



Submission No 52

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

Organisation: Australian Institute of Criminology – supplementary
submission



REFERENCE: Inquiry into Slavery, Slavery-like conditions and People Trafficking

**Australian Institute of Criminology:
Questions on Notice – Public Hearing 21 November 2012**

1. *Ms Beacroft: ...one example in the report is that of a young Pacific Island man brought to work in Sydney. He was under 18 when he first came here. He turned 18 when he was going through this experience. He came through family connections. He worked long hours, 5:30 to eight or nine, six days a week. He was physically abused, leading to permanent injury, by the person employing him. He was also injured at work and not properly treated. He was not properly fed. He was occasionally paid \$50. There were ultimately court proceedings and there was a conviction for a minor industrial state offence. He got some compensation for wages. If that matter was discovered today, one would hope that it would at least be triaged. I am not necessarily saying that was definitively or definitely a slavery type matter.*

Mr RUDDOCK: How long ago was that? You said that if it was discovered today—

Ms Beacroft: I can send you the details of that—I cannot remember the year. (p. 17)

This case was reported to the Construction, Forestry, Mining and Energy Union (CFMEU) by one of its delegates in 2006. The victim, Samuel Kautai, had been working for the offender, Mr Manuel Purauto, for approximately 18 months before the situation came to the attention of CFMEU.

It is of note that this case was not considered under slavery or trafficking in persons legislation. Rather, as discussed in David (2010, Box 2: Case study one), it was pursued under industrial mechanisms by the CFMEU as well as under state criminal law (in relation to maliciously inflicting grievous bodily harm) by the NSW Police Force. The case was also referred to the AFP by a local NGO.

Please find attached copies of details of the case of *Samuel Kautai v Manuel Puruto, Leisi Puruto and Freliesma Guttering Pty Ltd No. CIM 106709 of 2006* (see David 2010, Box 2: Case study one; CFMEU nd: 11), as well as details of a related case for which the settlement was confidential (see David 2010, Box 3: Case study two).

References

- David F 2010. *Labour trafficking*. Research and public policy series no. 108. Canberra: Australian Institute of Criminology.
<http://aic.gov.au/publications/current%20series/rpp/100-120/rpp108.html>
- CFMEU nd. A better life? Stories of exploited guest workers in Australia

2. *Mr RUDDOCK: I have some very important questions here. In relation to the unreliability of the data, could you either point us to those who have developed the critique or document the elements that you suggest to make it unreliable?*

Ms Beacroft: Yes.

CHAIR: You seem to have some nice notes there. Would it be possible for those to be tabled? You could send them to us.

Ms Beacroft: I have some little prompts for myself, so I might have to exclude those. But then I could send those. (p. 19)

The edited version of Ms Beacroft's speaking notes have already been provided to the Committee.

It is also noted that discussion surrounding the above comment by Mr Ruddock is addressed below in responses to questions 9 and 10.

3. *Mr RUDDOCK: ...Are there areas of research in relation to the matters we are addressing that you believe your organisation needs to be undertaking? Could I have a briefing on that?*

Ms Beacroft: Did you want me to respond now or—

Mr RUDDOCK: I am happy for you to put it to us. I am just interested in the areas that you think have not been adequately researched and where additional research might help.

Ms Beacroft: I can give a very quick response and then we can follow up. (p. 20)

AIC is finalising its Trafficking in Persons Type Crime (TIP-type crime) Plan for 2012-2016, having completed the first four-year plan by mid-2012. AIC employs a better practice approach to developing its research plans, which, in the case of the Trafficking in Persons Research Program, involved the following steps over the last 18 months:

- An internal review and citation review undertaken by the AIC with regard to trafficking in persons-type research;
- Outcomes of information sessions held with a diverse range of stakeholders across Australia to identify key themes/areas for future research and monitoring;
- Developing a 'program logic' which is a tool to map and monitor a program, for trafficking in persons-type research; and
- Development of a preliminary overview of the new Plan with possible projects under the following core themes:
 - Monitoring
 - Prevention
 - Victim's support
 - Criminal justice system; and
 - The wider Australian region (ie Pacific and SE Asia).

4. Mr RUDDOCK: *If there are any of these reports that you think I should have, could you make sure that I get them? Have you got a copy of Trends & issues in crime and criminal justice: organised crime and trafficking in persons, by David, 2012?*

*Ms Beacroft: We have a number of reports here, but that one we have not put in there.
CHAIR: Thank you for handing those over.*

Ms Beacroft: And, yes, anything that is in the list from us that is not there we will certainly supply. (p. 20)

The above Trends & Issues paper is forwarded as part of the response to the questions on notice:

- David F 2012. Organised crime and trafficking in persons. *Trends & Issues in Crime and Criminal Justice* no. 436. Canberra: Australian Institute of Criminology.
<http://aic.gov.au/publications/current%20series/tandi/421-440/tandi436.html>

We have also forwarded the AIC's submission to the Inquiry into Marriage Class Visas, because it has come to our attention that we provided the incorrect submission to you at the hearing.

Additional questions on notice

5. *How many trafficking victims are female compared to male?*
- *What type of visas are they on?*
 - *What are the ages of the victims?*
 - *What nationalities are they from?*
 - *Is there any other identifying information?*

The AIC advises that the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Department of Immigration and Citizenship (DIAC) are the most appropriate agencies to provide detailed information about victims of trafficking and their visa status.

In regard to the nature of trafficking in persons type crime, a feature identified in the literature and also evident in Australian convictions is the complex nature of the relationship between the victim and offender, and the manipulation of this relationship by the offender to control the victim. This issue was raised in AIC's evidence, and covered in paragraph 1, page 5, of the speaking notes submitted by Ms Laura Beacroft.

