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Human Trafficking: Australia's Response

It would shock many people to learn that there are victims of human trafficking in Australia, even here in Queensland.

This Research Brief provides background about the types of human trafficking and the obtainable data on the extent of the problem in Australia, noting the extensive limitations and shortcomings of the information available. The Brief also discusses the international conventions and protocols on human trafficking to which Australia is party and the legislative and administrative measures implemented to address the issue at a local level. Particular attention is given to the slavery and trafficking offences under the Commonwealth Criminal Code and some successful prosecutions brought under the slavery offence provisions.

Various other responses are also considered, including the actions taken under the Commonwealth Government's Anti-People Trafficking Strategy and Australia's role, at a governmental and non-governmental level, in international efforts to fight human trafficking, particularly in our neighbouring region. The Commonwealth Government's policies to support and assist victims of human trafficking, including the recent changes to its Visa Framework and Support for Victims of Human Trafficking Program, are also examined. Finally, consideration is given to the role of the states and territories in the fight against trafficking, including the implications of the decriminalisation and regulation of prostitution in some states, including Queensland.

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Research Brief No 2011/08

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ISSN 1443-7902

ISBN 978-1-921056-90-1

JUNE 2011

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CONTENTS

EXECUTIVE SUMMARY
1 INTRODUCTION.....	1
2 BACKGROUND.....	2
2.1 SOME KEY CONCEPTS IN HUMAN TRAFFICKING.....	4
2.1.1 Differences Between Human Trafficking and People Smuggling.....	5
2.2 WHY DO PEOPLE BECOME VICTIMS OF TRAFFICKING?	6
2.3 FINDINGS ABOUT HUMAN TRAFFICKING IN AUSTRALIA.....	8
2.3.1 Female Sex Industry Workers.....	9
2.3.2 Child Trafficking	13
2.3.3 Forced Labour.....	16
2.4 SOME FACTS AND STATISTICS ON THE EXTENT OF TRAFFICKING	21
2.4.1 Other Information and Data.....	24
3 CONVENTIONS AND PROTOCOLS	25
4 AUSTRALIAN RESPONSE	26
5 COMMONWEALTH LEGISLATIVE MEASURES.....	27
5.1 SLAVERY	29
5.1.1 High Court Case – R v Tang.....	30
5.1.2 Queensland Court of Appeal Case – R v Kovacs	32
5.2 TRAFFICKING IN PERSONS	34
5.2.1 Organising or Facilitating Entry or Exit	34
5.2.2 Trafficking in Children	35
5.2.3 Domestic Trafficking and Domestic Trafficking in Children.....	35
5.2.4 Debt Bondage.....	36
5.2.5 Cases Under the Anti-trafficking Offence Provisions	37

5.2.6	Child Sex Tourism Offences	39
5.2.7	Other Applicable Legislation	40
6	OTHER COMMONWEALTH GOVERNMENT MEASURES.....	41
6.1	THE INTERDEPARTMENTAL COMMITTEE (IDC).....	41
6.2	THE ANTI-PEOPLE TRAFFICKING STRATEGY	42
6.2.1	National Roundtable on People Trafficking.....	45
6.3	TRAFFICKING IN PERSONS – ANTI-PEOPLE TRAFFICKING INTERDEPARTMENTAL COMMITTEE REPORTS.....	46
7	AUSTRALIA’S ROLE IN INTERNATIONAL EFFORTS AGAINST HUMAN TRAFFICKING	48
7.1	THE BALI PROCESS	49
7.2	COMMIT	50
7.3	MEASURES TO ADDRESS FACTORS DRIVING HUMAN TRAFFICKING.....	50
7.4	PREVENTING TRAFFICKING AT ITS SOURCE	51
7.5	CAPACITY BUILDING AND TECHNICAL ASSISTANCE	52
8	SUPPORT AND PROTECTION FOR VICTIMS	53
8.1	THE COMMONWEALTH GOVERNMENT’S VISA FRAMEWORK.....	53
8.2	SUPPORT FOR VICTIMS OF PEOPLE TRAFFICKING PROGRAM	58
8.2.1	Helping Victims to Reintegrate	61
9	STATE AND TERRITORY MEASURES	62
9.1	POLICING AND INVESTIGATIONS.....	62
9.2	LEGISLATION.....	62
9.3	PROSTITUTION LAWS	64
APPENDIX A.....		67
APPENDIX B		69
RECENT QPL RESEARCH PUBLICATIONS 2011.....		71

