Figure 1: Trafficking Origins



(Source: UNODC Global Report on Trafficking in Persons, 2006)

¹⁰ Shelley, L, 2007, 'Human Trafficking as a form of transnational crime,' In *Human Trafficking*, Ed. Lee, M, Willan Publishing, UK.

¹¹ International Labour Organization (ILO), 'A Global Alliance Against Forced Labour: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005,' p. 15-16.

¹² United Nations Office on Drugs and Crime (UNODC), 2009, 'A Global Report on Trafficking in Persons', http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

International Anti-trafficking Laws

The United Nations General Assembly adapted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, in 2000.

The purpose of the protocol is:

- 1) Prevent and combat trafficking in persons, with particular attention to women and children.
- 2) Protect and assist the victims of trafficking whilst taking into account human rights.
- 3) Promote cooperation among all states in order to meet these purposes.¹³

The UN Trafficking Protocol is the first agreement on anti-trafficking adapted by the UN in eradicating trafficking in persons. Many countries have adapted anti-trafficking legislation, particularly in the last five years. Currently there are 61 countries that have passed national anti-trafficking laws.¹⁴

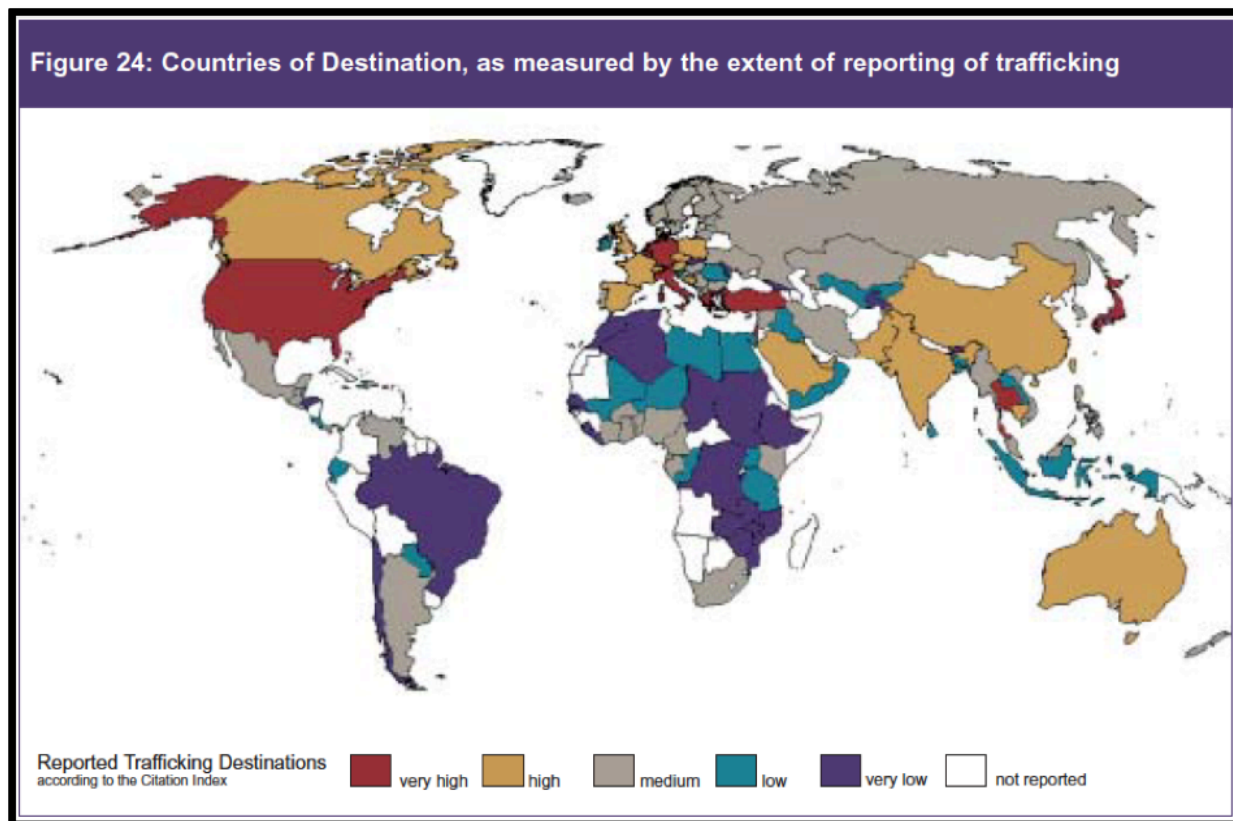
¹³ United Nations (UN), 2000, 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime', <http://www.unhcr.org/refworld/docid/4720706c0.html>.

¹⁴ United Nations Inter-Agency Project on Human Trafficking (UNIAP), 'International Trafficking In Persons Laws', Viewed 30 August 2012, http://www.no-trafficking.org/resources_int_tip_laws.html.

THE AUSTRALIAN CONTEXT

Australia is a destination country for trafficking in persons (See Figure 2). The number of people trafficked to Australia is relatively low compared to many other countries, yet it remains an issue that requires attention and solutions.

Figure 2: Destination countries



(Source: UNOCD Global Report on Trafficking in Persons, 2006)

Extent of trafficking in persons to Australia

Exact figures on trafficking in persons in Australia remains unclear. This is not limited to Australia but to many countries; as mentioned above. The Australian Institute of Criminology (AIC) shows that the lack of reliable data and statistics is a challenge particularly for evidence-based research.¹⁵ Whilst exact statistics are usually unavailable, there are certain estimates about the amount and scope of trafficking in persons that exists in Australia. Project Respect estimates that approximately 1,000 women each year are trafficked to Australia, for sexual purposes.¹⁶ The UN Special Rapporteurs report states, 'between 2004 and March 2012, 191 victims of trafficking were

¹⁵ Larsen, J, Lindley, J & Putt, J, 2009, 'Trafficking in Persons Monitoring Report July 2007-December 2008', *Australian Institute of Criminology*, AIC Reports: Monitoring Report 06.

¹⁶ Project Respect, 2008, 'How are Women Trafficked?', Viewed 30 August 2012, http://projectrespect.org.au/our_work/trafficking/why_trafficking.

identified.¹⁷ Note that there are no official statistics on newly emerging forms of trafficking such as labour trafficking. Discrepancies also exist due to inconsistencies of cases of trafficked persons detected by NGOs, and between detected cases and estimated numbers. There are also various degrees as to what constitutes a 'victim' which results in these differences.¹⁸

Who is being trafficked to Australia and for what purposes?

According to the UN Special Rapporteur's report, trafficked victims in Australia come from South East Asia. This predominately includes Thailand, Philippines, Malaysia and the Republic of Korea. Growing numbers of trafficked victims from China and India have also been apparent according to current information. Trafficking for the purposes of sexual exploitation and prostitution is the most common form of trafficking evident in Australia, whilst there are a growing number of cases related to forced labour and domestic services. Incidences and cases of human trafficking, particularly sexual exploitation, is predominately evident in Melbourne and Sydney. A smaller number of cases exist in Queensland, South Australia and the Australian Capital Territory.¹⁹ In recent years, there has been growing concern about sexual, labour and domestic exploitation occurring in other parts of Australia, such as Western Australia and Northern Territory and particularly rural areas.

Why is Australia a destination country?

As mentioned, Australia is a destination country for victims of human trafficking.

In regards to sexual exploitation, Project Respect believes that there are a number of factors that fuel the demand for trafficked women in Australia. These factors include:

- a) Lack of women in Australia that are prepared to do prostitution.
- b) Customers demanding women who are compliant and that they can be violent towards.
- c) Radicalized ideas of certain ethnicities/ male demand determining characteristics of women.²⁰

Opportunities to traffic people into Australia are low because of the strong migration controls and geographic isolation.²¹ Yet, it is an attractive destination for traffickers, particularly with the potential profits that can be made from trafficking in the sex industry. The strong dollar value in Australia is also appealing to traffickers.

¹⁷ United Nations Human Rights Council (UNHRC), 2012, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children', Joy Ngozi Ezeilo : Addendum, Mission to Australia, 18 May 2012, p. 11.

¹⁸ Ibid

¹⁹ Ibid, p. 3.

²⁰ Project Respect, 2008, 'Why Australia?', Viewed 30 August 2012, http://projectrespect.org.au/our_work/trafficking/why_australia.

²¹ Australian Government, 2009, 'Trafficking in Persons: The Australian Government Response,' January 2004-April 2009.

FEDERAL LEGAL FRAMEWORK

Specific legislation relating to trafficking was first introduced in Australia in 1999. The *Criminal Code Amendment Act 1999* created the offences of slavery, sexual servitude, and deceptive recruiting. In 2005, the criminal code underwent certain reform. A number of new offences were created which reflected the UN definition of trafficking in persons. The offences include trafficking in persons, trafficking in children, domestic trafficking in persons, and debt bondage.²²

Trafficking in persons

Division 270 of the *Criminal Code Act 1995* contains offences relating to trafficking in persons. The offences of trafficking in persons 'involve a person organizing or facilitating the entry, proposed entry of another person into Australia and the exit or proposed exit of a person out of Australia.'²³

Sexual servitude offences

Sexual servitude offences are under Division 270 of the Criminal Code. It is an offence to recklessly or intentionally cause another person to enter into or remain in sexual servitude, or to conduct a business that involves sexual servitude of another person.²⁴

A person who deceives the other person about:

- 'the fact that the engagement will involve the provision of sexual services; or
- the nature of sexual services to be provided; or
- the extent to which the person will be free to leave the place or area where the person provides sexual services; or
- the extent to which the person will be free to cease providing sexual services; or
- the extent to which the person will be free to leave his or her place of residence; or
- if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement; or
- the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person's travel or identity documents,'²⁵ constitutes an offence of trafficking in persons.

²² Larsen, J, Lindley, J & Putt, J, 2009, 'Trafficking in Persons Monitoring Report July 2007-December 2008', *Australian Institute of Criminology*, AIC Reports: Monitoring Reports 06.

²³ *Ibid*, p.23.

²⁴ Anti-Slavery Australia, 2012, 'Australian Legal Framework', <http://www.antislavery.org.au/resources.html>.

²⁵ *Criminal Code Act 1995* (Cwlth) S. 271.5.

Trafficking in Children

Trafficking in children offences are found in Section 271.4 of the Criminal Code. Offences involve facilitating or organizing the entry or exit of a person less than 18 years old into Australia either intending or recklessly knowing that they will be used to provide sexual services or be exploitation.

Domestic trafficking

Section 271.6 contains an offence of aggravated domestic trafficking. This offence involves the organizing or facilitating the movement of another person within Australia through the use of force or threats.

Debt Bondage

Debt bondage offences are found in *The Criminal Amendment Act 2005*, which is committed when a person engages in conduct that causes another person to enter into debt bondage.²⁶

Recent Amendments

- **Criminal Law Amendment (August 2012)**

The House of Representatives voted to amend legislation to include labour trafficking as an offence under the Criminal Code. This amendment was made as it was intended to help reduce exploitation of labour, particularly in the horticultural industry in Australia among migrant workers; who are often vulnerable to forced or exploitative labour conditions.²⁷ The amendment also created new offences for forced and servile marriage and harbouring or receiving victims of people trafficking.

²⁶ Larsen, J, Lindley, J & Putt, J, 2009, 'Trafficking in Persons Monitoring Report July 2007-December 2008', *Australian Institute of Criminology*, AIC Reports: Monitoring Reports 06.

²⁷ Vidot, A, 2010, 'Criminal law amendment could help reduce exploitation of farm labour,' *ABC-rural*, <http://www.abc.net.au/rural/news/content/201208/s3575205.htm>.

AUSTRALIAN GOVERNMENT RESPONSE

Over recent years, human trafficking has increasingly gained greater significance as a vital issue that needs to be prevented in Australia. Increasing knowledge of the problem and greater external pressures from the community has resulted in major reforms of criminal law. The death of Puongtong Simaplee, a Thai woman trafficked into sexual servitude, who died at Villawood Immigration Detention Centre in 2001, highlighted the Australian Government's failure to adequately respond to trafficking, particularly in relation to the trafficking of women for sexual purposes into Australia.²⁸

Since then, the Australian Government has worked to address human trafficking through a number of legislative reforms and additional policies and initiatives.

In 2003, Australia implemented its strategy to eradicate trafficking in persons; known as the *National Action Plan to Eradicate Trafficking in Persons*. The Strategy focuses on four pillars, which includes prevention, detection and investigations, criminal prosecution and victim support and rehabilitation. Various initiatives and measures have been addressed that help to confront trafficking and reflect the four central pillars of the strategy. These initiatives comprise:

- AFP specialist teams that investigate trafficking and sexual exploitation offences.
- A victim support program; that provides assistance to eligible victims of trafficking.
- Research into national and regional trafficking by the AIC.
- Enhanced visa arrangements and provisions.
- Specialist immigration officers - posted to South East Asian countries, such as Thailand, China and the Philippines to focus on people trafficking issues and aim at prevention.²⁹

A number of governmental agencies have been given the responsibility of helping to combat trafficking. These agencies include the Australian Federal Police (AFP), The Australian Federal Police's Transnational Sexual Exploitation and Trafficking Team, Aus. AID, Multicultural and Indigenous Affairs and The Commonwealth Department of Immigration.³⁰

Since 2004, Australia has been committed to the United Nations Convention against Transnational Organized Crime, including its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children*.³¹ Australia fully supports the objectives behind this particular

²⁸ McSherry, B, 2007, 'Trafficking in Persons: A Critical Analysis of the New Criminal Code Offences,' *Current Issues in Criminal Justice*, Vol. 18, No. 3, p. 386

²⁹ Australian Government, 2009, 'Trafficking in Persons: The Australian Government Response,' January 2004-April 2009.