6. *How much data do we have available relating to trafficking in the sex industry compared to the labour industry?*

AIC is currently concluding research on TIP type issues in the sex industry that involved analysis of all convictions for this crime in the sex industry and also a survey of sex workers across Australia. The Report will be released in 2013. Information about trafficking in persons type crimes is limited in all contexts where it appears to occur (ie the sex industry, non-sex

industries and marriage). In regard to the sex industry, due to a former focus by law enforcement on this context, and the relative visibility of the sex industry compared to other contexts (eg to marriage contexts), most convictions have involved the sex industry. Since 2009, the focus of Australia's anti-trafficking strategy has shifted from the exploitation in the sex industry to all forms of exploitation, regardless of industry. In 2011, Australia's first conviction for labour trafficking was recorded.

While not necessarily indicative of the full nature or relative risks in the sex industry, there have been a number of successful prosecutions in the sex industry— from 2004 to 30 June 2012, 12 of the 15 convictions for trafficking-type crimes have been in the sex industry, with 33 of the 35 victims being from the sex industry. Of the 15 convictions, 13 involved slavery or slavery-like (ie sexual servitude) offences, with only 2 involving the offence of trafficking in persons, of which one was in the sex industry (*R v Dobie* [2011] QCA 21). This underlines the importance of research focusing on the wider trafficking crime type that includes slavery and not just the offence of trafficking in persons.

Nine distinct trafficking-type schemes, 7 in the sex industry, underlie these successful prosecutions. Schemes varied from an offender who operated relatively alone (eg *R v Dobie*), to more organised schemes involving co-offenders in Australia and off-shore facilitators who were paid for various services from recruiting to arranging visas and travel (David 2012).

Importantly for crime prevention purposes, they were all designed to make profit and involved varying levels of sustained planning and organised activity over time, largely requiring co-operation with other specialist offenders in immigration fraud. Immigration fraud of some sort was involved with all the schemes.

In all the cases offenders were motivated not by the need to do harm to the victim, but by profit. Overall the schemes were small scale and unsophisticated compared to other transnational crime such as drug trafficking (David 2012), perhaps in part a reflection of offenders mostly having limited educational backgrounds and some had psychological issues. However they were all profitable schemes, with profit enhanced by the amount of debt to be re-paid, the numbers of persons trafficked simultaneously and the time they take to re-pay.

All the persons trafficked have been migrants and had limited education by Australian standards and many had poor to no English. Most persons trafficked paid little or no money up-front, suggesting they had limited means prior to their arrival in Australia. Assisting families/dependents and having a better life were common reasons for the victim to enter the arrangement.

Most trafficked persons in the sex industry had worked as sex workers before entering Australia, but two never had. Most knew they would be doing sex work, however one thought she would be doing massage and was an unwilling sex worker (*R v Mclvor and Tanuchit* [2010] NSWDC 310).

An important theme that is identified in the literature is also evident in the cases. Most victims became known to the offender through shared networks or family connections (*R v Mclvor and Tanuchit*) between offenders and victims. The shared networks reflect the many common characteristics and complex relationships that offenders, especially the female

offenders, shared with their victims. This aspect of the cases, where social structures that are manipulated over time are at the heart of the context for offending, raises a challenge for prevention and detection in that “understanding a situation requires not only an understanding of who is present but also the nature of the relationship between those present...” (von Lampe 2011: 154).

Most schemes involved brothels, and 2 occurred in more private settings (*R v Dobie* and *R v Nantahkhum* [Unreported] Supreme Court of the Australian Capital Territory Refshauge J (24 May 2012)), however none involved street work. The schemes occurred in both illegal and legal brothels and other off-street settings. Thus compliance or otherwise by workplaces within the sex work industry to current laws is not necessarily indicative of trafficking-type crimes, a finding well recognised today in the literature.

Conditions of work varied. Victim’s access to services varied. Some trafficked persons were locked up (*R v Mclvor and Tanuchit*), with limited access to medical services and only with a minder (*R v Mclvor and Tanuchit*). As mentioned above, others had the opportunity to access health or other services without the offender knowing (*R v Netthip*).

Deception and/or coercion were present in all cases.

The case of *R v Netthip* illustrates the complex nature of control that may occur in trafficking in persons-type crimes (in that case, the offence was sexual servitude). In that case there were limited physical controls - after an initial period living with the offender, the victims rented privately, they caught public transport, had access to various communications such as the internet, were directly paid their earnings and made repayments to the offender. It is perhaps no coincidence that in the case of *R v Netthip*, involving subtle forms of control, and the offender was able to profit from 11 victims which enhanced the schemes profitability.

Detection processes varied. Most came to light from police and immigration compliance activity. One was brought to the attention of law enforcement through information provided by a client of the victim (*R v Johan Sieders and Somsri Yotchomchin*), and another from a call from a mobile phone by a sex worker to the Thai Embassy who then notified the relevant Australian Government agencies (*R v Mclvor and Tanuchit*). Detection has been primarily been in Sydney and Melbourne, where trafficking-type crime services are concentrated, and additional cases have been detected in ACT, QLD and SA (IDC 2012).

References

- David F 2012. Organised crime and trafficking in persons. *Trends & Issues in Crime and Criminal Justice* no. 436. Canberra: Australian Institute of Criminology. <http://aic.gov.au/publications/current%20series/tandi/421-440/tandi436.html>
- Anti-People Trafficking Interdepartmental Committee 2012. Trafficking in persons: The Australian Government response 1 July 2011 – 30 June 2012. Canberra: Attorney-General's Department.
- Von Lampe K 2011. The application of the framework of situational crime prevention to ‘organized crime’. *Criminology & Criminal Justice* 11(2): 145-163

7. How much data is available on forced marriage or child trafficking?

The AIC is finalising research on issues in marriage relevant to trafficking in persons type crime, with a Report expected to be released in 2013. A copy of a PowerPoint presentation on this research, presented at the National Roundtable on People Trafficking, is attached.

