



Submission No 6

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Australian Crime Commission



OFFICE OF THE
CHIEF EXECUTIVE

Our ref: 12/117648

Inquiry Secretary
Human Rights Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Australian Parliament House
Canberra ACT 2600

**Human Rights Sub-Committee of
the Joint Standing Committee on Foreign Affairs, Defence and Trade**

Australian Crime Commission Submission

1. The Australian Crime Commission (ACC) welcomes the opportunity to make a submission to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into slavery, slavery like conditions and people trafficking, commissioned by the Minister for Foreign Affairs, The Hon Senator Bob Carr on 13 August 2012
2. This submission is unclassified, and may be published publicly.

Introduction

3. In today's increasingly globalised society, the opportunities for organised crime are unprecedented. Complex networks stretch across continents to support activities which range from drug importation to identity fraud; cybercrime to high-level offshore tax evasion; counterfeit goods to money laundering; and even environmental crime. Organised crime is sophisticated, resilient, highly diversified and pervasive. It operates within and alongside legitimate businesses, spanning multiple sectors to maximise return and minimise risk.
4. People trafficking is interlinked with these other organised criminal activities, and the harm that it causes has a very real impact on the community. The ACC conservatively estimates that organised crime costs the Australian community in the order of \$15 billion per annum.
5. The Australian Government established the ACC on 1 January 2003 as an independent statutory authority under the *Australian Crime Commission Act 2002* (ACC Act). The ACC's primary objective is to support and complement Australian law enforcement

efforts to break the business of organised crime. As Australia's national criminal intelligence agency, the ACC is a niche, complementary agency that delivers specialist law enforcement intelligence analysis and investigative capabilities to its partners, as well as a unique and valuable understanding of serious and organised crime, including its activities, methodologies and emerging areas of influence.

6. The ACC's priorities are set by its Board, which consists of the Commissioners of all Commonwealth, state and territory police forces, as well as the heads of the Attorney-General's Department, the Australian Taxation Office, Australian Customs and Border Protection Service, the Australian Security Intelligence Organisation, and the Australia Securities and Investments Commission. One of the Board's primary roles is to establish Special Investigations and Special Operations under which the ACC is able to exercise its coercive investigatory powers. Before establishing these Special Investigations and Operations, the Board must judge that ordinary police methods of investigation are ineffective. In this way, the ACC represents a powerful investigatory weapon to combat Australia's most critical organised crime threats when all else fails.
7. Importantly, the ACC plays a pivotal role in fusing the information and intelligence of Australia's law enforcement community into a single repository of intelligence. In this way, the ACC is uniquely placed to develop and report on the picture of criminality in Australia.

National approach to detecting and deterring people trafficking

8. Australia implemented a comprehensive, whole-of-government national strategy to address people trafficking in late 2003. The strategy addresses the full cycle of trafficking from recruitment to reintegration and gives equal weight to the critical areas of prevention, prosecution and victim support. Domestic legislation has been enacted and is currently being strengthened. The ACC supports this strategy, which is overseen by the Anti-People Trafficking Interdepartmental Committee (the Trafficking IDC), led by the Attorney-General's Department.
9. The Trafficking IDC was established to develop Australia's anti-trafficking strategy and has a continuing responsibility to monitor the implementation of this strategy and to report to Government on its effectiveness. It also ensures that emerging issues are addressed on a whole-of-government basis.
10. Under Commonwealth legislation¹ the offence of people trafficking requires the person trafficked to be physically moved across a domestic or international border. The movement across a border requirement does not apply to offences committed in a territory².
11. Exploitation, whether for sexual servitude or other purposes, occurring wholly in a state is not 'trafficking' under Commonwealth law and is therefore dealt with under relevant state legislation³. In these cases jurisdictional police services have responsibility to lead and coordinate detection and disruption activities.
12. The amendments to the Criminal Code currently before the Parliament will enhance the existing provisions of s 270.12 to ensure that State jurisdiction over the conduct concerned is not displaced by the new Commonwealth provisions.
13. The United Nations is leading the development of a Global Plan of Action Against Trafficking in Persons. Australia supports, in principle, the Global Plan of Action, noting

¹ Divisions 270 and 271 Criminal Code Act 1995 (Cth). s271.11(a) and (b) specify the jurisdictional requirements for domestic trafficking.

² Division 271 may be applied to offences occurring wholly within a Territory. cf s271.11(c)

³ See s66 of the *Criminal Law Consolidation Act 1935 (SA)*, or s80E of the *Crimes Act 1900 (NSW)*.

the Trafficking IDC has expressed concerns regarding the draft plan and the degree to which it aligns with the Trafficking in Persons Protocol (TiP Protocol).