³⁰ Kotnik, E, Czymoniewicz-Klippel, M & Hoban E, 2007, 'Human Trafficking in Australia: The Challenge of Responding to Suspicious Activities,' *Australian Journal of Social Issues*, vol. 42, no. 3.

³¹ United Nations Human Rights Council (UNHRC), 2012, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children', Joy Ngozi Ezeilo : Addendum, Mission to Australia, 18 May 2012, p. 7.

protocol. Australia's international obligation to address human trafficking is also evident from the range of human rights and labour rights treaties that have been signed.³²

The Four Pillars of Australia's Anti-Trafficking Strategy

Prevention

Attempts to prevent trafficking in persons have been undertaken in a number of ways, which include raising awareness of the issue throughout the community and relevant industries, skills training for law enforcement, and employing immigration officers for international assistance programs.

A communication awareness strategy was developed in 2004, which aimed at promoting greater awareness of trafficking in persons in the community and in relevant industries.³³ It aimed at targeting trafficked persons working in the sex industry in Australia as well as relevant industries associated and those who are likely to come into contact with people, such as other sex workers, clients and brothel owners. The media was also targeted to enhance community debate on the issue and encourage people to report suspicious activity.³⁴

Detection & Investigation

The AFP established the Transnational Sexual Exploitation and Trafficking Teams (TSEET) in 2003. Its name was recently changed in May of 2011 to the Human Trafficking Teams (HTT) to reflect the extent of human trafficking, taking into account other forms of trafficking other than sexual servitude. The AFP HTT investigates trafficking in persons, for the purposes of either sexual, labour, and organ trafficking and slavery-like-practices.³⁵ The AFP also provides an extensive international network of officers for overseas missions. Most are posted in neighboring countries in South East Asia.

Between 2009-10 the AFP undertook 38 investigations into trafficking related matters. Of these investigations, 70% were related to trafficking of persons for the purposes of sexual servitude. Previous reports indicated that Thailand was the dominant source country.³⁶

³² Anti-Slavery Project, 2010, 'Strengthening Australia's Response to Human Trafficking,' Report to Australian Women's Coalition, <http://www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf>.

³³ Larsen, J, Lindley, J & Putt, J, 2009, 'Trafficking in Persons Monitoring Report July 2007-December 2008', *Australian Institute of Criminology*, AIC Reports: Monitoring Reports 06.

³⁴ Kotnik, E, Czymoniewicz-Klippel, M & Hoban E, 2007, 'Human Trafficking in Australia: The Challenge of Responding to Suspicious Activities,' *Australian Journal of Social Issues*, vol. 42, no. 3.

³⁵ Australian Federal Police (AFP), 2012, 'Stopping Human Trafficking,' <http://www.afp.gov.au/policing/human-trafficking.aspx>.

³⁶ Australian Government, 2010, 'Trafficking in Persons: The Australian Government Response.' 1 May 2009- 30 June 2010.

Prosecution

Crimes related to people trafficking are often complex and difficult to prosecute; yet securing prosecutions are a key objective of the Australian Government's anti-people trafficking strategy. The AFP refers people trafficking matters to the Commonwealth Director of Public Prosecutions (CDPP), which was established by the Parliament of Australia to prosecute offences against Commonwealth law. For the CDPP to proceed with people trafficking prosecutions the prosecutor must first evaluate how strong the case will be in court. There must be reasonable prospects of a prosecution being secured and the conviction must be in the public interest for the CDPP to proceed with a prosecution.³⁷

So far there have only been a small number of convictions. Between 2004 and 2011, the AFP conducted 300 investigations into human trafficking and slavery offences. These investigations resulted in 13 convictions.³⁸

Protection & Victim Support

The Australian Government funded a victim support program, special visa arrangements for trafficked people and reintegration assistance for trafficked people have helped to provide protection for trafficked victims.³⁹

Victims Support Program & Visa Framework

Possible victims of trafficking may be identified through a number of agencies and organizations, such as NGO's, immigration officials, hospitals, law enforcement agencies and government departments. If a possible victim of trafficking is reported, they are referred to the AFP for assessment and if suitable they then may be referred to the Support Program. The aim of the Support Program is to help clients with their basic needs such as food, accommodation and wellbeing.

In 2009, a number of changes occurred to the People Trafficking Visa Framework and to the Support for Victims of People Trafficking Program. The changes included:

- De-linking victim support from visas.
- Extending the initial stage of the Support program from 30 to 45 days. This change was to allow victims of trafficking to assess their options. E.g. willing to assist police.
- A period of up to 90 days assistance to victims who are willing but not able to assist with an investigation or a prosecution of a people trafficking offence.

³⁷ Ibid.

³⁸ The Australian, 2012, 'Inquiry into modern-day slavery,' <http://www.theaustralian.com.au/news/breaking-news/inquiry-into-modern-day-slavery/story-fn3dxiwe-1226452569334>.

³⁹ Anti-Slavery Project, 2010, 'Strengthening Australia's Response to Human Trafficking,' Report to Australian Women's Coalition, <http://www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf>.

- 20-day transition period for victims leaving the support program.
- Removing the temporary visa stage in the Witness Protection visa process.
 - These types of visas allow a person, who has assisted with an investigation, and who may be in danger if they return to their home country, to stay in Australia. Also all immediate family members of a victim outside Australia are eligible and can be included in the application for a Witness Protection visa.⁴⁰

In 2009-2010, the Support for Victims of People Trafficking Program provided assistance to 24 new clients mostly from Malaysia and the Republic of Korea.⁴¹

⁴⁰ Australian Government, 2010, 'Trafficking in persons: The Australian Government Response,' 1 May 2009- 30 June 2010.

⁴¹ Ibid.

PROTECTION AND SUPPORT FOR VULNERABLE WORKERS - LABOUR TRAFFICKING

Cases of labour trafficking are increasingly coming to light in Australia. Whilst Australian workplace laws and policies are in place to protect all workers across a number of industries, a proportion of people remain vulnerable to exploitation of labour and in some cases labour trafficking.

Sectors and Industries with a large migrant work population and a perceived risk of exploitation and labour trafficking in Australia include:

- Construction industry
- Nurses
- Chefs and Cooks
- Meat industry
- Manufacturing
- Agricultural sector
- Maritime/Seafarers
- International Students - concern that they are vulnerable to exploitation within the employment sector.⁴²

Australian Workplace Law and practices

Australian workplace laws and practices are supported by immigration law and policies as well as state based laws. Therefore, anyone working in Australia should be entitled to work place rights and protection under these various provisions.

Fair Work Ombudsman

The *Fair Work Act* came into effect in 2009 and the Fair Work Ombudsman was established. The Act is responsible for providing education, information and assistance about the Commonwealth workplace relations system. It also upholds and enforces compliance with the *Fair Work Act*. The *Fair Work Act* contains entitlements for all employees working in the national workplace. This includes short and long-term migrant workers and international students. Ten national employment standards are imposed by the Act. This includes leave and public holiday entitlements, minimum wages and maximum weekly hours of work.

- Between July 2010 and June 2011, the Fair Work Ombudsman conducted 585 investigations involving temporary visas and other visa holders, in which it recovered more than \$510,000 in unpaid entitlements.

⁴² David, F, 2010, 'Labour Trafficking,' *Australian Institute of Criminology*, Research and Public Policy Series, AIC Report 108.

- The Fair Work Ombudsman also conducts checks within industry sectors that commonly employ foreign workers.
- During the same year educational programs were developed and specifically targeted at culturally and linguistically diverse communities. For example, videos were made for people from non-English speaking backgrounds, helping them to understand their work rights in Australia.⁴³

Australian Building and Construction Commission (ABCC)

The ABCC is responsible for ensuring building and construction work is carried out productively and equitably, whilst monitoring the industries compliance with the *Building and Construction Industry and Improvement Act 2005*. A particular aspect of ABCC's role is to assist and advise all participants of the building and construction industry, including those from culturally and linguistically diverse backgrounds. Increasingly ABCC has been involved in monitoring cases where workers may be vulnerable or potentially exploited. This has resulted in close cooperation between ABCC, AFP and the Department of Immigration and Citizenship (DIAC).⁴⁴

Australian Immigration Policies

It is apparent that Australia's current immigration laws and policies are increasing the incidence of labour trafficking and forced labour in many industries. This can be attributed to many factors including the significant growth in temporary visa-holders in Australia and a shift away from skilled migration. There are approximately 1.2 million people in Australia on a temporary visa. This visa also ranges from different types of bridging visas, which means work rights vary according to the visa. It is also evident that there has been a shift to reduce the number of independent skilled Permanent Residence (PR) migrants to increase the number of employer-sponsored PR migrants. To obtain a PR visa, a person must find an employer who will sponsor them and work for two years for the sponsoring employer, among other requirements. Therefore, employers have a significant amount of power in determining the working circumstances of the employee. Workplace laws can also be violated in employer-sponsored visa conditions. These particular trends in immigration policies have led to ideal conditions where labour trafficking and labour exploitation can flourish, particularly due to soft regulations and poor enforcement of visa work rights. It is estimated that 100,000 people in Australia are currently illegally working.⁴⁵

⁴³ Australian Government, 'Trafficking in persons: The Australian Government Response,' July 2010- June 2011.

⁴⁴ Ibid.

⁴⁵ Kinnard, B, CFMEU Labour Trafficking Notes, June 2012.

Federal funding to combat labour trafficking

In 2011, the Australian Government allocated funding to five organizations with the aim to combat labour trafficking and exploitation. Educational and advocacy projects about labour trafficking were carried out by:

- The Australian Council of Trade Unions (ACTU),
- The Australian Hotels Associations,
- The Australian Red Cross,
- Asian Women at Work,
- Construction, Forestry, Mining and Energy Union (CFMEU).⁴⁶

Compensation for victims of people trafficking

The Australian response to people trafficking has not focused on compensating victims of trafficking but has rather prioritized prosecuting traffickers. Without a specific federal framework intended to compensate victims of trafficking, victims are increasingly trying to claim compensation under state and territory compensation schemes. However, this has often proved difficult, as most of these compensation schemes do not recognize trafficking or similar offences as acts of violence or injuries that are compensable. There is usually no typical victim in trafficking cases and often cases of trafficking occur within or across a number of state and territory jurisdictions in which state compensation measures are restricted. State and territory compensation is also limited to victims of trafficking because of differences in assessment and eligibility for compensation across state jurisdictions.⁴⁷

Current state and territory compensation laws will be further outlined throughout this report. However, it is evident that most state and territory compensation schemes do not take crimes such as trafficking in persons into account. The UN Special Rapporteur on her mission to Australia recommended the Australian Government establish and implement a federal compensation scheme for victims of trafficking.⁴⁸

⁴⁶ Australian Government, 'Trafficking in persons: The Australian Government Response,' July 2010- June 2011.

⁴⁷ Simmons, F, 2012, 'Making Possibilities Realities: Compensation for Trafficked People, *Sydney Law Review*, Vol. 34, no. 3.

⁴⁸ United Nations Human Rights Council (UNHRC), 2012, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children', Joy Ngozi Ezeilo : Addendum, Mission to Australia, 18 May 2012, p. 7.

STATE PROFILES

The investigation and prosecution of crimes relating to human trafficking are primarily federal responsibilities and obligations. States also play a role in detecting and addressing issues and crimes of human trafficking, involving state legislation in regards to sexual servitude and state police rules and procedures and investigations.⁴⁹ Non-governmental and community organizations also play a vital role in addressing trafficking in persons and adopting anti-trafficking projects and protocols.

VICTORIA

Overview

In recent years there has been growing concerns in Victoria about illicit sex activity linked to organized crime and trafficking, particularly in Melbourne based brothels and the sex industry. The illicit trade in women for sexual purposes and exploitation is relatively high in Victoria, compared to other Australian states and territories. There is also concern among a number of non-government and community organizations surrounding other forms of human trafficking, such as forced labour and arranged marriages, that may be occurring throughout the state, particularly in rural and regional areas.⁵⁰

State Laws

Sexual Servitude

In Victoria, the offences of 'sexual servitude' (section 60AB) and 'deceptive recruitment for commercial sexual services' (Section 60AD) are offences under the *Crimes Act 1958 (Vic)*. There are also offences under (Section 60AC) for aggravated sexual servitude where the person forced to provide sexual services is under 18 years of age, and where the person is recruited for sexual services is under 18 years of age (Section 60AE). In Victoria there are no legislative provisions relating to debt bondage offences.⁵¹

⁴⁹ Larsen, J, Lindley, J & Putt, J, 2009, 'Trafficking in Persons Monitoring Report July 2007-December 2008', *Australian Institute of Criminology*, AIC Reports: Monitoring Reports 06.

⁵⁰ Drug and Crime Prevention Committee, 2010, 'Inquiry into People Trafficking for Sex Work,' Final Report, Parliament of Victoria.

⁵¹ Larsen, J, Lindley, J & Putt, J, 2009, 'Trafficking in Persons Monitoring Report July 2007-December 2008', *Australian Institute of Criminology*, AIC Reports: Monitoring Reports 06.

60AB. Sexual Servitude

2) A Person who, by the use of-

- a) force ,or
- b) threat , or
- c) unlawful detention, or
- d) fraud or misrepresentation, including omission, or
- e) a manifestly excessive debt-

- causes another person to provided or to continue providing commercial sexual services is guilty of an offence and liable to 15 years maximum.