While the AIC has not undertaken research on child trafficking in Australia, the AIC undertook analysis of the Organization of Migration's Counter-Trafficking Database for Indonesia. A series of publications will be released shortly. These analyses found that:

- 24 percent of individuals in the Indonesian database were children (83 percent of which were female). The majority of children were aged between 15 and 17 years (79%), but the database included children as young as three years of age, with approximately two percent of children aged 3-10 years.
- Of the individuals identified as children:
 - 59 percent were trafficked internationally (41% domestically);
 - Overall, most were trafficked for domestic work (40%) or waitressing (16%), although most male children were trafficked for plantation work (29%);
 - 81% of girls were psychologically abused, while 71% were physically abused, 16% sexually abused, and 8% raped. Girls trafficked for exploitation in the sex industry were more likely to be forced to consume alcohol (40% cf 1%) and drugs (23% cf 3%) than children trafficked for labour exploitation;
 - Boys experienced similar types of abuse to girls, but the actual level of abuse experienced was not as high, experiencing excessive working hours, full deprivation of wages, lack of healthcare, and/or poor living conditions.

8. Is there any evidence to show that forced labour is increasing?

AIC undertook research on labour trafficking some years ago. It is important to point out that not all trafficking in labour is forced. The following excerpt from the AIC's 2010 publication on labour trafficking by David (copy previously submitted to the Committee) speaks to the question of the size of the problem of labour trafficking in Australia:

The precise size of the labour trafficking problem in Australia remains unknown. The number of cases reported to federal agencies involved in the whole of government response to trafficking in persons is small. However, this research has confirmed that there have been instances of unreported, or perhaps unrecognised, labour trafficking. This suggests not only the existence of under-reporting, but a lack of awareness among a wide variety of front-line agencies and service providers that certain exploitative practices in a work context are in fact criminal under Australian law. In addition, the cases of unreported or unrecognised labour trafficking exist in an environment that includes significant numbers of cases involving unlawful conduct perpetrated against migrant workers in Australia, including under-payment or non-payment, sexual harassment, deception or fraud about working conditions and sponsorship for permanent residency. Some of these cases present one or two features that are widely considered to be indicators of trafficking (eg retention of passports, withholding of wages and the exercise of control over living and working conditions) suggesting they may have warranted further investigation from a criminal justice perspective...Unfortunately, the most serious cases may remain hidden and the course of exploitative conduct is readily repeatable (David 2010: 59, 60).

The AIC is currently undertaking follow-up research on the construction industry, with fieldwork underway and a report scheduled for release in 2013.

References

- David F 2010. *Labour trafficking*. Research and public policy series no. 108. Canberra: Australian Institute of Criminology.
<http://aic.gov.au/publications/current%20series/rpp/100-120/rpp108.html>

9. *How is data on trafficking or slavery obtained?*

- *How many Departments or organisations contribute to the data?*
- *Is there a better way to obtain data?*

AIC has worked closely with all key stakeholders to support the production of annual IDC Reports and also AIC's Monitoring Reports. While these reports are invaluable, accurate information and data on many aspects of trafficking in persons is not currently available. This is not a problem exclusive to Australia, it is a global issue and attempts are being made to address this in various ways.

A critical matter is whether or not to develop estimates at this time; there are difficulties with such an approach and the US Government Accountability Office found that 'such estimates are questionable...because of methodological weaknesses, gaps in data, and numerical discrepancies' (Government Accountability Office 2006: 2).

Further, international bodies have commented on how '[i]nsufficient data and a lack of comparable analyses that are reliable and up-to-date hamper the efforts of almost every agency dealing with trafficking' (IOM & FMIA 2009: 16). Similarly, 'useful and relevant information...is still spread over different departments, services, institutions and organisations...[and is] often partial and incomplete [internationally]' (Vermeulen & Paterson 2010: 11). Even long-term monitoring programs, such as that undertaken by the National Rapporteur on Trafficking in Human Beings (NRTHB) (2010) for the Netherlands, report that the capacity (or willingness) of agencies to maintain quality records, and ongoing gaps in the methods of registering victims, continues to be a barrier for collecting quality quantitative data even after 10 years of monitoring.

The negative impacts of these data issues have also been well documented:

Insufficient data and a lack of comparable analyses that are reliable and up-to-date hamper the efforts of almost every agency dealing with trafficking, its victims and perpetrators. Such a challenge contravenes the efforts of policy-makers and other practitioners to respond effectively in assisting and protecting victims, preventing and combating trafficking and monitoring and verifying the implementation of national laws, international protocols and conventions. A serious effort in fighting human trafficking...requires a clear understanding of current trends with regard to victims, traffickers, their modus operandi, travel routes and different forms of human trafficking (ie commercial sexual exploitation, labour exploitation, organ trafficking, child trafficking, trafficking for forced marriage and internal trafficking) (International Organization for Migration (IOM) 2007: 16).

[T]his dearth of information — about both trafficking victims and traffickers — is particularly striking given the importance of reliable data in efforts to prevent and combat the problem. Concrete, reliable data on human trafficking is an essential basis for all good programmes, interventions, policy and legislation. Without this data it is not possible to know the extent or the true nature of the trafficking problems, nor understand the complexity of the issues involved. As a result, practitioners and policy makers are less able to act and react effectively, which, in turn, has direct and very serious implications for the lives of trafficked persons, their families and their communities (International Centre for Migration Policy Development (ICMPD) 2009: 16).

Recent research undertaken by Statistics Canada indicates that Departments and organisations in that country have identified the following as barriers for collecting data (Ogrodnick 2010). Stakeholders believed that the four greatest challenges to collecting trafficking data were:

- inconsistent and unclear definitions across stakeholders;
- difficulties in tracking trafficking in persons-type crimes. It was indicated that hidden victims and a lack of awareness of trafficking in persons were particularly significant issues in this regard;
- the confidentiality of the data making it difficult to share information; and
- securing resources to support sustainable data collection.