United Nations Protocols

14. United Nations protocols draw a distinction between people smuggling and people trafficking:
 - smuggling of migrants⁴ is the act of assisting a migrant to gain unlawful entry into a country of which they are not a legal resident, by means of an illegal vessel or fraudulent travel or identity documents, for the purpose of receiving payment of one form or another.
 - trafficking in persons⁵ is the act of moving or harbouring a person by means of the threat or use of force or coercion for the purpose of exploiting that person.
15. The trafficking in persons, and the smuggling of migrants are offences under Australian law⁶. The unlawful act is perpetrated by the organiser or facilitator, not the person trafficked or, the person smuggled. Smuggled persons may, in some instances, be eligible for lawful entry to Australia.
16. While it is possible that people who are subject to exploitation (trafficked) may have been smuggled into Australia, or may in future be smuggled out of Australia, there is no necessary or causal link between the two crime types.
17. The UN distinction between people trafficking and people smuggling notwithstanding; the ACC is aware of convergence between people seeking unlawful migration to Australia and exploitation types commonly associated with people trafficking ventures.
18. The most common exploitation identified to date is 'debt bondage', under which unlawful migrants who were unable to pay the cost of transport up front are forced to participate in a range of unlawful activities to repay the debt. The illegal activities include participation in card skimming and related frauds as well as unpaid or under paid labour in the construction or hospitality industries.
19. The range of types of exploitation identified in these findings is reflected in the amendments to Division 270 of the Criminal Code that are currently before the Parliament in the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012. These amendments, if passed, will replace the existing provisions of the Code relating specifically to sexual servitude with new provisions that deal with a range of slavery-like conditions, including servitude offences, forced labour offences, deceptive recruiting for labour or services and forced marriage offences. The existing people trafficking and debt bondage offences will be retained and enhanced. The amendments will also facilitate proof of offences by clarifying that surrounding circumstances such as the economic relationship between the victim and offender and the victim's immigration status and social isolation may properly be considered as relevant matters in determining whether a victim was coerced, threatened or deceived. The victim's consent will not be a defence to a charge under the people trafficking and related provisions.

ACC activities

20. The ACC contributes to the development and implementation of the national anti-people trafficking strategy through participation in forums such as the Anti-People Trafficking Interdepartmental Committee, the AGD-hosted annual People Trafficking Round Table,

⁴ Defined in Article 3(a) – *Protocol against the Smuggling of Migrants by Land, Sea and Air*

⁵ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*

⁶ Sub Division A of Division 12 of the *Migration Act 1958* applies

and events such as the 2011 People Trafficking hypothetical, sponsored by the Australian Federal Police. The ACC also contributes to partner agency projects and investigations through its ACC Board approved Special Operations and Special Investigations.

21. In December 2003, the ACC Board approved the establishment of a Special Operation into people trafficking for sexual exploitation. The Special Operation ended in September 2006, at which time the ACC Board considered a final report and agreed that the objectives had been met.
22. The June 2011 ACC Board meeting approved the Making Australia Hostile to Serious and Organised Crime (MAHSOC) Special Operation (SO).
23. The MAHSOC SO is authorised by the ACC Board to work closely and collaboratively with partner agencies to:
 - identify professional facilitators, network characteristics and methodologies of contemporary serious and organised crime networks
 - provide access to coercive powers in support of partner agency serious and organised crime investigations relating to MAHSOC activities
 - assist partner agencies to prevent or disrupt to activities of serious and organised crime groups across Australia, and
 - develop intelligence which can inform detection, prevention and mitigation strategies and contribute to national policy, regulatory, and law enforcement decision making that will make Australia more resistant to serious and organised crime.
24. MAHSOC SO activities include intelligence support to law enforcement agencies undertaking investigations into people trafficking; including labour and sexual exploitation, through a centralised intelligence network maintained by the Australian Crime Commission. This intelligence will inform investigative strategies and build a better understand the activities, and methodologies of people trafficking networks.

ACC intelligence findings

25. The ACC's unclassified Organised Crime in Australia 2011 (OCA 2011), and classified Organised Crime Threat Assessment 2012 (OCTA 2012), include chapters on people trafficking. Key unclassified findings from those reports include:
 - Most victims of trafficking into Australia have been women trafficked for the purpose of exploitation in the sex industry (in both legal and illegal brothels). However, victims are increasingly being identified in other industries, including the agricultural, construction and hospitality industries.⁷
 - The emphasis on combating labour exploitation is increasing. The Australian Building and Construction Commission⁸ joined the IDC in 2010–11⁹ and the United Nations Special Rapporteur in Trafficking in Persons noted the need for a

⁷ Australian Government 2011, *Trafficking in persons – the Australian Government response 1 July 2010 – 30 June 2011: the third report of the Anti-People Trafficking Interdepartmental Committee*, Australian Government, Canberra.