(Source: Parliament of Victoria, 2010, Inquiry into people trafficking for sex work)

Prostitution Laws

Sex work and prostitution in Victoria is legal. It is legal when regulated and licensed according to the provisions of the *Prostitution Control Act (PCA) 1994*. A person can legitimately operate the business of prostitution as long as they have a licence with the Business Licensing Authority (BLA). In 2010 there were 95 licensed brothels in Victoria. According to the Senior Sergeant of the Sex Industry Coordination Unit (SICU), Marilyn Ross, there are currently 98 licensed brothels in Victoria and the majority are situated in Melbourne.

Providing commercial sexual services in Victoria is illegal when it is:

- Street sex work: Soliciting, accosting or loitering for the purpose of commercial sexual services is illegal in Victoria. Offences related to these matters are located in Section 12 PCA and Section 13 PCA.
- Provided to or by a person under 18 years of age,
- Taking place in unlicensed brothels,
- Provided through unlicensed brothels,
- When brothels do not have relevant planning permission to operate,
- Workers and operators who are not registered with the BLA,
- When a person is forced into sex work.⁵²

Unlicensed brothels are often hard to detect in Victoria and in most parts of Australia. According to Marilyn Ross, there are estimates of about 300-400 illegal brothels in Victoria alone.⁵³ This is a particular issue for regulators of the sex industry and Victoria Police as it is apparent that illegal sex work is now taking place in a variety of locations other than in shop front brothels.

⁵² Drug and Crime Prevention Committee, 2010, 'Inquiry into People Trafficking for Sex Work,' Final Report, Parliament of Victoria, p. 78.

⁵³ Ross, M, ACRATH Meeting, 13 August 2012.

For example, there is increasing concern over illegal sex work taking place behind massage parlor shop fronts. This concern also extends to striptease clubs, gentlemen's clubs, escort services and phone sex operators. Internet and mobile phones have created opportunities for illegal sexual services to take place. This has further made combating trafficking a difficult feat particularly because of the intricacies of the crime and the difficulty in pinpointing the operation of illegal sex and illegal brothels, such as those underground brothels.⁵⁴

In August 2012, it was reported that illegal brothels were running out of hotels in Melbourne's CBD, in which 19 women were working for a Chinese syndicate operating in Southbank's Crown Metropol. This mobile brothel was found to be promoting its services through the Internet on a Chinese social media webpage. The hotels involved said they were unaware that illegal sex activity was taking place on their premises.⁵⁵

Illegal brothel activity is also evident in rural regions of Victoria. A fourth illegal brothel was raided in Ballarat in September 2012. A Sebastopol home was also raided on the basis that it was thought to be harboring illegal sex workers.⁵⁶ Illegal brothels have also been raided across Bendigo in the last year, some of which have also been operating out of residential properties. It remains unclear as to whether sex trafficking was occurring in these brothels.

Regulating and monitoring the sex industry in Victoria

The regulation of the sex industry in Victoria is a joint commitment between:

1. Consumer Affairs Victoria (CAV)
2. Victoria Police
3. Local Council

Consumer Affairs Victoria (CAV)

CAV, Victoria Police and local councils enforce the planning, criminal and licensing requirements of sex work that is outlined in the Sex Work Act. CAV is responsible for sexual service provider permits and enforcing the provisions relating to sex work. For the purpose of monitoring compliance with relevant sex work regulations, CAV inspectors can enter a premise with prior permission from the occupier.⁵⁷

⁵⁴ Drug and Crime Prevention Committee, 2010, 'Inquiry into People Trafficking for Sex Work,' Final Report, Parliament of Victoria.

⁵⁵ Donnelly, B, 2012, 'Sex and the City: Brothels in CBD hotels, investigation finds,' *The Age*, Viewed 20 September 2012, <http://www.theage.com.au/victoria/sex-and-the-city-brothels-in-cbd-hotels-investigation-finds-20120813-24440.html>.

⁵⁶ Oliver, J, 2012, 'Fourth Ballarat illegal brothel raided,' *The Courier*, Viewed 12 September 2012, <http://www.thecourier.com.au/story/303169/fourth-ballarat-illegal-brothel-raided/?cs=62>.

⁵⁷ Consumer Affairs Victoria, 2012, 'Sex Work Regulators', Viewed 20 September 2012, <http://www.consumer.vic.gov.au/businesses/licensed-businesses/sex-work-service-providers/legislation-and-regulation-sex-work/sex-work-regulators>.

Victoria Police

Victoria Police is also involved with the monitoring and regulation of the sex industry. In late February 2012, The Sex Industry Coordination Unit (SICU) was established. The unit formed in response to legislative changes of the *Sex Act 1994*, which were introduced to Victorian Parliament in October 2011. These changes have meant that Victoria Police is now the lead agency for the enforcement of laws relating to unlawful conduct within the sex work industry. Victoria Police has the power to investigate and shut down illegal brothels.⁵⁸ If Victoria Police detects cases of trafficking it is then referred to the AFP. SISC is also part of the Australian Police Strategy-known as Trafficking in Women for Sexual Purposes, which focuses on prevention, resources, victim assistance, regulation, training and education. Victorian Police plan to train 8,000 police personnel on the issue of human trafficking.

Marilyn Ross stresses that there remains significant challenges in detecting victims of trafficking in Victoria. The majority of victims of sex trafficking do not come forward to police due to a number of reasons. A significant factor is that victims do not trust police and within their own cultures police are sometimes stigmatized as corrupt. Cultural issues, as well as fear and manipulation that victims experience makes the task of detecting trafficked people harder for police.⁵⁹ It has been suggested by ACRATH that a social worker should attend Police raids to brothels. It is also a difficult feat for police given that sex trafficking syndicates and some brothel owners use technology and other communication services to organize and facilitate sex trafficking. In many cases police cannot keep up with the modern ways such syndicates operate. A number of factors affect the ability and effectiveness of policing the sex industry and detecting cases of trafficking.

Local Council

Local councils throughout Victoria also play an important role in the regulation and monitoring of the sex industry. Local councils are primarily responsible for determining the location of sexual service providers. They work in conjunction with Victoria Police and CAV.

Other agencies and governmental sectors that cooperate and work closely with CAV, Victoria Police and local councils regarding the regulation of sex industry also include:

- Department of Immigration & Citizenship (DIAC)
- Worksafe Victoria
- Victorian Equal Opportunity & Human Rights Commission

⁵⁸ Liberal Victoria, 2011, 'Tougher laws against illegal brothels introduced to Victorian Parliament,' *Liberal Victoria*, Viewed 22 September 2012, <http://vic.liberal.org.au/News/MediaReleases.aspx?id=1702&title=Tougher%20laws%20against%20illegal%20brothels%20introduced%20to%20Victorian%20Parliament>

⁵⁹ Ross, M, ACRATH Meeting, 13 August 2012.

- Australian Taxation Office (ATO)⁶⁰

Marilynn Ross claimed that SICU inspected 25 legal brothels out of 98; in which 3 brothels were suspected of victims of trafficking. Three teams with the Victorian Police did a three-night raid in September 2012. As SICU is only a five-person unit, regulating licensed brothels as well as investigating illegal brothels has proved to be a difficult task.⁶¹

Other forms of trafficking evident in Victoria

The main focus in Victoria, in relation to human trafficking, has been primarily on trafficking for the purposes of sex work. However, other forms of trafficking such as labour trafficking, exploitation of workers and forced marriages are significant issues being raised in NGOs and governmental sectors. This was a particular concern that came out of the Victorian Inquiry into Sex Work June 2010. The inquiry only focused on sex trafficking in Victoria. However, it highlighted the lack of research and data on other forms of trafficking taking place in Victoria and wider Australia that require further investigation and research.

Services and Support for Victims of Trafficking

Victim Support Programs

Support and assistance to victims of trafficking in Australia is provided by various governmental and organizational sectors. Whilst there is the national Support for Victims of People Trafficking program, administered by the Australian Red Cross, the state of Victoria has a number of services that provide assistance and support to victims of trafficking.

Project Respect

Project Respect is a non-profit, feminist based organization that supports women in the sex industry, including trafficked women. Through empowerment, education, advocacy and activism, Project Respect aims to prevent the exploitation and enslavement of women.

Project Respect's work includes:

- Outreach to brothels in Victoria,
- Intensive case management/individual counseling,
- Emergency accommodation/ ongoing support for women who have been trafficked,
- Referrals for legal and financial support,
- Social activities for peer support,

⁶⁰ Consumer Affairs Victoria, 2012, 'Sex Work Regulators', Viewed 20 September 2012, <http://www.consumer.vic.gov.au/businesses/licensed-businesses/sex-work-service-providers/legislation-and-regulation-sex-work/sex-work-regulators>.

⁶¹ Ross, M, ACRATH Meeting, 13 August 2012.

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- Specialized training for community organizations.⁶²

In 2003, Project Respect headed a national campaign to recognize the problem of human trafficking in Australia and respond to it. It resulted in the Commonwealth government's \$20 million anti-trafficking package in late 2003. Since this time, Project Respect has received limited government funding. Currently, they are not receiving any funding from the Victorian government. Whilst lack of funding is apparent, the organization has continued to support women in the sex industry, especially with their social workers, who access brothels and provide a vital contact with possible victims.⁶³

Project Respect also works in conjunction with other organizations such as Australian Red Cross and Australian Catholic Religious Against Trafficking In Humans (ACRATH).

Australian Catholic Religious Against Trafficking in Humans (ACRATH)

ACRATH is committed to working towards the elimination of human trafficking in Australia, Asia and internationally. Partially funded by the government, ACRATH works primarily as an advocacy group, who are committed to raising awareness of trafficking and providing education. They also work closely with Project Respect and Red Cross.⁶⁴

ACRATH work has consisted of:

- Education programs; such as educational programs delivered to schools, churches and universities
- Yearly advocacy/lobbying week in Canberra
- Compensation project
- Improvement in accommodation services (In conjunction with Project Respect)
- Welfare and other forms of support to victims of trafficking

ACRATH's national office is based in Melbourne; there are national coordinators in Perth, Adelaide, Brisbane and Sydney.

⁶² Project Respect, 2008, 'Our Work,' http://projectrespect.org.au/our_work.

⁶³ Drug and Crime Prevention Committee, 2010, 'Inquiry into People Trafficking for Sex Work,' Final Report, Parliament of Victoria, p. 201.

⁶⁴ Australian Catholic Religious against Trafficking in Humans (ACRATH), 2011, 'About Us,' <http://acrath.org.au/about/>.

Australian Red Cross

Red Cross is responsible for administering the Support for Victims of People Trafficking Program. They also work in each state. In Victoria, the Red Cross has primarily focused on obtaining housing services and accommodation, assistance in obtaining training, such as English classes and employment. They also assist victims with health care, legal services, interpreters and financial assistance.

Whilst the mentioned organizations above are dedicated to assisting trafficked women, there are other organizations and services in Victoria that offer assistance and support with trafficking related issues. These include:

- Foundation House
- Centre for Sexual Assault
- Fitzroy legal Centre
- Child Wise
- Streets of Freedom
- Salvation Army
- Resourcing Health & Education in the Sex Industry (RhED)

Note: some of these organizations will be further discussed as they work across a number of states and territories.

Education: Information and awareness

Across Australia, information and awareness of human trafficking differs in each state and territory. Victoria is a primary state leading the way in education and raising awareness about trafficking in persons through a number of NGOs, government initiatives and community groups who aim to address the issue through a number of mechanisms. Recent programs and initiatives in Victoria have included:

- Signage in brothels: In 2009, the City of Yarra council introduced a local law, which required all brothels in Yarra to display signage at the reception, and also in rooms where prostitution takes place. The aim of placing the signs in brothels was to support sex workers if they needed help via a contact number and to also bring to attention the issue of trafficking to those who purchase commercial sex. The signs were displayed in 5 languages.⁶⁵
- Websites: ACRATH has developed a resourceful and informative webpage on issues and information relating to trafficking. It is an effective tool for educational purposes but also for awareness raising.

⁶⁵ City Of Yarra, 2012, 'Anti-Slavery & Sexual Servitude,' Viewed 29 September 2012, <http://www.yarracity.vic.gov.au/Anti-Slavery/>.

- The Salvation Army in Victoria attempted to raise awareness on the issue of sex trafficking as it set up a stall at the Melbourne ‘Sexpo.’ The stall contained information and relevant material about the issue.⁶⁶

State Inquiries

Parliament of Victoria- Drugs and Crime Prevention Committee, ‘Inquiry into People Trafficking for Sex Work,’ June 2010.

Main areas of the report included:

- The extent and nature of trafficking people for the purposes of sex work into Victoria
- Unlicensed and licensed prostitution in Victoria
- National and local strategies to target trafficking in Victoria
- Outlines the need for further legislative and policy reform to combat sex trafficking.⁶⁷

The Inquiry was a vital step in making the Victorian community in particular aware of the crime of sex trafficking and it highlighted the need for specialist training in the area of issues relating to trafficking. The inquiry only focused on trafficking for the purposes of sex, but it highlighted the need for more research and evidence about labour trafficking and other forms of people trafficking.

Prosecutions

Sexual servitude and slavery prosecutions

R v Glazner (2001)

- First major case in Victoria that dealt with sexual slavery and servitude.
- Commonwealth/Victorian legislation regarding trafficking and slavery had not yet been established at the time of the trial.
- He was convicted for offences under the PCA 1994 (VIC), including living off the earnings of prostitution (S.10).⁶⁸

Wei Tang (2006)

- Wei Tang was convicted by a jury in the Country Court of Victoria of five counts of possessing a slave and five counts of using a slave, under section 270.3 of the Criminal Code.

⁶⁶ Drug and Crime Prevention Committee, 2010, ‘Inquiry into People Trafficking for Sex Work,’ Final Report, Parliament of Victoria.