AIC is working closely with all key stakeholders to improve monitoring of this crime type in Australia. AIC's approach will not attempt to establish estimates at this time, but will follow a best practice approach to monitoring trafficking and gathering evidence about risk and protective factors, and the dimensions of situations that enable or prevent offending.

In 2013 the AIC will work collaboratively with government and non-government sectors, to develop a relevant framework of indicators for monitoring trafficking in persons in Australia and the region.

The Framework will be supported by a Guide for Collecting Information and Data on Trafficking in Persons in Australia and the Region, to guide government and non-government sectors in their information and data collection. This Guide will ensure that relevant and comparable information and data is collected across all sectors. Subject to the agreement of relevant agencies and ethics approvals, as part of its future monitoring the AIC will analyse information and data consistent with this Guide from both government and non-government sectors. AIC's next Monitoring Report is due to be released in 2014-2015 for the period to 30 June 2013.

References

- International Centre for Migration Policy Development (ICMPD) 2009. *Anti-trafficking data collections and information management in the European Union - A handbook: The situation in the Czech Republic, Poland, Portugal and the Slovak Republic*. Vienna: ICMPD. http://ec.europa.eu/anti-trafficking/download.action;jsessionid=pdhDQhzcNQ7m1TQn1hLQjl779YTDDGYS7w3Psmq4rDLhZ1RZjV8y!1158633405?nodeId=e7062f7b-e3f7-425e-9a10-d835c64026af&fileName=ICMPD+Data+collection+and+Information+Management_2009_en.pdf&fileType=pdf

- International Organization for Migration (IOM). *Guidelines for the collection of data on trafficking in human beings, including comparable indicators*. IOM and Federal Ministry of the Interior of Austria: Vienna. http://ec.europa.eu/anti-trafficking/download.action;jsessionid=YNvwTGBpmlCIPWv1Gt5H5c4TJRPSI32qtJTtSIMGD8g4FGQcjg1M!741669820?nodeId=9c97dc98-7292-441d-99d0-3b926b1346df&fileName=ISEC_2007_411_Guidelines_Collection_Data_THB.pdf
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10. Can you elaborate on the development of the evidence-based framework of indicators for monitoring trafficking in persons?

- Which groups are involved in the development of the framework?

The AIC's objective for monitoring TIP is to implement a better practice approach to monitoring in TIP for Australia and its regions so as to improve our evidence base for understanding trends and patterns. This will involve:

- Identifying and establishing a best practice framework and associated indicators;
- Identifying and utilising appropriate information and data, best data definitions, and collection methods and standards to support the framework and indicators, and ensure that these are suitable for and consistent with government and non-government sources, practices and expectations; and
- Applying the framework and indicators to assess the scale, context, nature and trends for TIP in Australia and the Asia-Pacific region, and how does this compare to international trends.

In considering the steps that the AIC needed to be taking in setting up the better practice framework, we consulted two bodies of work. The first of these were recognised principles and processes in setting up a monitoring program of any nature (ie not just those involving TIP-related crimes) set out by sources and bodies such as the Report on Government Services, the Council of Australian Government, the Australian Bureau of Statistics, and the Australian Institute of Health and Welfare. In general terms, establishing a monitoring program is essentially a four-tiered, inter-connected process involving:

- development of a conceptual framework;
- developing indicators that reflect those concepts;
- identifying what type of data will be needed to measure the indicators, and what is the quality of the data that is available now and expected to be available in the future; and

- establishing a minimum data set.

The second type of information that were consulted, which was important for providing guidance on what sorts of things we could or should be including in our framework, were guidelines about frameworks released by international organisations that are forefront in the trafficking space or related or trafficking-like crimes. Some of these organisations were the Organization for Migration (IOM), the International Centre for Migration Policy Development (ICMPD), the International Labour Organization, the Organization for Security and Cooperation in Europe, the United Kingdom Human Trafficking Centre, and Statistics Canada, or guidelines regarding sexual assault and domestic violence by the Australian Bureau of Statistics. Some of the key themes emerging from these frameworks and bodies of work are that better practice in the monitoring of TIP-related crimes should:

- be about more than just counting numbers or 'stating that trafficking is a problem'. We need to be thinking about what the numbers actually mean, such as trends and how well we are addressing the crime;
- focus on actions, means and process,
- capture all of the individuals who are involved in trafficking, including the actual and at risk victims and offenders (including those who may seek support from a service provider but not officially come to the attention of the criminal justice system), and knowledge and attitudes of the community as well as front line staff;
- be able to look at overall patterns and trends, but also use the framework to consider specific cases;
- include responses by the criminal justice as well as NGOs;
- broaden out the lens of monitoring to crimes other than trafficking (eg to related crimes where trafficking victims or perpetrators may have come into contact with the criminal justice system) as well as beyond criminal justice to consider related subject areas such migration issues or gender inequalities (in other words, not looking at TIP as a purely criminal process);
- be focused on the overall goal of reducing trafficking and achieving better outcomes for victims;
- use a mix of qualitative and quantitative data to capture a broad range of victims' experiences and needs, victim profiles, trafficking experiences, and 'the ways that trafficking is played out'; and
- account for the complexities of the crime. This may involve looking at many indicators at the one time to get a better sense of what has happened and or why a case progressed (or didn't progress) as it did.

Two of the key frameworks that we identified were:

- The IOM's Handbook on Performance Indicators for Counter-trafficking Projects (2008) was concerned with providing a victim oriented, gendered, collaborative and sustainable approach to counter-trafficking. They recommend an action/means/process approach, with eighteen indicators focused on the victims, such as profiles, factors that increase the likelihood of trafficking, pathways and movement, means of coercion/control/exploitation, and responses from the criminal justice system, support services.
- ICMPD (2009) set out a framework that includes two sets of indicators, one for victims and one for offenders:

- For victims, the key indicators are case registration, victim's background, recruitment experience, transportation and travel routes, exploitation experience, and identification, assistance and co-operation with officials and authorities.
- For traffickers, the key indicators are - registration of case of alleged/convicted trafficker, alleged/convicted trafficker's background, complainant and investigation phase, trial phase, appeal process and outcomes, and post-trial phase.