EXECUTIVE SUMMARY

It would shock many people to learn that there are victims of human trafficking in Australia, even here in Queensland. It is difficult to determine how many trafficking victims are in Australia and estimates vary about the size and extent of the problem. Judging from the literature, human trafficking would appear to be a significantly underreported crime as victims are very reluctant to approach the authorities due to shame, distrust, anxiety about being deported, and fear of retribution towards them or their families back home.

Section 2 of this Research Brief provides background about some key concepts, including what is and is not included in the definition of ‘human trafficking’. It also discusses the ‘push’ and ‘pull’ factors that can cause people, particularly in countries affected by poverty, war, or political instability, to become victims of trafficking. Consideration is given to the types of human trafficking in the Australian context, including trafficking for sex industry work, child trafficking and forced labour. Data on the extent of the problem, and the legislative and criminal justice responses to, human trafficking in Australia and around the world is also considered, noting the extensive limitations and shortcomings of the information available.

Section 3 then turns to a brief overview of the United Nations *Convention Against Transnational Organised Crime* and the supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. The Protocol obliges signatories to criminalise trafficking; to impose penalties that reflect the severity of trafficking offences, and to investigate, prosecute and convict offenders. Other relevant international instruments are also mentioned.

Australia’s policies and legislative measures to respond to the human trafficking issue are discussed in **Sections 4-6** of the Brief. Firstly, in the context of Commonwealth anti-trafficking laws, **Section 5.1** explores the slavery offence provisions under Div 270 of the Commonwealth Criminal Code, together with a discussion of the High Court’s recent decision in *R v Tang* clarifying the operation of those provisions and leading to the imprisonment of a brothel owner in Victoria. Also considered is the Queensland Court of Appeal’s decision in *R v Kovacs* concerning slavery in a North Queensland setting. The anti-trafficking offence provisions under Div 271 include child trafficking offences, domestic trafficking and debt bondage and these are outlined in **Section 5.2**. The difficulties in successfully prosecuting trafficking offences are discussed but a successful prosecution is highlighted in the overview of the Queensland Court of Appeal case of *R v Dobie*. Brief mention is made of recent legislative amendments to introduce a number of child sex tourism offences into the Commonwealth Criminal Code.

Non-legislative approaches adopted by the Commonwealth Government to combat trafficking are set out in **Section 6.1-6.3** of the Brief. The main policy measure is the Commonwealth’s Government’s *Whole of Government Anti-People Trafficking Strategy*. Key aspects include a dedicated Australian Federal Police Transnational

Sexual Exploitation and Trafficking Team; a National Policing Strategy; a People Trafficking Visa Framework and Support for Victims of People Trafficking Program; better cooperation with countries in our region to combat human trafficking; improvements in anti-trafficking laws and prosecution efforts; and stronger partnerships with non-government organisations. The Commonwealth Government's Interdepartmental Committee (IDC), comprised of representatives of Government agencies with responsibilities in anti-trafficking matters, coordinates and monitors the Commonwealth Government's efforts in addressing human trafficking. It released its inaugural report in June 2009 and its second report in November 2010.

Section 7 considers Australia's role in international efforts in the fight against human trafficking including its funding initiatives through AusAID; involvement in international and regional forums and in the Bali Process; and through training workshops and other measures designed to strengthen law enforcement responses in nearby countries.