⁶⁷ Ibid.

⁶⁸ Ibid.

- Her conviction was in relation to five Thai women who had worked in a Melbourne brothel which she owned and managed.
- Wei Tang was sentenced to 10 years imprisonment.⁶⁹

Ho Kam Ho and Kam Tin Ho (2009)

- Convicted in the Supreme Court of Victoria on six charges of possessing and exercising ownership over a person under the provisions of the Criminal Code.

Kam Tin Ho and Sarah Leech (2009)

- Convicted in the Supreme Court of Victoria on two charges of possessing and exercising ownership over a person under the provisions of the Criminal Code.⁷⁰

Both convictions were appealed against in 2011 and the judgment was reversed.

Compensation Laws

Victoria's compensation scheme is known as the *Victims of Crime Assistance Act 1996*. In 2010, the first victim of trafficking in Victoria successfully sought compensation under the *Victims of Crime Assistance Act 1996*. The victim, who was forced into sexual servitude, was awarded financial assistance on the basis that there was forced deprivation of liberty and threats of death. She received a total of almost \$30,000. Even though the perpetrator was never prosecuted, the victim was able to receive compensation benefits.⁷¹

ACRATH strongly asserts that crimes compensation should be available to victims of human trafficking and it continues to lobby for stronger compensation laws that all victims of trafficking should be entitled to.

⁶⁹ Australian Government, 2010, 'Trafficking in persons: The Australian Government Response,' 1 May 2009- 30 June 2010.

⁷⁰ Australian Government, 2011, 'Trafficking in persons: The Australian Government Response,' July 2010- June 2011.

⁷¹ Simmons, F, 2012, 'Making Possibilities Realities: Compensation for Trafficked People, *Sydney Law Review*, Vol. 34, no. 3.

NEW SOUTH WALES

Overview

Like Victoria, sex trafficking is evident throughout the state of New South Wales, particularly in Sydney where legal and illegal brothels outnumber the amount of brothels operating in Victoria alone. Labeled the 'Amsterdam of the South Pacific', Sydney is the prominent destination for victims of sex trafficking in Australia. Many argue that New South Wales legislation relating to the sex industry and the operation of sex premises needs immediate reforms.⁷² There is also increasing concern in New South Wales about the amount of and type of trafficking occurring in rural and remote parts of the state, such as labour trafficking. Whilst cases of labour trafficking have been reported, it is often apparent that many incidences go unreported in New South Wales.

State Laws

Sexual Servitude

The New South Wales *Crimes Act 1990* contains offences relating to sexual servitude and trafficking. Offences of 'sexual servitude' are listed under Section 80D and offences regarding the conduct of business involving sexual servitude are relevant under Section 80E. Section 80C also contains offences relating to sexual servitude where the victim is under 18 years of age.

Section 80D. Causing Sexual Servitude

- 1) A person:
 - a) who causes another person to enter into or remain in sexual servitude
 - b) who intends to cause, or is reckless as to causing that sexual servitude, is guilty of an offence.
- 2) A person is guilty of an offence against this subsection if the person commits an offence under subsection (1) in 'circumstances of aggravation.'

⁷² Tabakoff, N, 2010, 'Sydney Sinking into Sin,' *The Daily Telegraph*, Viewed 15 September 2012, <http://www.dailytelegraph.com.au/news/sydney-news/sydney-is-sinking-into-sin/story-e6freuzi-1225952354770>.

Section 80E. Conduct of business involving sexual servitude

- 1) A person;
 - a) who conducts any business that involves the sexual servitude of other persons
 - b) who knows about or is reckless as to that sexual servitude is guilty of an offence
- 2) A person commits an offence against this subsection (1) in 'circumstances of aggravation.'
- 3) 'Conducting a business' includes:
 - a) taking any part in the management of the business
 - b) exercising control or direction over the business
 - c) providing finance for the business

(Source: *Crimes Act 1990* – New South Wales Consolidated Acts)

Prostitution laws

Prostitution is legal in the state of New South Wales. Prostitution was decriminalized in New South Wales and the current law is contained primarily in the *Summary Offences Act 1988*, the *Restricted premise Act 1943* and also the *Environmental Planning and Assessment Act 1979*. It is not a criminal offence to own or manage a brothel in New South Wales, or to work in a brothel. Brothels in New South Wales require a planning approval from the local council, but they do not need a licence to operate.⁷³

For over 30 years, street soliciting in New South Wales has been legal except for a few locations. Section 20 of the *Summary Offences Act 1988* creates an offence of 'public acts of prostitution,' which punishes the persons taking part in prostitution if the act of prostitution is within view from a school, hospital, church or public place, or within view from a dwelling.⁷⁴ Street based sex workers only represent 5% of the sex industry in New South Wales. The most well-known and prominent street for street soliciting is William St, near Kings Cross yet street soliciting is also prevalent in other suburbs of Sydney, such as Belmore, Campsie, and in the outer suburbs of Sydney such as the Great Western highway at Minchinbury and Mt Druitt.⁷⁵ New South Wales laws regarding prostitution and in particular street prostitution are quite ambiguous and vague in many ways. This has created many issues, which need to be addressed with stricter laws.

⁷³ Donovan, B, Harcourt, C, Egger, S, Watchirs Smith, L, Schneider, K, Kaldor, J.M, Chen, M.Y, Fairley, C.K, Tabrizi, S, 2012, 'The Sex Industry in New South Wales: a Report to the NSW Ministry of Health', Sydney: Kirby Institute, University of New South Wales.

⁷⁴ New South Wales Government, 'Summary Offences Act 1988', no. 25, *NSW legislation*, <http://www.legislation.nsw.gov.au>.

⁷⁵ Donovan, B, Harcourt, C, Egger, S, Watchirs Smith, L, Schneider, K, Kaldor, J.M, Chen, M.Y, Fairley, C.K, Tabrizi, S, 2012, 'The Sex Industry in New South Wales: a Report to the NSW Ministry of Health', Sydney: Kirby Institute, University of New South Wales.

There are also restrictions on the premises used for prostitution in New South Wales. Section 16 of the *Summary Offences Act 1988* outlines the offences in relation to premises for prostitution. Brothel keeping is illegal if the premises are held out as being available for the provision of massage or facilities for physical exercise or if the premises are held out as being a photographic studio.⁷⁶ Prostitution is therefore illegal if the premise is used and classified as a massage parlor. It is legal in New South Wales for a sole operator in the sex industry to run and offer sexual services from their home or a house, which is used for the purpose of sexual services. There is also no criminal prohibition regarding the conduct of an escort business in New South Wales.⁷⁷

In 2010, it was estimated that 271 legal brothels existed in the state of New South Wales. 244 of these legal brothels are in Sydney. In the same year, statistics showed that 150 illegal brothels were operating in the state; however, it is certain that there are hundreds of illegal brothels that go unreported.⁷⁸ In 2007, the New South Wales Adult Business Association (ABA) alleged that 800 massage, sauna and acupuncture businesses were appearing as illicit sex services and it reported that 782 businesses were offering illicit sex services, mainly in Sydney.⁷⁹ Therefore illegal sex services and brothels in New South Wales and particularly Sydney, could be anywhere between 100-800. Exact figures on illicit sexual services and premises are largely unknown and a lot of speculation exists within different industries. It is evident that New South Wales prostitution laws seem to be too relaxed and largely disregarded in many cases. This brings to the fore many issues, which need to be addressed if sex trafficking is to be targeted and combated in New South Wales. Anyone can open or own a brothel in New South Wales without a licence and with lax approval processes. This is a concern considering the possibility of brothels operators or owners with criminal backgrounds, such as owners with connections to international crime syndicates such sex trafficking. It is clearly apparent that regulation of the sex industry in New South Wales therefore needs to be addressed.

⁷⁶ New South Wales Government, 'Summary Offences Act 1988', no. 25, *NSW legislation*, <http://www.legislation.nsw.gov.au>.

⁷⁷ Donovan, B, Harcourt, C, Egger, S, Watchirs Smith, L, Schneider, K, Kaldor, J.M, Chen, M.Y, Fairley, C.K, Tabrizi, S, 2012, 'The Sex Industry in New South Wales: a Report to the NSW Ministry of Health', Sydney: Kirby Institute, University of New South Wales.

⁷⁸ Tabakoff, N, 2010, 'Sydney Sinking into Sin,' *The Daily Telegraph*, Viewed 15 September 2012, <http://www.dailytelegraph.com.au/news/sydney-news/sydney-is-sinking-into-sin/story-e6freuzi-1225952354770>.

⁷⁹ Welch, D, 2007, 'Brothel Black Market Worth \$500m: Report,' *The Sydney Morning Herald*, Viewed 3 October 2012, <http://www.smh.com.au/news/national/brothel-black-market-worth-500m-report/2007/02/14/1171405265293.html>.

Regulating and monitoring the sex industry in New South Wales

The regulation of the sex industry in New South Wales involves a number of government and local authorities including local councils, New South Wales Police and Ministry of Health. Other actors involved with the regulation and oversight of the New South Wales sex industry include AFP, Work Cover Authority and Sex Workers Outreach Project (SWOP).

Local Council

Local councils in New South Wales are responsible for administering and checking the planning policies of brothels and deciding on development applications for premises where sexual services will take place. Local councils also have the power to shut down or prohibit the use of the premises. The power is situated under Section 17 of the *Restricted Premises Act 1943*. This may occur if there have been a number of complaints against the premise.⁸⁰

Local councils in New South Wales are responsible for administering and checking planning policies for local premises that are used for sex services. This regulation is under the development control provisions of the *Environmental Planning and Assessment Act 1979*. Local councils can also develop specific control plans for certain brothels and limit and decide the location of brothels. The planning controls do not distinguish between the different types and size of brothels and there is no requirement for local councils to consider the owners or operators of brothels, when it is in the process of determining a development application.⁸¹ This remains an issue, particularly if owners and operators are associated with sex slavery.

In 2011, the AFP were involved in two investigations – known as Operations Elixation and Raspberry, in which three Melbourne based brothels and two Sydney based brothels were found to be linked to the international sex trafficking ring. Despite these findings, it is apparent that state authorities and those responsible for regulating and approving brothels, such as local councils, have taken no action.⁸² In New South Wales this is a considerable issue given the relatively lenient laws surrounding the operation of brothels.

Licensing system

In 2011, the state government proposed a licensing system to regulate the sex industry, which gives New South Wales Police the role of regulating brothels, yet strong criticism and opposition against the proposal has persisted. New South Wales Greens MP, Cate Faehrmann, criticized the proposal contending that licensing schemes have failed in other Australian states and that tougher

⁸⁰ Roth, L, 2011, 'Regulation of Brothels: an update,' E-brief, NSW Parliamentary Library Research Service.

⁸¹ Ibid.

⁸² McKenzie, N & Beck, M, 2011, 'Legal brothels sex slavery links,' *The Age*, Viewed 3 October 2012, <http://www.theage.com.au/victoria/legal-brothels-sex-slavery-links-20111009-1fy0.html>.

licensing laws and regulation of brothels in New South Wales will only lead to more illegal activity within the sex industry and underground brothels.⁸³ This can be witnessed in other Australian states, such as Queensland in which most of the industry has been forced underground. Contention still surrounds the issue of licensing in New South Wales.

New South Wales Police

Compared to Victorian Police, New South Wales Police force has far less powers and roles when it comes to the regulation of the sex industry. Police are firstly not responsible for regulating the sex industry. Since 1996 the police's role in regulating the sex industry in New South Wales has decreased. When sex work in New South Wales was decriminalized, the police could no longer arrest someone for being a sex worker. The police also do not have the power to shut down a premise that is used for prostitution or related sexual services. Some police stations in New South Wales have a Police Sex Worker Liaison Officer to help sex workers. New South Wales Police can enforce laws regarding the following:

- Sexual assault and harassment crimes (related to street sex workers)
- Sex workers under 18 years of age
- Offences relating to living of the earnings of a sex worker
- Advertising and the use of massage premises as sex services.⁸⁴

New South Wales Police visit brothels occasionally. Calls to local police usually involve property thefts and on one occasion this year involved an underage sex worker. Other Police visits sometimes can be routine checks.⁸⁵ The response to trafficking for the purposes of sexual servitude is coordinated through the Child Protection and Sex Crimes Squad in New South Wales. There is no state police unit which deals specifically with human trafficking offences and issues. The aim of the Squad is to investigate sex crimes that are serious in nature, identify crime trends, develop operations strategies and programs, maintain the child protection register and provide consultancy in local investigations if necessary.⁸⁶

⁸³ The Australian, 2012, 'NSW brothel plan health disaster: Greens', *The Australian*, Viewed 1 October 2012, <http://www.theaustralian.com.au/news/breaking-news/nsw-brothel-plan-health-disaster-greens/story-fn3dxiwe-1226461588461>.

⁸⁴ Sex Workers Outreach Project (SWOP), 2010, 'NSW Police Force', <http://www.swop.org.au/the-law/regulating-the-industry/nsw-police-force>.

⁸⁵ Donovan, B, Harcourt, C, Egger, S, Watchirs Smith, L, Schneider, K, Kaldor, J.M, Chen, M.Y, Fairley, C.K, Tabrizi, S, 2012, 'The Sex Industry in New South Wales: a Report to the NSW Ministry of Health', Sydney: Kirby Institute, University of New South Wales.

⁸⁶ New South Wales Police Force, 2012, 'Sex Crimes Squad', http://www.police.nsw.gov.au/community_issues/children.