The AIC is in the process of developing a conceptual framework that is based on ABS' sexual assault framework but modified using indicators that are appropriate for trafficking-type crimes (and informed by the findings and frameworks discussed above).

It is important to note that the AIC's monitoring program is not intended to be an evaluation or performance measurement mechanism for the Interdepartmental Committee or for any particular department, agency or service. Rather, the purpose of the AIC's monitoring is restricted to the nature and extent of the crime. It is of note that the Attorney-General's Department is responsible for the whole-of-government response to trafficking-type crimes in Australia.

References

- Australian National Audit Office (ANAO) 2009. *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*. Canberra: Attorney-General's Department. http://www.anao.gov.au/uploads/documents/2008-09_Audit_Report_30.pdf
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- SCRCSP 2012. *Report on government services 2012*. Canberra: Productivity Commission. <http://www.pc.gov.au/gsp/reports/rogs/2012>

11. Does Australia provide input into the International Organization for Migration's Counter-Trafficking Module?

The Department of Immigration and Citizenship (DIAC) is the most appropriate agency to respond.

12. Are you aware if the International Organization for Migration provided assistance to people who have been trafficked in Australia?

- *Does Australia provide financial assistance to the International Organization for Migration?*

The Department of Immigration and Citizenship (DIAC) is the most appropriate agency to respond.



Australian Government
Australian Institute of Criminology

Telephone +61 2 6260 9200

Facsimile +61 2 6260 9299

GPO Box 2944

Canberra ACT 2601 Australia

www.aic.gov.au

Based on the terms of reference for the inquiry, and the submissions and transcripts of hearings, the Australian Institute of Criminology (AIC) was best placed to provide information with regard to measurement of the *scale and nature of trafficking in Australia*, and, to a lesser degree, *international issues or better practices*.

Australian Institute of Criminology's research on trafficking

Research and monitoring on the 'scale and nature of both domestic and transnational trafficking in persons' is promoted under the Trafficking Protocol – see Article 9(4). The AIC undertakes research and independent monitoring, funded by the Australian Government, on trafficking in persons-type crime to inform Australia's anti-trafficking responses, to contribute to preventing and reducing this crime type, and also to inform international knowledge and responses. Our research is well cited and regarded, for example, the Special Rapporteur has commented positively about AIC's focus on non-sex trafficking as well as sex industries, and research collaborations with non-government and government sectors. The scope of AIC's research and monitoring includes Australia's region. This is because the crime type is commonly transnational, and as a signatory to the Protocol Australia has responsibilities to assist its neighbours both in the Pacific and SE Asia.

It is important to point out that the AIC's research is not limited to a focus on the criminal justice system. Rather, AIC's research considers crime prevention as well as criminal justice issues, such as root causes and early intervention (which is illustrated throughout this evidence).

The focus of Australian Institute of Criminology's research is 'trafficking in persons-type crime'

Similar to other research undertaken by AIC (eg violent crime, domestic violence), the focus of our research is on a *crime type* – in AIC's research, the term 'trafficking in persons-type crime' includes slavery or slavery-like offences. The development of this crime type for the

purposes of AIC's research has been guided by the Protocol and other relevant international instruments such as on slavery and forced labour, as well as Australian laws.

The crime type covers trafficking in person's offences, slavery and slavery-like offences such as servitude, forced labour, forced marriage, deprivation of liberty, forced prostitution, and so forth. In Australia, this involves Commonwealth and state/territory laws. This means the AIC does not have a narrow focus on only trafficking in persons offences as a Submission to the committee suggests, but a very broad focus on a crime type.

The AIC does not define this type of crime by way of a finite list of offences since these are dynamic and also vary internationally. Its focus is on a type of crime that involves a serious undermining of a person's freedom and/or that the person is effectively owned in slavery or not free to leave a situation of servitude.

The challenges in determining the scale and nature of this crime type

Knowledge about the levels of incidence of trafficking in persons-type crime is limited around the world for a range of common reasons. Criminalisation and attention to this crime type in its modern form is relatively recent - one consequence is that many dimensions of this crime type are unreported and indeed the crime is not necessarily recognised as a crime in the community. Also the discourse on this crime type can be 'agenda driven' (see Submission 39 for the Inquiry, Gallagher 2012:1), with a range of political and moral issues often raised when discussing trafficking in persons-type crime and responses (eg about the morality of the sex industry as a whole). Definitions and core data have not been settled resulting in minimal ongoing data collections, and, what does exist, is largely not comparable and possibly distorting. For example, data on breaches of variable prostitution laws is conflated with trafficking in persons-type crimes in many nations.

Australia shares many of these hurdles with other committed nations, and overcoming them is a key to improved responses and monitoring of this crime type.

AIC's research on labour trafficking, surveying of community awareness, and information sessions for a wide range of services around Australia over some years confirms that this crime type is commonly not able to be recognised by community members or non-specialist frontline staff in key sectors in Australia. For example, in AIC's survey of community attitudes and awareness, 10 percent of people did not know what trafficking is and 61 percent confused people trafficking with people smuggling (see Joudo Larson et al. 2012, which is the most recent monitoring report, previously provided to the Committee). Similar confusion was evident in Information Sessions presented by AIC across Australia to non-specialist front-line staff from a range of services and government agencies. This means that this

crime-type may not be responded to at all as a crime, or it may be responded to under other potentially less serious crime types (eg domestic violence or a civil breach of a labour). This is perhaps similar to the history of domestic violence, which was once not recognised as a crime but now is a core area of policing and treated very seriously.