⁸ After passage of the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill in March 2012, the Australian Building and Construction Commission will be abolished and the majority of its functions will be absorbed by a new body, the Fair Work Building Industry Inspectorate.

⁹ Australian Government 2011, *Trafficking in persons – the Australian Government response 1 July 2010 – 30 June 2011: the third report of the Anti-People Trafficking Interdepartmental Committee*, Australian Government, Canberra.

greater focus on identifying victims of labour trafficking after her visit to Australia in November 2011.¹⁰

- The hospitality, agricultural, construction and legal and illegal sex industries are key targets of exploitation by human traffickers. Some victims are also trafficked for other purposes, such as domestic servitude. In many cases, victims believe they are coming to Australia to study or work legitimately. Some victims are trafficked into Australia knowing that they will undertake a particular type of work, but are then held in debt-bondage or slavery-like conditions. Since 2004, Australian authorities have identified 192 suspected victims of trafficking. Of those, 173 were women, with 155 of the 173¹¹ being victims of sexual exploitation.
- In Australia, the extent of organised crime involvement in the labour hire industry has not been assessed. However, recent research has indicated that labour trafficking exists in a broader context of exploitation of migrant workers, particularly those in low-skilled professions. Workers perceived to be at most risk of exploitation are those on 457 visas, migrants working in the agricultural sector or as domestic workers, international students and those working in the maritime/seafarer sector.¹²
- The AFP undertook 45 investigations into human trafficking in 2010–11. Almost 70 per cent of these investigations related to trafficking for the purposes of sexual exploitation and the remainder related to exploitation in other industries. In the same period, the Support for Trafficked People Program, which is administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), provided assistance to 80 clients, including 29 new clients (21 females and eight males) who were mainly from the Philippines and Malaysia. Of the 29 new clients, there were 16 women and one unaccompanied minor who were trafficked into the sex industry, while the remaining clients were trafficked into other industries.¹³ As at 8 February 2012, a total of 191 clients have been referred to the Support Program since its inception in 2004.
- Cases of trafficking for sexual exploitation have largely involved small crime groups rather than large organised crime groups. The small crime groups use family or business contacts overseas to facilitate recruitment, movement and visa fraud. People trafficking matters have also generally involved other crime types, including immigration fraud, identity fraud, document fraud and money laundering.
- People traffickers are alert to matters raised in court by investigators and prosecutors, and to indicators that alert authorities to potential criminality which are discussed in open source publications. In response, people trafficking syndicates are changing their modus operandi to avoid detection and, if detected to make elements of the offence harder to prove to the standard that satisfies the courts and juries

¹⁰ United Nations Special Rapporteur in Trafficking in People, Particularly Women and Children 2011, *The UN Special Rapporteur in Trafficking in Persons, especially Women and Children, concludes her country visit to Australia*, media release, 30 November 2011, viewed 28 February 2012, <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11664&LangID=E>>.

¹¹ Figures correct as at July 2012

¹² David, F 2010, *Labour trafficking*, Research and Public Policy Series no. 108, Australian Institute of Criminology, Canberra.

¹³ Australian Government 2011, *Trafficking in persons – the Australian Government response 1 July 2010 – 30 June 2011: the third report of the Anti-People Trafficking Interdepartmental Committee*, Australian Government, Canberra.

- Possible victims of trafficking may be identified through a variety of means. Non-government organisations and support agencies play an important role in this identification.

Publications

26. The ACC has been consulted in the development of the following documents:

- The IDC Annual Report for 2010–11, which has been released and is available on the Attorney-General's Department's website.
- Three papers related to People Trafficking recently released by The Australian Institute of Criminology (AIC) :
 - Organised Crime and Trafficking in Persons (March 2012).
 - Australia's Pacific Seasonal Worker Pilot Scheme: Managing Vulnerabilities to Exploitation (November 2011)
 - Vulnerabilities to Trafficking in Persons in the Pacific Islands (November 2011)

ACC Contact

27. On behalf of the ACC I thank you for the opportunity to make a submission to the inquiry. Should you wish to discuss any aspect of this submission further please contact Mrs Karen Harfield, Executive Director Fusion, Target Development & Performance

Yours sincerely

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Chief Executive Officer
24 September 2012