New South Wales Ministry of Health

The New South Wales Ministry of Health is involved in the regulation of brothels to an extent. Primarily, their role is promoting awareness of HIV, AIDS and other STI's. They provide a range of sexual health services. They are also responsible for investigating complaints related to public health issues in premises used for sex services. If further action is needed, the New South Wales Ministry of Health can refer to the *Public Health Act 2010*.⁸⁷

Other forms of trafficking evident in New South Wales

Other forms of trafficking have also been evident in New South Wales. Again, labour exploitation and some cases of labour trafficking are emerging issues within the state government, and wider Australia in general. In July 2011, the Construction, Forestry, Mining and Energy Union (CMFEU) found that many construction companies in Sydney were underpaying workers and illegal workers, primarily from China, Korea and British backpackers. More than 40 companies in Sydney alone have been found to use illegal workers and some are paid as little as \$3 an hour. The union estimated that there were 13,000 temporary foreign workers in construction in New South Wales, and 3000 were working illegally. This case also put significant pressure on the Department of Immigration.⁸⁸ Considering the large number of temporary workers and migrant workers, conditions for people trafficking for the purpose of labour exploitation in New South Wales, and Sydney in particular, is high. Cases of labour trafficking remain considerably low, but there is speculation that labour trafficking is happening at a much higher rate.

The AFP investigated the first case of organ trafficking in Australia in 2011. It was alleged that a Sydney woman with kidney problems was suspected of trafficking a young Philippine woman with the intention of harvesting an organ.⁸⁹

Services and Support for victims of trafficking

Many services and support groups for victims of trafficking are available in New South Wales. Most organizations are located in Sydney.

⁸⁷ New South Wales Government, 2012, 'Regulation of Brothels in NSW: Issue Paper,' http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0006/145077/Issues_Paper_Regulation_of_Brothels.pdf.

⁸⁸ Wallace, N, 2011, 'Illegal workers rife in construction industry, Union claims,' *The Sydney Morning Herald*, Viewed 8 October 2012, <http://www.smh.com.au/nsw/illegal-workers-rife-in-construction-industry-union-claims-20110724-1hvgo.html>.

⁸⁹ ABC, 2011, 'AFP investigates organ trafficking,' *ABC News*, Viewed 8 October 2012, <http://www.abc.net.au/news/2011-07-28/afp-investigates-organ-trafficking/2813492>.

ACRATH- Sydney

Currently ACRATH in New South Wales have been working together with Anti -Slavery Australia on a number of issues such as housing and English classes for people that are or have been trafficked victims in the sex industry in New South Wales. ACRATH members in New South Wales have also attended seminars about forced and servile marriages at Sydney's University of Technology, which have been hosted by Anti-Slavery Australia.

ACRATH also works closely with Stop the Traffik campaigns- a global movement of organizations and communities fighting to prevent human trafficking on a global scale. Campaigns have recently targeted forced child labour and supply chains, such as chocolate. Noelene Simmons, who is ACRATH's New South Wales project coordinator, is a member of the Stop the Traffik committee. To further their knowledge, members of ACRATH in New South Wales work with and invite people to present at meetings to inform them of their own experiences with victims of trafficking and the industry. This has included representatives from Red Cross and the Salvation Army and Jennifer Burn and Sr Roslyn Carey.⁹⁰

Salvation Army

The Salvation Army has two territories; the Eastern Territory, which includes New South Wales and Queensland, and the Southern Territory, which includes Victoria, Western Australia, South Australia, Northern Territory and Tasmania. The Eastern Territory has social program services, which involve housing services. It is within these services that victims of trafficking sometimes maybe supported. Only a small number of victims of trafficking have taken refuge in transitional housing services with the Salvation Army, whilst others who have left the sex industry have been referred to other places of care. It is not clearly evident if the women were trafficked.

The Eastern Territory also recently launched a survey to determine the amount and extent of people who access their services to determine how many people have been victims of trafficking. The intended outcome of the survey is to provide data that may help with future awareness and signs of trafficking. Currently the Eastern Territory works also with Stop the Traffik and it receives education and greater awareness of trafficking through the resources and materials Stop the Traffik provides.⁹¹

⁹⁰ Rose, S, ACRATH, Email, 14 October 2012.

⁹¹ Weymouth, M, Territorial Social Justice Secretary- Salvation Army, Email, 10 October 2012.

The Safe House

The Safe House was established in Sydney and is exclusively funded by the Salvation Army. Safe House services are eligible to people who have been subject to human trafficking, slavery and slavery-like conditions. The Safe House provides residential assistance, outreach services and prevention support.

- Residential Support: The Safe House offers accommodation for victims of trafficking and there is no limit on the length of the stay. Women with children can also be accommodated.
- Outreach Support: provides support to men, women and children living in the community who have been subjected to trafficking.
- Prevention support: prevention support involves the work of a case manager providing assistance to people vulnerable to exploitation in Australia. They work with vulnerable people and help them to remain free from exploitation or trafficking.⁹²

The Safe House received 61 referrals between January 2008 and June 2009. 37 individuals were assessed for assistance at the Safe House. It was found that the majority of the clients being assessed were not exploited in the sex industry, but many had experienced exploitation and trafficking into industries in Australia, including agriculture, hospitality, domestic work, health care and retail massage and some had been trafficked into forced marriage in Australia.⁹³

Other organizations that may work to eliminate and support victims of trafficking or may come into contact with victims of trafficking in New South Wales and wider Australia include:

- Immigration Women's Speak out: New South Wales based organization that represents immigrants and refugee women in New South Wales.
- Sex Workers Outreach Program: Sex work education and support for people in the sex industry
- Fair Wear: Organization committed to eliminating exploitation of outworkers in the Australian clothing industry.
- Sydney's Seafarers Centre: Committee who supports the rights of seafarers in Australia who may be vulnerable to exploitation.⁹⁴

Whilst these organizations are not specifically organizations committed to the elimination of human trafficking or support services for victims, they may come into contact with people who may

⁹² The Salvation Army: Eastern Territory, 'Human Trafficking and Slavery: Identify and Respond,' (Document provided by Jenny Stanger via email, 14 October 2012).

⁹³ David, F, 2008, 'Trafficking of Women for Sexual Purposes,' *Australian Institute of Criminology*, Research and Public Policy Series, no. 95.

⁹⁴ Anti-Slavery Australia, 2012, 'What We Do', Viewed 10 October 2012, <http://www.antislavery.org.au/what-we-do/who-we-work-with.html>.

have experienced sex trafficking or other forms of trafficking, such as labour trafficking. Anti-Slavery Australia works with these organizations helping to end exploitation in Australia in various industries. Community awareness and information about human trafficking is crucial to combating the issue.

State Inquiries

The Community Relations Commission for a Multicultural New South Wales is currently conducting an Inquiry into the *Exploitation of Women through Trafficking*. The inquiry was announced in July 2012. The inquiry will investigate trafficking and exploitation of people in the sex industry as well as other forms of employment, look at local and state responses to trafficking and determine how effective they have been at targeting the issue of trafficking, identify commonwealth initiatives that have been developed to address trafficking, assess the level of community awareness of the issue and look at ways human trafficking can be addressed in the state of New South Wales.⁹⁵

Prosecutions

Sexual servitude and slavery prosecutions

Sieders and Yotchomchin (2006)

- Sieders was sentenced to four years' imprisonment and Yotchomchin was sentenced to five years imprisonment for conducting a brothel, which involved the trafficking of persons and sexual servitude in Sydney.⁹⁶

Mclvor and Tanuchit (2010)

- This was the first case that resulted in convictions for slavery in New South Wales.
- Both were convicted of five counts of possessing a slave under section 270.3 of the Criminal Code as well as five counts of exercising the right of ownership over a slave.
- Both Mclvor and Tanuchit were sentenced to 12 years imprisonment.⁹⁷

Namthip Netthip (2010)

- Organized the placement of 11 Thai women in brothels across seven Australian cities and was arrested in 2009.

⁹⁵ New South Wales Government, 2012, 'Inquiry into the Exploitation of Women through Trafficking,' *Community Relations Commission for a Multicultural NSW*, <http://www.crc.nsw.gov.au/inquiries>.

⁹⁶ Australian Government, 2009, 'Trafficking in Persons: The Australian Government Response,' January 2004-April 2009.

⁹⁷ Australian Government, 2011, 'Trafficking in Persons: The Australian Government Response,' July 2010- June 2011.

- She pleaded guilty in the Downing Centre Local Court, New South Wales, to charges in relation to sexual servitude, immigration and debt bondage offences.
- Netthip was sentenced to two years and three months imprisonment.⁹⁸

Labour trafficking prosecutions

Rasalingam (2007)

- First labour exploitation case to be prosecuted in Australia.
- Prosecuted in New South Wales under section 271.2 of the Criminal Code for trafficking a male Indian Chef for exploitation in his restaurants.
- The restaurant, Yoga Tandoori, was ordered to pay \$18,200 in penalties into Commonwealth revenue.⁹⁹

Compensation laws

New South Wales compensation scheme is under the *Victim Support and Rehabilitation Act 1996*. New South Wales was the first Australian state to award compensation to a victim of trafficking.

This case was in relation to 13-year-old Jetsadophorn Chaladone, also known as Ning. She was trafficked from Thailand to Australia in 1995 and was forced to work in a brothel in Surrey Hills, Sydney, to pay off the \$35,000 debt the traffickers declared she owned them. AFP and Immigration Police raided the brothel she was working in and she was sent back to Thailand. Policemen Chris Payne and filmmaker Luigi Acquisto travelled to Thailand to find her and subsequently made a film called 'Trafficked'. The brothel owner was never prosecuted yet the New South Wales Compensation Tribunal awarded an undisclosed sum to Ning. The New South Wales Victims Compensation Tribunal granted her compensation on the reasons and intention that she had suffered post-traumatic stress disorder and severe depression as a result of the experiences she had been subjected to.¹⁰⁰

⁹⁸ Human Trafficking Working Group, 'R v Namthip Netthip', Case Report (criminal), TC Beirne School of Law, *The University of Queensland*, <http://www.law.uq.edu.au/documents/humantraffic/case-reports/Netthip.pdf>.

⁹⁹ David, F, 2010, 'Labour Trafficking,' *Australian Institute of Criminology*, Research and Public Policy Series, AIC Report 108.

¹⁰⁰ Donovan, S, 2007, 'Tribunal pays compensation to sex trafficking victim,' *ABC Radio*, Transcript available from-
<http://www.abc.net.au/pm/content/2007/s1936937.htm>.

AUSTRALIAN CAPITAL TERRITORY

Overview

In recent years, illegal brothels have increased in the Australian Capital Territory. From time to time issues of sex trafficking and other forms of trafficking have been apparent in the Australian Capital Territory. What remain apparent are the current issues with the Australian Capital Territory's sex industry laws and the need for reform. There is also a lack of support services for sex workers. Labour trafficking cases have also been apparent in the Australian Capital Territory.

State Laws

Sexual Servitude

The Australian Capital Territory *Crimes Act 1990* was amended by the *Crimes Amendment Act 2000* to include offences relating to sexual servitude and deceptive recruiting. The offences inserted into this Act are similar to Commonwealth offences relating to sexual servitude.

Section 79 Criminal Code: Causing sexual servitude

- 1) The person's conduct causes someone else to enter into or remain in sexual servitude
- 2) Conducting business involving sexual servitude:
The person conducts a business that involves the sexual servitude of others.

Section 80 Criminal Code: Deceptive recruiting for sexual services

The person induces someone else to enter into an engagement to provide sexual services or; deceives the other person about the fact that the engagement will involve the provision of sexual services.

(Source: The Human trafficking Working Group, 2009, 'Australia, State and Territory offences relating to trafficking in persons', TC Beirne Scholl of Law, University of Queensland)

Prostitution Laws

Prostitution is legal in the Australian Capital Territory. It was legalized in Canberra in 1992 when the Australian Capital Territory legislative Assembly passed the Prostitution Act. The *Prostitution Act 1992* outlines offences regarding soliciting and coercion, sexual exploitation of children and the laws regarding registration of brothel operators.

In the Australian Capital Territory, all brothels must be registered. Operators of brothels and escort agencies are required to provide registration notices, defined under sections 7 and 8 of the

Prostitution Act 1992.¹⁰¹ The Office of Regulatory Services is responsible for the registration of commercial sexual services and persons who want to register a commercial brothel or sole operator brothel that will be used for the purposes of prostitution. Commercial operators must also provide a police record when registering with the Office of Regulatory Services and also pay relevant registration fees.¹⁰²

Over recent years, illegal brothels and criminal activity have increased in Canberra which has led to questioning about the effectiveness of the *Prostitution Act 1992*. There has also been increasing fear that criminal syndicates are running sex trafficking out of Canberra's illegal brothels.

Regulating and monitoring the sex industry in Australian Capital Territory

Office of Regulatory Services and Australian Capital Territory Police

Regulation and monitoring of brothels in the Australian Capital Territory have been relatively poor. Since the death of young women in a Fyshwick brothel in 2008, there has been mounting concern over the regulation of brothels in the Australian Capital Territory and the relevance of the *Prostitution Act 1992*.¹⁰³ The Office of Regulatory Services has both administrative and regulative responsibilities in regard to the operation and functioning of brothels in the Australian Capital Territory. Under the *Prostitution Act 1992*, the Office of Regulatory Services does not have inspection or enforcement powers. The Office of Regulatory Services conducts inspections on the basis of the framework of the Work Safety Act 2008. If signs of criminal activity, or violations of the *Prostitution Act 1992* are evident during the process of Work Safety inspections, inspectors notify Police, and they will investigate the issue. Australian Capital Territory Police do not have the right to inspect a brothel. Police can only enter a brothel if they believe a crime has been committed. Health workers are apart of Work safe inspections and Sex Workers Outreach Program (SWOP) are also involved in the process of regulating and monitoring brothels in the Australian Capital Territory.¹⁰⁴ It was acknowledged that the Office of Regulatory Services failed to inspect a brothel between 2005 and 2010.¹⁰⁵

¹⁰¹ Standing Committee on Justice and Community Safety, 2012, 'Inquiry into the Prostitution Act 1992', Legislative Assembly of the ACT, <http://www.parliament.act.gov.au/downloads/reports/JACS09%20Prostitution%20Act.pdf>.