Another hurdle for research and reducing the crime is that it may not be reported by victims. Where a service, usually highly specialised, does identify a potential trafficking in persons-type crime, it seems only some matters proceed to investigation and then prosecution. For example

Between January 2008 and June 2009, the Salvation Army's Samaritan Accommodation - a shelter for women who have experienced situations of people trafficking – provided services to 37 women, of which 20 had contact with the AFP and/or the Department of Immigration and Citizenship and [only] 11 participated in the Australian Government's Support for Trafficked People program (Stanger 2009 cited in Joudo Larsen et al.2012:11).

This is perhaps similar to the history of sexual assault as a recognisable crime. Historically, the crime had low levels of reporting by victims and high attrition rates as matters proceeded through the criminal justice system. Overtime, these issues have been addressed by better support for victims and witnesses, and other initiatives.

Currently the scale and nature of trafficking in persons-type crime is not able to be accurately stated anywhere in the world. Estimates were cited routinely until some years ago, at which point it became well recognised that these estimates are flawed. For example, the US Government Accountability Office in a Report to the Committee of the House of Representatives found that 'such estimates are questionable...because of methodological weaknesses, gaps in data, and numerical discrepancies' (2006: 2).

Key work is underway by international organisations (particularly International Labour Organization (ILO), International Organization for Migration (IOM), International Centre for Migration Policy Development (ICMPD), United Nations Office for Drugs and Crime (UNODC)) as well as many governments (particularly those for Canada and the Netherlands) to overcome these hurdles. AIC keeps abreast of this work and inputs information and findings as necessary. For example, the AIC is currently developing a monitoring framework and supporting data guidelines – drawing on these sources – that will contribute to overcoming challenges of better monitoring, and which provides a tailored program of monitoring for Australia.

Cautions

The scale and nature of trafficking in persons-type crime is likely to vary between nations, so

findings with regard to one nation are not necessarily fully transferable or indeed transferable at all. For example, Australia's border controls mean that trafficking here largely occurs with valid visas (with some migration fraud involved) and not through overt smuggling.

There needs to be caution in drawing conclusions about the level or trends in trafficking in persons-type crimes in the sex industry using health measures alone (eg recognised high use of condoms and improving low incidence of STIs among sex workers in Australia). In Australia, the victims in finalised convictions for trafficking in persons-type crimes have been subjected to varied health and safety contexts. For example, in the case of *R v Netthip* [2010] NSWDC 159, victims had few physical controls, lived independently of the offender and were able to access health and other services if they wished. Also in some of the Australian convictions victims reported that they used condoms.

Therefore, tailored indicators for trafficking in persons-type crime are necessary to better understand the level of exposure to this crime type. In current research, AIC is guided by ILO's *Operational Indicators of Trafficking in Human Beings* (2009), which are widely recognised as the best available at this early stage in trafficking research (copy previously provided to the Committee) as well as the literature and analysis of finalised convictions in Australia.

Acknowledging the above challenges, what can be said overall about the level and nature of exposure to trafficking type crime in Australia?

Between 1 January 2004 and 30 June 2012, convictions under Commonwealth laws have identified:

- 15 distinct offenders (mostly women);
- 9 distinct schemes (7 in the sex industry); and
- at least 35 distinct victims.

Convictions for these cases have mostly been for slavery rather than trafficking in persons offences.

However, the actual number of convictions is not necessarily indicative of the actual level of trafficking in persons-type crime (eg unreported/historical focus on sex industry by law enforcement). They do indicate, however, that there are problems in three sectors, being the sex industry (eg *R v Netthip* [2010] NSWDC 159), non-sex industry (eg *R v Trivedi* [2011] NSWDC), and marriage arrangements (eg *R v Kovacs* [2009] 2 Qd R 51).

Organised crime research is relevant to research here since the nine distinct schemes that underlie the 15 convictions were organised (but not mafia style) and offenders were resourceful. Although the offenders were not particularly well educated, they used their

experiences and also commonly sourced the services of specialist co-offenders (eg labour brokers and migration agents), they planned and executed the crimes over time, and they made profits (eg in the case of R v Netthip [2010] NSWDC 159 the offender victimised 11 persons).

The literature on organised crime recommends a focus on the dimensions of crime situations that are engineered by the offenders, going beyond 'typologies of the person present in a situation and their levels of responsibility and awareness' (von Lampe 2011:155; article previously provided to the Committee). Rather, it recommended that offenders be considered as potentially 'less dependent on any one situation' and 'they are able to seek or engineer opportunities and circumvent obstacles' (Ekblom 2003 cited in von Lampe 2011:151). Therefore, dimensions of what are termed 'niches' for offending in this literature, not just the typologies of victims and offenders, are relevant to research in this area. In most convictions in Australia, the offending situations or niches were such that they allowed simultaneous victimisation of multiple victims, thus enhancing profits.

A common dimension to trafficking in persons-type crimes reported in the literature (see Bales 2006), also evident in Australian cases, is the manipulation of social contexts to control the victim or more commonly victims. In Australian cases victims were vulnerable due to their disadvantaged and migrant backgrounds. They became known to offenders through networks and social contexts that they shared, which offenders manipulated such that the victims ended up in situations in Australia where they were able to be effectively controlled. Means of control varied but at minimum threats linked to unreasonable debt arrangements that were embedded in these manipulated social contexts occurred. Physical violence by the offenders, who were mostly women, was not common and largely not necessary given the manipulated social contexts and nonphysical threats that were in place.

Attitudes to debt and barriers to exiting highly exploitative debt arrangements emerges as an area for further research that could inform prevention initiatives targeted at vulnerable cultural groups. Also a critical dimension to the offending that emerged from AIC's labour trafficking research, as well as the convictions and the literature, is the use of fraudulent brokers to undertake the specialised work on getting the victim legally into Australia and maintaining their legal status while here. Not all brokers in Australian cases were off-shore - in one case an Australian solicitor was involved. Developing schemes for labour migration that avoid the use of brokers and/or which involve using well regulated brokers are obvious strategies here (see Ball et al. 2011; a copy was previously provided to the Committee).

More generally, targeting all stages and elements of trafficking in persons-type crime is important, including targeting brokers and other third party facilitators. This is because it is better practice to aim to disrupt all elements of the process of trafficking, from recruitment to

managing the proceeds of crime. A recent report found that it is common for only a few elements of the criminal process to be targeted in law enforcement and related responses, favoured targeting was on the exploitation at destination and transportation process (Office of the Special Representative and Co-Ordinator for Combating Trafficking in Human Beings (OSCE) 2012:19; a copy of the Executive Summary was previously provided to the Committee). Note, however, that, as the UN Special Rapporteur advises, any analysis of a market nature needs to be victim centred:

Tools of economic analysis are designed to explain and evaluate markets in terms of efficiency. Such tools are not necessarily well-designed for furthering the goal of protecting human dignity...It is with caution, therefore, that [any report] ...employs concepts such as supply and demand in discussing trafficking (UN, Report on Bosnia and others, E/CN4/2006:7).

Overview of scale and nature of trafficking-type crime in 3 main contexts – marriage, sex and non-sex industries?

While the crimes under this crime type have some common features as raised above, the scale and nature/dimensions of offending situations is likely to vary across the three main contexts - sex industry, non sex industries and marriage contexts. There is also likely to be diversity within each of these three contexts, which means that it is important to undertake research to better understand the specifics of the crime type in each of these contexts.

AIC has undertaken exploratory research in each of these contexts which is very briefly summarised below.

Labour Trafficking: In 2010, the AIC released a Report that explored issues of trafficking in persons-type crime in the non-sex industries (copy previously provided to the Committee). The research involved wide ranging discussions and interviews with frontline services, and found that there appear to be examples of unreported, even unrecognised cases of trafficking in persons-type cases, in the following industries:

- Domestic
- Construction workers
- Nurses/cleaning
- Stonemasons

There were numerous examples of borderline cases, suggesting an enabling environment in the hospitality industry and various trades. One example was discussed as follows:

Young Pacific Island man brought to work in Sydney through local connections, worked long hours (5.30am to 8 or 9pm), 6 days a week, physical abuse leading to permanent injury, injury at work and not properly treated, not properly fed, occasionally paid Aust \$50, and court proceedings resulted in some compensation for wages and conviction for

minor industrial state offence (David 2010: 30).

The Report raised issues for law reform and regulation, suggesting:

- improved awareness of community and non-specialist frontline services (eg unions) as well as law enforcement personnel about labor trafficking;
- targeting enabling environments as well as the most serious cases of trafficking in persons-type crime; and
- targeting brokers as well as the end exploiter.

Marriage: A Report will be released in 2013, with preliminary findings provided in a Submission and evidence for the Standing Committee on Legal and Constitutional Affairs in its Inquiry into Prospective Marriage visa program (that Committee's Report has been released, copies of AIC's submission to that Committee and also of a PowerPoint presentation at the recent National Roundtable on People Trafficking are submitted with this correspondence).

In summary, the case analysis suggests that in the small number of cases identified for this study, marriage visa classes have been used to facilitate trafficking in persons-like exploitation or associated risky scenarios in two ways. First, marriages have been identified where there was no intention on the part of the husband for the marriage to be genuine (for example, where the 'husband' is already in a de facto relationship with another such as occurred in the Kovacs case (R v Kovacs [2009] 2 Qd R 51) – enslaved domestic (shop and home) worker in remote Australia that led to slavery convictions for offenders (husband and wife). The following excerpt is an example of what AIC's marriage research has found in relation to a deceptive and exploitative marriage scenario:

When I arrived in Australia, my husband and I never shared the same bedroom. There was a room for me to stay in. My husband and his girlfriend left to stay at their own place...There were 16 people living in the house...My life was like a slave... there was always work to do in the house. My mother-in-law was always with me...I hardly ever got any rest or break during the day. If I sat down for 5 or 10 minutes my mother-in-law would find me something to do.

The other scenario is where the marriage is genuine but the husband has the intention of seriously exploiting his wife in their relationship. For example:

These are the rules and regulations. You should be caring for everything in the house, doing the cooking, washing, cleaning, and whenever I go to the shower you have to give me my toothbrush and towel. You must iron my clothes and make my food whenever I like and whatever I like... You must care for me...I brought you to give me money and help me in the house. If you don't do those things I will send you back. Otherwise, it's no use keeping you here [and/or also being locked in the house during the day and at night if the husband wasn't at home].

The small number of cases involved in the research represent a cross sector of marriages, including love marriages, arranged in the traditional sense, parties met online through internet introductory agencies, and parties met through family connections. None of the marriages were not overtly forced, and, in all cases, the wife had little prior experience of (or information about) the husband before marrying.

Marriage exploitation in trafficking in persons-type crime has overlaps with intimate partner violence crime and is likely to take place in private settings (ie the home) where it is harder for third parties to observe and to intervene. As a result, any help-seeking behaviours by victims need to be encouraged and responded to well (see Meyer 2010 regarding effective options for help-seeking; copy previously provided to the Committee).

Related to such help-seeking behaviours by the victim, it emerged from the above AIC research that English courses are an opportunity for women to seek informal help. Having a requirement to show completion, rather than placing the responsibility on the sponsor for the applicant's attendance, may increase opportunities for the women to receive information and assistance. In the study, some of the women were denied access to English courses or community centres as they were prevented from leaving their homes or were only allowed to leave if they were escorted. If there was a requirement to report back to immigration or to provide evidence that they had attended their course, this would provide a greater opportunity for women in an exploitative situation to have contact with people that could assist them.

Sex industry: AIC will release a major Report in 2013 that explores the exposure of sex workers to exploitation and coercion linked to trafficking in persons-type crime and enabling environments for this crime type. The research involved detailed analysis of all the Australian convictions for this crime type in the sex industry, and analysis of responses from surveying of almost 600 sex workers across Australia (note: the survey was administered under the guidance of AIC by Scarlet Alliance, the Australian Sex Workers Association, who provided a Submission for this Inquiry).