¹⁰² ACT Government, 2012, 'Sex industry', Viewed 10 October 2012, http://www.ors.act.gov.au/industry/sex_industry.

¹⁰³ Standing Committee on Justice and Community Safety, 2012, 'Inquiry into the Prostitution Act 1992', Legislative Assembly of the ACT, <http://www.parliament.act.gov.au/downloads/reports/JACS09%20Prostitution%20Act.pdf>.

¹⁰⁴ Ibid.

¹⁰⁵ ABC Canberra, 2010, 'Support the Sex industry Review,' *ABC News*, <http://www.abc.net.au/news/stories/2010/05/31/2913428.htm?site=canberra>.

Reforming the Australian Capital Territory sex industry laws

A multi-party assembly committee has just recently finished a review and investigation into the Australian Capital Territory's sex industry laws, and specifically the *Prostitution Act 1992*. The inquiry into Australian Capital Territory prostitution laws resulted in 17 recommendations. These recommendations ranged from the following:

- Stronger and more effective inspection of brothels
- Tougher laws to target brothels that employ sex workers who are underage
- More requirements for brothels to provide sex workers with safety equipment.¹⁰⁶

In June 2012, the government committed to reforming certain aspects of the Australian Capital Territory's sex industry laws. This included protecting young people from being caught in the sex industry, investigating local brothels and links with sex slavery as well as human trafficking and organized crime. The government are also contemplating the installation of multilingual signs in brothels to aware both customers and sex workers of sex trafficking. Australian Capital Territory Police also need more powers within the regulation and oversight of the sex industry to prevent criminal activity from occurring in the industry.

The Australian Capital Territory sex industry has had less criminality and cases of trafficking than other Australian states and territories such as New South Wales and Victoria. However, Australian Capital Territory Police have encountered various criminal activities within the sex industry including:

- Children involved in the sex industry
- Involvement of illegal immigrants in the sex industry
- Underage customers
- Unregistered/illegal brothels
- Illicit drugs on licensed premises used for sexual purposes.¹⁰⁷

¹⁰⁶ Knaus, C, 2012, 'ACT govt to clean up sex sector,' *The Canberra Times*, <http://www.canberratimes.com.au/act-news/act-govt-to-clean-up-sex-sector-20120606-1zwz5.html>.

¹⁰⁷ Standing Committee on Justice and Community Safety, 2012, 'Inquiry into the Prostitution Act 1992', Legislative Assembly of the ACT, <http://www.parliament.act.gov.au/downloads/reports/JACS09%20Prostitution%20Act.pdf>.

Other forms of trafficking evident in Australian Capital Territory

Labour trafficking

Exploitation of a group of Filipino Chefs in Canberra

- A restaurant owner/employer was paid \$8000 by a restaurant and \$12,000 by another restaurant to effectively 'rent out' or 'sell' the group of chefs. The chefs were forced to work and they were paid reduced pay rates. New South Wales Police and DIAC later on noticed the group of Filipino chefs and their situation in which these cases were investigated.¹⁰⁸

Services and Support for victims of trafficking

In the recent inquiry into the *Prostitution Act 1992*, it was revealed that there were no support services or exit programs for sex workers in the territory, particularly for sex workers who want to leave the industry or stop prostitution.¹⁰⁹ The Sex Worker Outreach Program (SWOP) is based in the Australian Capital Territory. SWOP is funded by the Australian Capital Territory Department of Health and is committed to providing education and preventing the spread and transmission of HIV/STI's to sex workers. Its focus is from a health and safety perspective. It is considered the main organization in Canberra that focuses on sex worker support and raising awareness.¹¹⁰ However, the Australian Red Cross assists with victims of trafficking across most Australian states and territories including the Australian Capital Territory.

State Inquiries

Inquiry into Australian Capital Territory sex industry laws:

- Inquiry into the *Prostitution Act 1992*: has prompted government and police to investigate the Australian Capital Territory sex industry and links with sex trafficking/criminal activity (outlined above).

There has been no inquiry into trafficking for the purposes of sex work or other forms of trafficking. The outcome of the Australian Capital Territory sex industry inquiry may prompt further research on issues related to human trafficking.

¹⁰⁸ David, F, 2010, 'Labour Trafficking,' *Australian Institute of Criminology*, Research and Public Policy Series, AIC Report 108.

¹⁰⁹ Evans, K, 2011, 'No exit programs for sex workers in Canberra,' *ABC News*, <http://www.abc.net.au/news/2011-04-08/no-exit-programs-for-canberra-sex-workers/2622676>.

¹¹⁰ SWOP, 2012, 'About the Sex Worker Outreach Program', Viewed 12 October 2012, <http://www.aidsaction.org.au/swop/about.php>.

Prosecutions

Sexual Servitude prosecutions

Nantakhum (2012)

- Brothel owner in Canberra who was charged with sexual servitude and slavery offences.
- Sentenced on 24 May 2012 to eight years and 10 months imprisonment on the grounds that she intentionally possessed a slave. She was also charged for crimes under the Migration Act.¹¹¹

Compensation

Compensation laws in the Australian Capital Territory are under the *Victims of Crime (Financial Assistance) Act 1983*. To be eligible for compensation and financial assistance the crime must be defined as a violent crime under Section 3 of the Victims of Crime Financial Assistance Act and the crime must have been reported to police.¹¹² Considering that cases of sexual servitude and sex trafficking often go unreported to police, victims of trafficking might be limited in seeking compensation in such circumstances.

It is also apparent that victims of trafficking and exploitation in the Australian Capital Territory have been able to obtain financial reparation through other avenues. For example, some Filipino chefs, who were exploited by restaurant owners in Canberra, were able to obtain financial benefits through the small claims court and the Australian Capital Territory Human Rights Office.¹¹³

¹¹¹ Human Trafficking Working Group, 'Watcharaporn Nantakhum and Robert Phillip Dick,' Case Report (Criminal), TC Beirne School of Law, *The University of Queensland*, <http://www.law.uq.edu.au/documents/humantrafficking/case-reports/Nantakhum-Dick.pdf>.

¹¹² ACT Police, 2002, 'Applying for Financial Assistance pursuant to the Victims of Crime (financial Assistance) Act 1983: An information Guide for providers of services to victims of crime', <http://www.police.act.gov.au/~media/act/pdf/apply-financial.ashx>.

¹¹³ David, F, 2010, 'Labour Trafficking,' *Australian Institute of Criminology*, Research and Public Policy Series, AIC Report 108.

QUEENSLAND

Overview

In recent years, people trafficking for the purposes of sex have become more prevalent in Queensland. This is not only a concern in major towns of Queensland such as the Gold Coast and Brisbane, but also for smaller communities involved in the mining industry in which women are being trafficked to mining towns. Many argue that Queensland licensing laws and regulation of the sex industry needs certain reforms to protect sex workers. An illegal industry has flourished within the region, yet it seems to be largely concealed from government authorities and police. Further training, education and services are needed to combat illegal sex services and prevent possible sex trafficking from occurring.

State Laws

Sexual Servitude

There are no offences in the Criminal Code (QLD) that criminalize trafficking in persons or sexual servitude. There are two offences in the Criminal Code (QLD), which can be perceived to relate to trafficking in persons.

- It is an offence to knowingly entice or recruit a person under the age of 18 years, or an intellectually impaired person, for the purposes of sexual exploitation. This can be broadly related to trafficking in persons.
- Section 218 of the Queensland Criminal Code criminalizes 3 aspects of trafficking in persons including threats/intimidation, false pretense and the use of drugs.¹¹⁴

Prostitution Laws

Sole Operators (private work) and sex work conducted in a licensed brothel are the only two legal forms of sex work permitted in Queensland. The *Prostitution Control Act 1999* (QLD) outlines the relevant framework for licensed brothels, guidelines for advertisements for prostitution and the process in which premises for the purposes of sexual services are granted or declined. Sex work in Queensland is illegal if it is provided through:

- An unlicensed brothel/premise,
- Street-work,
- Escort Services, or
- When two people are sharing the same premises for sex work.¹¹⁵

¹¹⁴ Human Trafficking Working Group, 2009, 'Australia, State and Territory offences relating to trafficking in persons', TC Beirne School of Law, *University of Queensland*, <http://www.law.uq.edu.au/documents/humantrafficking/legislation/State-Territory-Trafficking-and-Servitude-Offences.pdf>.

In 2010-2011, there were 23 licensed brothels in Queensland according to the Prostitution Licensing Authority (PLA). Of these, nine were in the Brisbane City Council area and six were in the Gold Coast City Council area.¹¹⁶ It is apparent that an illegal sex industry has been slowly flourishing in Queensland and current laws have failed to protect sex workers from exploitation. It has also been asserted that 90% of prostitution in Queensland is taking place outside legal brothels.¹¹⁷

Sex trafficking has become a concern in the state of Queensland only in recent years. Whilst many fear that sex trafficking is taking place within the illegal sex industry in Queensland it is not certain to what extent sex trafficking is an issue in Queensland as the area is poorly researched and most illegal activity is disguised from government agencies and local police in many ways. What has been apparent is that sex trafficking is taking place in Queensland mining towns. Mount Isa Police have been increasingly dealing with women and girls who have very low levels of English. Local police say that women, majority of whom are from Southeast Asia, are being trafficked in Australia from one mining town to the other, on a fly-in and fly-out basis.¹¹⁸ This is a serious issue occurring across a number of Australian mining towns which needs urgent investigation and addressing. It is apparent that this illegal activity is hard to track and pinpoint exactly where the source is and who is facilitating the sex trafficking into these towns.

Regulating and monitoring the Sex Industry in Queensland

The PLA is responsible for the regulation of brothels in Queensland, as outlined in the *Prostitution Control Act 1999*. The roles of the PLA include:

- Brothel licensing and manager applications, including licensing fees:
 - To obtain a license for a brothel, the owner/operator must apply to the PLA. Prospective brothel operators/owners must meet a number of eligibility requirements. This process is to ensure that brothels are not associated with organized crime, the entertainment industry, corporate organizations and people who have had license violations or criminal records.
- Monitors services in licensed premises:
 - The PLA regulates and monitors licensed brothels through inspections by compliance officers.

¹¹⁵ Prostitution Licensing Authority (PLA), 'Prostitution and the Law in Queensland', *Queensland Government*, <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/Prostitution%20and%20the%20Law%20in%20Qld%20-%202010.12.07.pdf>.

¹¹⁶ Prostitution Licensing Authority, 2011, 'Select Sex industry Statistics,' <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/IndStats.pdf>.

¹¹⁷ Hall, J, 2011, 'Prostitution Laws failing sex workers,' *ABC News*, <http://www.abc.net.au/news/2009-08-15/prostitution-laws-failing-sex-workers/1391654>.

¹¹⁸ Overington, C, 2012, 'Sex Traffick 'serious' in mine towns, *The Australian*, <http://www.theaustralian.com.au/news/nation/sex-traffic-serious-in-mine-towns/story-e6frg6nf-1226422026998>.

- Conducts inquiries into license holders:
 - On some occasions, the PLA conducts inquiries into licensees. This may occur if the licensee is suspected of being associated with a criminal offence, a breach of licensing conditions or breach of state prostitution laws and guidelines.
- Cooperates with police and government agencies about possible offences.¹¹⁹

Underlying concerns remain about the regulation of the sex industry and the efficiency of the current licensing and regulation system in Queensland. Whilst there have been instances of sex trafficking throughout Queensland it remains an issue that needs further investigating by Queensland authorities and police. Queensland does not have a state law that specifically suppresses human trafficking offences, which also remains an issue particularly for foreign sex workers who are vulnerable to exploitation.

Other forms of trafficking evident in Queensland

The booming mining and construction industry in Queensland has resulted in an influx of foreign workers. 7,380 foreign workers came to Queensland on 457 visas in 2011- 2012.

In April this year, 2,500 foreign workers were brought to Queensland to work in mining and construction in the state. Most of these workers were on 457 visas or temporary business long stay visas. Unions, such as the CFMEU state that the foreign workers are being exploited through low wages and dangerous work conditions. Employers can also threaten foreign workers to cancel their visas if they voice concerns about safety conditions or low wages.¹²⁰ This may be the case for some foreign workers in Queensland, yet there is a lack of evidence on the issue and it is also hard to regulate the work practices of mining and construction industries. It is unknown as to whether labour trafficking is occurring in mining and construction industries in Queensland, yet the present conditions as well as a large migrant intake means that it could be happening and authorities are not aware of it. Farms throughout Queensland can also be possible destinations for human trafficking to flourish, particularly because farms attract a large amount of foreign workers, such as fruit pickers.

¹¹⁹ Prostitution Licensing Authority, 2011, 'Sex Work (prostitution) & The Law in Queensland,' Prostitution Licensing Authority, <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/documents/SexWorkLaw.pdf>.

¹²⁰ Jacques, O, 2012, 'Foreign workers filling boom jobs,' *Sunshine Coast Daily*, <http://www.sunshinecoastdaily.com.au/news/foreign-workers-filling-boom-jobs/1350915/>.