At this stage, the AIC can assist the Committee with background and some high level results from the research, as follows:

- AIC's research is guided by the Trafficking in Persons Protocol which does not equate prostitution or pornography per se with trafficking, since not all sex work is of this nature.
- Convictions for trafficking in persons-type crime in Australia have been mostly in the sex industry, in legal and illegal off-street settings (brothels), involved Thai victims,

mostly migrant offenders with a similar cultural background to the victim and a history of victimisation themselves and experience in the sex industry too, and have been for profit.

- the predominance of convictions occurring in the sex industry is not necessarily indicative of the relative risks or numbers of potential cases between each of the sectors ie non-sex industries and marriage, and may be a reflection of law enforcement activity and the higher visibility of the sex industry.
- due to limited data on the size of the sex workers population and the convenience sampling method used for survey collection, it was not possible to accurately measure the level of this type of crime in the research. Rather the research explores the exposure of the wider sex worker population, particularly migrant sex workers, to a continuum of exploitative situations and investigates vulnerabilities and protections to key elements of this crime type.
- The indicators of exploitation and coercion used in the research were derived from the set developed by ILO mentioned earlier (with copy previously provided to the Committee), plus Australian cases and the literature.
- The research overall suggests that exposure to indicators of exploitation and/or coercion linked to trafficking in persons-type crime is not the norm in the sex industry, but rather there are small groups of persons, and associated niches with multiple victims in some cases, with heightened vulnerability to this crime type.
- The research reinforces the need to move beyond stereotyping the victim and a singular focus on migrant status and other characteristics commonly linked to disadvantage, since commonly assumed characteristics such as being a migrant, low education and poor English skills were not significant for a respondent in the survey displaying an indicator/exhibiting vulnerability.
- Importantly there are dimensions to the most vulnerable groups and their situations that overlap with other areas of well-developed research. The need to build better responses to labour issues and violence within the sex industry is of a catch up nature compared to other workplaces and victims of violence.
- Dr Anne Gallagher's submission to the Inquiry (2012:5) mentions that customers of sexual services are an important target group, as did the 2010 Report by the Drugs and Crime Prevention Committee of the Victorian Parliament. This group is an important target group for the sex industry for the purpose of raising their guardianship capacities. In the case of *R v Johan Sieders and Somsri Yotchomchin* [2006] NSWDC 184, a client of the trafficked sex worker helped the sex worker escape her situation, acting as a 'preventer' of crime not a facilitator (Von Lampe 2011: 151). This reinforces the importance of not stereotyping clients of sex workers

or the protections that may be relevant to trafficking in persons-type crimes in the sex industry.

- Literature on the attitudes of customers of sex workers is limited; however, the IOM surveyed customers in Denmark, Thailand, India and Italy. The study found that most customers do not seek sex workers who are forced or obviously exploited. Some customers displayed a specific repulsion to buying sexual services from a trafficked person. Indeed, when asked what clients should do if they came across a trafficked sex worker, a quarter said they should help them escape, and over half stated that the client should report it to the police (Anderson & O'Connell Davidson 2003; copy previously provided to the Committee).

Cho, Dreher and Neumayer

Finally in regard to the sex industry, AIC has been provided with a paper by the Committee to comment on (Cho, Dreher and Neumayer 2012). The paper concludes that 'countries with legalised prostitution experience a larger *reported* incidence of trafficking inflows' (2012: 26) and the writers note the issues with the data used to come to this conclusion. AIC's research does not aim to assess whether the legalisation or otherwise of sex work increases trafficking in persons-type crime in any nation, but there are some obvious comments to be made about the paper.

First, the issues with the data, and therefore the cautions that apply to the conclusions, cannot be under-stated for the reasons I outlined earlier. Second, the conclusion of the paper is that 'the *reported* incidence of trafficking increases with the legalisation of prostitution' (Cho et al. 2012: 26; emphasis added), and not necessarily the *actual* incidence of trafficking in persons-type crime. This is a critical distinction to be made.

Better Monitoring?

The AIC has recently released its second Monitoring Report (Joudo Larson et al. 2012). However, accurate information and data on many aspects of trafficking in persons is not currently available as explained earlier.

The AIC currently has a project underway to improve the monitoring in line with international and national better practice for such (largely unreported, new) crime types. It involves working with government and non-government sectors to develop a relevant conceptual framework and indicators for monitoring trafficking in persons-type crimes in Australia and the region that will allow assessment of a range of elements to trafficking in persons-type crime, its prevention and prosecution (eg monitoring community and frontline staff awareness and attitudes given their roles in improved reporting, regulation and prosecution of

brokers given the evidence that this is better practice), as well as patterns and trends in criminal justice processes (including attrition rates for cases as they proceed through the criminal justice system) and detailed analysis of confirmed and related cases in all three sectors – sex, non-sex and marriage.

Critical to its success, the Framework will be supported by a Guide for Collecting Information and Data on Trafficking-type Crimes in Australia and the Region, to guide government and non-government sectors in their information and data collection. This Guide will build on what is already being collected, and ensure that in the future relevant and comparable information and data can be collected across all sectors.

Subject to the agreement of relevant agencies and ethics approvals, as part of its future monitoring AIC will seek and analyse information and data consistent with this Guide as part of a minimum data set from both government and non-government sectors.

The next Monitoring Report is due for release in 2013-2014, for the period 2011 to 30 June 2013, and it will incorporate these improvements, although it may take some years for relevant agencies and services to fully adopt the data guidelines.

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Ms Laura Beacroft

Research Manager,

Australian Institute of Criminology

Dr Lisa Rosevear

Research Officer, Trafficking in Persons Research Program,

Australian Institute of Criminology