Services and Support for victims of trafficking

Apart from ACRATH (QLD), there are no direct services for victims of sex trafficking. There are support services for sex workers, which mainly focus on the rights and well being of sex workers in Queensland.

Respect Inc. is one such organization, which focuses on education services to increase awareness of health and safety rights and responsibilities. They are also involved in health promotion. Crimson Coalition is another organization based in Queensland that provides services for sex workers to voice their opinions and their views to the government in the prospect of law reforms associated with the sex industry. United Sex Workers North Queensland was established in 2007 and they primarily focus on health and safety training.¹²¹ Respect Inc. website does not mention sex trafficking. These organizations are members of Scarlett Alliance.

State Inquiries

Queensland has not conducted an inquiry into trafficking in persons. Queensland had an inquiry into their prostitution laws in 1991.

Prosecutions

Sexual servitude and slavery prosecutions

Dobie (2008)

- Recruited and organized four Thai women to come to the Gold Coast, Australia, to work for him as prostitutes.
- Charged with two counts of people trafficking under section 271.2 of the Criminal Code and another count that related to dealing in the proceeds of crime.
- He was also charged with presenting false documents to immigration officials.
- He was sentenced to five years imprisonment.¹²²

Zoltan Kovacs & Melita Kovacs (2007)

- Sentenced in the Supreme Court of Queensland for intentionally possessing a slave, intentionally exercising ownership over and using a slave and arranging a marriage for visa purposes.
- Zoltan Kovacs was sentenced to 8 years in prison and Melita Kovacs was sentenced to 4 years in prison.¹²³

¹²¹ Respect Inc, 2012, 'About Us', <http://www.respectqld.org.au/about-us>.

¹²² Australian Government, 2009, 'Trafficking in Persons: The Australian Government Response,' January 2004-April 2009.

Compensation

Queensland's current criminal compensation scheme, *Victims of Crime Assistance Act 2009*, seeks to focus on victim recovery by awarding compensation or reimbursing the costs of goods and services that a victim requires to recover from the effects of crime. It focuses on financial assistance rather than just criminal compensation.¹²⁴ There have been no cases in Queensland in which a victim of trafficking has been awarded compensation.

¹²³ Human Trafficking Working Group, 'Zoltan Kovacs & Melita Kovacs,' Case report (Criminal), TC Beirne School of Law, *The University of Queensland*, <http://www.law.uq.edu.au/documents/humantraffic/case-reports/kovacs.pdf>.

¹²⁴ Queensland Law Society, 2012, 'Victim Assist', http://www.qls.com.au/For_the_community/You_your_solicitor/Victim_Assist.

WESTERN AUSTRALIA

Overview

Western Australia is currently reviewing the states sex industry laws. The sex industry and brothels are illegal in Western Australia; however, the proposed Prostitution Bill 2011 seeks to legalize prostitution and regulate the sex industry in Western Australia. Fervent debate has surrounded this Bill with regards to the legalization of the sex industry. A recent concern in rural Western Australia has been sex trafficking in the mining industry. It also is clear that exploitation of foreign workers is occurring in the Western Australian construction and mining sector. The majority of Western Australians are unaware of human trafficking and its effects, however NGO's and organizations such as ACRATH along with other governmental agencies are trying to increase awareness of human trafficking in the state, and particularly rural centres of Western Australia.

State Laws

Sexual Servitude

Under the Criminal Code (WA) there are three offences relating to trafficking in persons. Two of these offences are similar to that found in the Commonwealth Criminal Code.

Section 331B Criminal Code: Sexual Servitude

A person who compels another person to provide or to continue to provide a sexual service

Section 331C Criminal Code: Conducting a business involving sexual servitude

A person; who conducts a business which involves any other person being compelled to provide or to continue to provide a sexual service

Section 331D Criminal Code: Deceptive recruiting for commercial sexual services

A person; offers a person employment or some form of engagement to provide personal services

(Source: The Human trafficking Working Group, 2009, ' Australia, State and Territory offences relating to trafficking in persons', TC Beirne School of Law, University of Queensland)

Prostitution Laws

Brothels are currently illegal in Western Australia and criminal laws prohibit most activities related to prostitution; most of them specified under the *Prostitution Act 2000*. Section 5 and 6 of the *Prostitution Act 2000* are related to street offences which apply to both clients and workers. There are no offences regarding escort workers or businesses under the Act. Under the *Prostitution Act 2000*, there are enforcement powers granted to police including the power to require the production of documents and information, the power to search people and premises with or without a warrant.¹²⁵

Most brothels in Western Australia are concentrated in Perth, Kalgoorlie and Port Hedland. It has been noted that in Perth more Aboriginal sex workers are involved in street work than Asian Women. Cases of sex trafficking has been considerably low in Western Australia, yet it is apparent that illegal sex traffic is continuously occurring throughout Western Australian mining towns through fly-in fly-out services, similar to the situation in Queensland. Investigating illegal activity of this nature continues to be difficult to target.¹²⁶

Regulating and monitoring the Sex Industry in Western Australia

The Prostitution Bill 2011 proposed a new regulatory scheme for prostitution laws and guidelines in Western Australia. It was apparent that current prostitution laws were not working and did not have any function with the way the state sex industry was now operating.

In 2011, the Coalition government introduced the *Prostitution Bill 2011* into parliament. This Bill proposed a new regulatory scheme for prostitution laws and guidelines in Western Australia. The proposed new changes to the Prostitution Act include:

- Brothels will be legal and regulated under a licensing scheme that is administered by the Department of Racing, Gaming and Liquor.
- Self-employed prostitutes must also be licensed. Prostitutes working in brothels must have a licence or otherwise have their identify, age, Australian Citizenship/residency status verified by the operator of the brothel.
- Operators and managers of brothels will need to have a licence to operate a premise for the purposes of sex work.
- Brothels will be banned in all suburban residential areas.
- Further restrictions on sex industry advertising and advertising for prostitution must be approved beforehand.

¹²⁵ Donovan, B, Harcourt, C, Egger, S, Schneider, K, O'Connor, J, Marshall, L, Chen, M.Y, & Fairley, C.K, 2010, 'The Sex Industry in Western Australia: a Report to the Western Australian Government,' *National Centre in HIV Epidemiology and Clinical Research*, University of New South Wales, Sydney.

¹²⁶ Ibid.

- The police will be responsible for dealing with unlawful prostitution and investigating offences. If brothels are involved in certain offences, police can therefore issue the closure of the premises.¹²⁷

The *Prostitution Bill 2011* has created debate within Western Australia about the legalization of the sex industry. Many argue that legalizing the sex industry will only force sex workers underground and contribute to a more dangerous industry. Tough regulations and compliance laws will force operators underground and then sex workers will become more vulnerable, potentially contributing to increasing rates of sex trafficking flowing into the state.¹²⁸ The Bill is set for further debate in state parliament this year; however, it is unlikely to go through parliament unless it receives more support from both parties.

Other forms of trafficking evident in Western Australia

- Rural Western Australia: Increasing labour trafficking concerns.
 - There has been no research conducted into people trafficking occurring in rural parts of Western Australia. There is an amount of concern that it is happening but is usually unreported.
- Mining Industry & Construction Industry: Exploitation of foreign workers. Last year the Fair Work Ombudsman investigated claims foreign workers were getting paid \$3 an hour on an oilrig project off the coast of Western Australia.¹²⁹ Whilst this case is not specifically related to trafficking in persons, it demonstrates how foreign workers can 'fall through cracks' with Australian immigration laws.
- Trafficking for the purposes of exploitation and labour: In 2011, it was reported that a multinational company had trafficked Filipino workers to work on the North West Gas Shelf of the coast of Western Australia.¹³⁰

Services and Support for victims of trafficking

ACRATH- Perth

ACRATH and Red Cross recently had information and awareness training sessions. 30 different agencies turned up to the sessions. A number of agencies are now developing a pocket size fold up brochure that contains information about agencies that can assist potential victims of trafficking.

¹²⁷ Roth, L, 2011, 'Regulation of brothels: an update,' E-brief, NSW Parliamentary Library Research Service.

¹²⁸ Merrillees, L, 2011, 'Will new laws force prostitution underground?' *ABC News*, <http://www.abc.net.au/news/2011-11-04/will-new-prostitution-laws-drive-it-underground3f/3636524>.

¹²⁹ Barlow, K, 2011, 'Foreign rig workers paid \$3 an hour,' *ABC News*, <http://www.abc.net.au/news/2011-04-27/foreign-rig-workers-paid-3-an-hour/2696974>.

¹³⁰ The Australian Workers Union (AWU), 2011, 'Offshore Alliance exposes Danish Multinational trafficking Filipino workers into Australia,' http://www.awu.net.au/505550_5.html.

Walk Free is paying for and developing this in partnership with local agencies and ACRATH is involved with assisting and providing information for the project. The agencies involved have also discussed the possibility of short television ads about trafficking and developing and printing brochures in different languages as ways to increase public awareness about trafficking in Western Australia and wider Australia. ACRATH (WA) has sent power-point presentations and lesson plans to a number of local schools.¹³¹

Project Jenny

Project Jenny was founded in 2011. It is a non-profit organization that fights human trafficking in Western Australia. There is a lack of information on the Internet about their organization; however, they are in the process of developing a webpage. They do have a Facebook page, which contains informative information about what they do.

Project Jenny aims to assist victims of trafficking with providing accommodation services, assisting with immigration issues, counseling and education and training to improve victims' futures. (This information can be found on their Facebook page- Project Jenny).

Education: information and awareness

- Forums to combat human trafficking/identify victims
 - The AFP, Western Australian Police and Northern Territory Police hosted a series of forums in Kalgoorlie, Perth, Darwin and Alice Springs in March to raise awareness of the issue and impact of human trafficking. Representatives from the Australia Institution of Criminology also travelled to the regions to discuss the issue of human trafficking in regional centres with NGO's and local police.¹³² This event was an important step in raising awareness of trafficking in regional and remote parts of Australia.

State Inquiries

Western Australia has not conducted an inquiry into trafficking in persons.

Prosecutions

No prosecutions in Western Australia in relation to slavery or people trafficking offences.

¹³¹ Van Kessel, L, ACRATH –WA, Email, 19 October 2012.

¹³² Australian Federal Police (AFP), 2012, 'Media Release: Forums focus on combating human trafficking and identifying victims,' <http://www.afp.gov.au/media-centre/news/afp/2012/march/forums-focus-on-combating-human-trafficking-and-identifying-victims.aspx>.

Compensation

Laws regarding victim compensation in Western Australia are contained under the *Criminal Injuries Compensation Act 2003*. The Office of Criminal Injuries Compensation was established to compensate victims for injuries that occurred as a result of an offence. Compensation can be awarded to a victim of crime who has bodily harm, suffered mental or nervous shock or pregnancy as a result of the crime. Compensation may also cover pain and suffering, loss of enjoyment of life, as well as income and medical expenses.¹³³

¹³³ District Court, Western Australia, 'Criminal Injuries Compensation', http://www.districtcourt.wa.gov.au/C/criminal_injuries_compensation_appeals.aspx?uid=2985-4327-4579-5512.

NORTHERN TERRITORY

Overview

There is a lack of information and research about the extent and nature of the illegal sex industry in Northern Territory and if whether sex trafficking has occurred in the territory. Whilst brothels are illegal in the Northern Territory, it is evident that escort services still operate. Whilst the laws related to prostitution in Northern Territory are strict, there are less regulation and compliance checks. It is also apparent that local police are unaware of illegal activity that may be taking place within the industry. Recently, awareness- raising training has taken place in the territory, which will help to inform stakeholders working in or with the sex industry and local police of the issue of human trafficking, which may have long term benefits and influence on sex industry laws and practices.

Northern Territory State Laws

Sexual Servitude

The Northern Territory *Criminal Code Amendment Act 2002* inserted offences related to sexual servitude and deceptive recruiting into the Criminal Code (NT).

Section 202B: Sexual Servitude

Causing an adult or child to enter into or continue in sexual servitude

Section 202C: Conducting a business involving sexual servitude

A person who conducts a business involving sexual servitude of adults or children

Section 202D: Deceptive recruiting for sexual services

Induce another person into an engagement to provide sexual services or deceives that person about the fact that the engagement will involve provision of sexual services

(Source: The Human trafficking Working Group, 2009, 'Australia, State and Territory offences relating to trafficking in persons', TC Beirne Scholl of Law, University of Queensland)

Prostitution Laws

In the Northern Territory brothels and soliciting sex work is illegal, however escort agencies are not. The Prostitution Regulation Act and prostitution regulations control prostitution in the Northern Territory and provide for the licensing of businesses such as escort agencies. To operate an escort agency in the Northern Territory the owner/operator of the business must hold a licence.

To be eligible you must be a resident in the Territory, have no past criminal offences or record, and have a current police check. All sex workers in the Northern Territory must be registered with Northern Territory police. Solo sex workers in the Northern Territory do not have to be registered with the police.¹³⁴

Regulating and monitoring the Sex Industry in the Northern Territory

The Northern Territory Police, the Northern Territory Licensing Commission and licensing inspectors are responsible for the regulation of the sex industry through different roles and powers.

Northern Territory Police

In the Northern Territory the police have the power to enter any premises that they suspect may be a brothel or a premise that is being used for sex work. They can also enter an escort agency at any time. They do not need a warrant. If the premise owner or an agency refuses police entry they then have the power to enter in a forceful manner. The Northern Territory Police have a liaison worker who specifically cooperates with those in the sex industry. This may include issuing police certificates to sex workers.

Northern Territory Licensing Commission and Licensing Inspectors

The Licensing Commission manages prostitution regulations. They are responsible for administering licenses to escort agencies, whilst complying and enforcing the prostitution regulations in the Northern Territory. Licensing inspectors are responsible for inspecting escort agencies to make sure they are complying with prostitution regulation rules, occupational health and safety and safe sex practices.¹³⁵

There is a lack of research and information of the extent and nature of illegal sex services taking place in the Northern Territory. It is largely unknown if sex trafficking is taking place. Local police and authorities are beginning to understand and are just coming to terms with the issue of human trafficking, evident by forums that have taken place this year to inform people of the issue within various communities.

Whilst it is hard to pinpoint cases of sex trafficking occurring in the Territory, it is apparent that sexual exploitation occurs among Indigenous Australians in the Northern Territory. A reporter for the Age newspaper in 2008 reported that trading young Aboriginal girls for sex in Nhulunbuy, Northern Territory, had been happening for at least 15 years. This information came from a highly

¹³⁴ Northern Territory Government, 2012, 'Escort Agency Licensing,' Department of Business, <http://www.nt.gov.au/justice/licenreg/escorts.shtml>.

¹³⁵ Scarlet Alliance, 2005, 'NT Laws,' <http://www.scarletalliance.org.au/laws/nt/>.

regarded Aboriginal leader.¹³⁶ This has also been an issue at roadside truck stops in the Northern Territory, but also in northwest New South Wales where truck drivers were targeting Aboriginal girls for sex. Rapes are often common.¹³⁷ The vulnerability of Aboriginal women often makes them open to exploitation in all forms. There has been no research in Australia to the extent in which Aboriginal women may be vulnerable or forced into sex trafficking.

Services and Support for victims of trafficking

There are no support services for victims of human trafficking in the Northern Territory. However there are support services for sex workers such as the Northern Territory Aids & Hepatitis Council (NTAHC) and the SWOP.

Education: Information and awareness

- Forums to combat human trafficking:
 - Forum in Darwin and Alice springs hosted by The AFP, Western Australian Police, and Northern Territory Police to raise awareness of human trafficking. This forum was intended to provide locals and Northern Territory police with information about human trafficking and make them aware of the signs of trafficking.
- Red Cross:
 - This year the Red Cross provided free community awareness training on human trafficking. It held a training session in Darwin. This training was also about realizing that human trafficking is an issue in Australia but was also about training people how to deal with trafficked persons and how people could refer them to specialist support agencies.¹³⁸

State Inquiries

The Northern Territory has not conducted an inquiry into trafficking in persons.

Compensation

The Northern Territory compensation laws are outlined under the *Crime (Victims Assistance) Act 2006*. It only includes violent acts such as domestic violence and sexual assault. The amount of compensation awarded also depends on whether the victim is classified as a primary, secondary or family victim.¹³⁹

¹³⁶ Ravens, T, 2008, 'Police 'knew about' teen sex trade in NT,' *The Age*, <http://news.theage.com.au/national/police-knew-about-teen-sex-trade-in-nt-20080404-23nc.html>.

¹³⁷ ABC, 2008, 'Truckies 'target Aboriginal girls for paid sex,' *ABC News*, <http://www.abc.net.au/news/2008-03-14/truckies-target-aboriginal-girls-for-paid-sex/1072572>.

¹³⁸ Australian Women Against Violence Alliance (AWAVA), 2012, 'Red Cross Human Trafficking Training Sessions,' *Events*, <http://awava.org.au/2012/05/25/red-cross-human-trafficking-training-sessions/>.

¹³⁹ Department of Attorney-General and Justice, 2012, 'Crime Victim Service Units', <http://www.nt.gov.au/justice/solicitor/cvsu/index.shtml>.

SOUTH AUSTRALIA

Overview

Instances of trafficking in persons for the purposes of labor and sex remain minor issues in South Australia when compared to other Australian states, such as Victoria and New South Wales. However, more awareness and education about human trafficking as a potential issue within South Australia and wider Australia needs to take place. Whilst brothels are illegal and most sex work in South Australia is illegal, it is apparent that illegal sex work could be happening within the state which may involve trafficking in persons.

State Laws

Sexual Servitude

The *Criminal Law Consolidation Act 1935* (SA) contains laws regarding sexual servitude. The *Criminal Law Consolidation Amendment Act 2000* (SA) updated these laws to include the following:

Section 67: Deceptive recruiting for commercial sexual services

A person offers another employment or some other form of engagement to provide personal services and fails to disclose that information to the victim at the time of offering the employment or engagement.

(Source: The Human trafficking Working Group, 2009, 'Australia, State and Territory offences relating to trafficking in persons', TC Beirne Scholl of Law, University of Queensland)

Prostitution Laws

The laws surrounding prostitution and the sex industry in South Australia are contained in the *Summary offence Act 1953* and in the *Criminal Law Consolidation Act (1935-1976)*. Most of the laws contained in these Acts still apply in South Australia today. Brothels are illegal in South Australia. Under Section 28(1) of the *Summary Offence Act 1953* it is an offence to keep or manage a brothel. Under Section 26 it is an offence to live off the earnings of prostitution. Street work and soliciting for the purpose of prostitution is also illegal in South Australia.¹⁴⁰

Recently South Australian sex industry laws have been reviewed. On the 31 May the *Statutes Amendment Bill 2012* was introduced into Parliament. The Bill is intended to amend the *Criminal Law Consolidation Act 1935* and the *Summary Offences Act 1953*. The proposed bill is intended to legalize the sex industry, including brothels. Street prostitution would remain illegal. The proposed

¹⁴⁰ Summary Offences Act 1953 (South Australia)-Available at: <http://www.legislation.sa.gov.au/LZ/C/A/SUMMARY%20OFFENCES%20ACT%201953/CURRENT/1953.55.UN.PDF>.

Bill has resulted in fervent debate about decriminalizing the sex industry in South Australia. Many contend that it will only force sex workers to work outside the law, with tougher restrictions and compliance measures, and contribute to illegal activity and sexual slavery.¹⁴¹

Regulating and monitoring the sex industry in South Australia

It is uncertain to what extent the sex industry is monitored and regulated in accordance with sex industry laws. The South Australian Police enforce laws in regards to prostitution via the task force known as Operation Patriot. This task force is responsible for policing the sex industry in South Australia whilst aiming to suppress illegal operations occurring in the sex industry. Brothels receive the most police attention.¹⁴²

Services and Support for victims of trafficking

There are no direct state services in South Australia that support victims of human trafficking and it is apparent that there is a lack of concern and research surrounding the issue in South Australia. An ACRATH group was established in South Australia in 2011. In November 2011, ACRATH focused on cultural and linguistically diverse projects. This included giving presentations to various communities to raise awareness of the issue in the state.¹⁴³

State Inquiries

South Australia has not conducted an inquiry into trafficking in persons.

Compensation

The *Victims of Crime Act 2001* outlines compensation laws in South Australia. It only entails injury as a result of a crime in which a victim can therefore be entitled to apply for damages under the Victims of Crime Act.

¹⁴¹ Kelton, G, 2011, 'Round Seven for South Australian Prostitution Laws,' *Adelaide Now*, <http://www.adelaidenow.com.au/news/south-australia/round-seven-for-south-australian-prostitution-laws/story-e6frea83-1226147315120>.

¹⁴² Scarlett Alliance, 2012, 'Occupational Health and Safety in the South Australian Sex Industry,' *Current Issues, South Australian Sex Industry Network and Sex Worker Action Group*, <http://www.scarletalliance.org.au/library/gamble-mawulisa>.

¹⁴³ ACRATH Newsletter, November 2011, <http://acrath.org.au/1972/acrath-newsletter-november-2011/>.

TASMANIA

Overview

It is not known if human trafficking is occurring or is an issue in Tasmania. Sex work in Tasmania has always been illegal. However, recently there has been concern over private sex workers safety and rights under the current sex industry laws. More research needs to be conducted into sex workers in Tasmania and also into possible cases of sex trafficking and other forms of trafficking that may be flourishing in Tasmania.

State Laws

Sexual Servitude

The Tasmanian Criminal Code contains no offences that relate specifically to trafficking in persons. There is only one offence in the Criminal Code (TAS) that relates to the forced or deceptive procuring of another for unlawful sexual intercourse. This offence can relate to deceptive recruiting for the purposes of sex work. However, this is the only offence that relates to offences regarding human trafficking.¹⁴⁴

Prostitution Laws

Sex industry laws in Tasmania have always been and currently are criminalized. The current legislation exists under the *Sex Industry Offences Act 2005*. In Tasmania, brothels and street-based work are illegal, however private sex work is legal and this can take place from a hotel or residence. Under the *Sex Industry Offences Act 2005* it is illegal for a person to employ or control or profit from the work of an individual sex worker. In Tasmania it is legal for two sex workers to work together in a partnership.

As there is limited information and research on sex workers in Tasmania, there is a lack of information about trafficking for sexual purposes and if it is or has occurred in Tasmania. It is apparent that most sex workers in Hobart are from interstate and travel to Tasmania to work for a week to a couple of months.¹⁴⁵ Launceston's Laurel House Counselor, Rachel Portsmouth, exclaimed to *The Examiner* that she was "not aware of any particular characteristics of Tasmania

¹⁴⁴ Human trafficking Working Group, 2009, 'Australia, State and Territory offences relating to Trafficking in Persons', TC Beirne School of Law, University of Queensland.

¹⁴⁵ Regulation of the Sex Industry in Tasmania, 2012, Discussion Paper, *Tasmanian Department of Justice*, http://www.justice.tas.gov.au/__data/assets/pdf_file/0008/188738/Regulation_of_the_Sex_Industry_Discussion_Paper.pdf.

that make it a more or less appealing hot spot although any island has geographical and social features that allow some crimes to more easily flourish whilst discouraging some others.”¹⁴⁶

Regulating and monitoring the sex industry in Tasmania

A review of the *Sex Industry Offences Act 2005* was released earlier this year. The discussion paper outlined the *Sex Industry Offences Act 2005* and reviews the effectiveness of the Act. The paper clearly identifies serious flaws within the legislation and demonstrates that it has not been effective enough in protecting sex workers and preventing sex workers from exploitation. The report also looks at other Australian states in which the sex industry is decriminalized and recommends reform of sex laws in Tasmania. This is perhaps a starting point to identifying sex workers and their rights and also acknowledging the issue of trafficking and if it is a relevant issue for Tasmania.

Services and Support for victims of trafficking

Scarlet Alliance asserts that there is a serious lack of organizations and support services for sex workers in Tasmania.

State Inquiries

There have been no state inquiries into trafficking in persons in Tasmania.

Compensation

The *Victims of Crime Assistance Act 1976* (TAS), covers monetary loss and loss of income, as a result of injuries which have occurred. To obtain compensation in Tasmania, the victim must lodge an application with assistance from the Victims Support Services, and also make sure that the incident has been reported to the Police. The victims must also obtain a medical report about the injuries suffered and their effect.¹⁴⁷

Some compensation schemes, including Tasmania, Northern Territory and Western Australia, involve psychological tests and medical certificates to apply for financial assistance and compensation. The UN Special Rapporteur noted that some state compensation schemes in Australia limit victims of trafficking, in that victims are often reluctant to undergo psychological or medical tests because of fear of re-traumatization.¹⁴⁸

¹⁴⁶ Malony, M, 2012, 'Debate Rages over impact of legal prostitution,' *The Examiner*, <http://www.examiner.com.au/story/440677/debate-rages-over-impact-of-legal-prostitution/>.

¹⁴⁷ Legal Aid Commission of Tasmania, 2008, 'Criminal Injuries Compensation', <http://www.legalaid.tas.gov.au/factsheets/Criminal%20Injuries%20Compensation.html>.

¹⁴⁸ United Nations Human Rights Council (UNHRC), 2012, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children', Joy Ngozi Ezeilo: Addendum, Mission to Australia, 18 May 2012.

CONCLUSION

Human trafficking in any country is a serious issue and a challenge to human rights. So far, the Australian Government has positively acted in a number of ways to combat human trafficking over recent years; however, given the complexities and transnational nature of such a crime, more concerted and a collaborative effort between stakeholders needs to take place to prevent people trafficking in Australia.

A number of Australian states and territories, such as Victoria, have led the way in combating human trafficking. Largely, this has been a joint effort between a number of non-governmental organizations, such as ACRATH and Project Respect, who are committed to the eradication of human trafficking and supporting victims of human trafficking.

In addition, a number of challenges lay ahead. There remains ongoing debate about the legislative approaches to sex work in general, evident across a number of Australian states and territories where sex industry laws have or are being reviewed. Decriminalization of the sex industry and sex work is thought to lead to illegal activity and the possibility of sexual slavery, as evidenced by the sex industry in various Australian states. This debate is likely to persist into the future. There also remains the challenge of how to best deal with illegal sex work and sex trafficking occurring across a number of Australian states.

Other forms of trafficking are also coming to light in Australia. Labour trafficking has occurred throughout some Australian states and territories and the number of migrant workers in Australia has enhanced this. Labour trafficking remains a significant issue that lacks solid research and evidence. It is also more difficult to detect in many cases.

Support services for victims of trafficking are important facilities to have in place to combat human trafficking. Various Australian states have a number of support services for victims of trafficking in persons, yet others lack significant support services and options. Financial assistance, accommodation, counseling and support various organizations help victims of trafficking in ways that police and government authorities cannot. They are crucial to helping victims re-establish their lives.

Raising awareness and promoting education about human trafficking is also essential to combating the crime. States and territories should share information and more collaboration needs to take place between local, state and federal authorities on the issue of human trafficking. Whilst this may be wishful thinking, a number of organizations continue to fight to end human trafficking and slavery in Australia and worldwide.