Section 8 examines the Commonwealth Government's People Trafficking Visa Framework which enables victims to remain in Australia to assist in the investigation and prosecution of trafficking offenders and, in certain circumstances, obtain a Witness Protection Visa. Various issues raised by human rights groups and others are considered. The assistance offered to victims under the Support for Victims of People Trafficking Program and by various non-government organisations, such as Project Respect, are also discussed.

Finally, **Section 9** of the Brief looks briefly at legislative measures and policies of the states and territories and discusses the debate about the impact of liberalised prostitution laws in jurisdictions such as Queensland on human trafficking in the sex industry. The Victorian Parliamentary Drugs and Crime Prevention Committee's *Inquiry into People Trafficking for Sex Work* is also mentioned in this context.

1 INTRODUCTION

It would shock many people to learn that there are victims of human trafficking in Australia, even here in Queensland. It is difficult to determine how many trafficking victims are in Australia and estimates vary about the size and extent of the problem. Human trafficking is viewed by many as being a significantly underreported crime as victims may be reluctant to approach the authorities due to shame, distrust, anxiety about being deported, and fear of retribution towards them or their families back home.¹ The ability to determine the numbers of trafficked persons, particularly women in the sex industry, has been impacted not only by likely underreporting via official channels but, also, by differing perspectives on what amounts to 'trafficking'. For instance, not all migrant sex workers or their support organisations see working under contract to pay off their travel debts to their employers as indicative of being trafficking victims. On the other hand, there are some people who want prostitution outlawed because they regard sex work as a form of violence and perceive sex industry trafficking as part and parcel of that violence. Such diverse viewpoints will necessarily colour the nature of the trafficking issue and inflate or deflate estimates of the size of the problem.²

Trafficking in persons is viewed by some as a modern form of slavery. Its resurgence was internationally recognised in December 1949 with the United Nations (UN) adopting the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*. In 2000, it adopted the [*Convention Against Transnational Organised Crime*](#) and its supplementing Protocols, particularly the [*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*](#) (UN Trafficking Protocol).³ Australia is a signatory to those conventions and the UN Trafficking Protocol and, as will be discussed later in this Research Brief, has obligations thereunder.

¹ Victorian Parliament, Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, Final Report, June 2010, pp 29, 30.

² Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, pp 30, 31. The issue of differing viewpoints confounding accurate estimation of the size of the trafficking problem, especially in the sex industry, is discussed in Section 9 of this paper.

³ JJ Larsen, J Lindley & J Putt, *Trafficking in Persons Monitoring Report July 2007 – December 2008*, Australian Institute of Criminology (AIC), Monitoring Report No 6 ([AIC Monitoring Report No 6](#)), October 2009, p 7, citing Office of the High Commissioner for Human Rights, 'Contemporary forms of slavery', *Factsheet*, no 14, 1991, Geneva, Switzerland.

This Research Brief provides background about the types of human trafficking and presents the obtainable data on the extent of the problem in Australia, noting the extensive limitations and shortcomings of the information available.

Various legislative and administrative measures to combat human trafficking are also considered, including the actions taken under the Commonwealth Government's Anti-People Trafficking Strategy and Australia's role, at a governmental and non-governmental level, in international efforts to fight human trafficking. Particular attention is given to the slavery and trafficking offences under the Commonwealth Criminal Code and some successful prosecutions brought thereunder. The Commonwealth Government's policies to support and assist human trafficking victims, including the 2009 changes to its Visa Framework and Support for Victims of Human Trafficking Program, are also examined. Finally, consideration is given to the role of the states and territories in the fight against trafficking, including the implications of the decriminalisation and regulation of prostitution in some states, including in Queensland.

2 BACKGROUND

The Commonwealth Attorney-General's Department (AGD) notes that there is little data about the nature and extent of human trafficking but there is general agreement that it affects almost every country around the world. The most well-known type is probably trafficking in women for sexual exploitation but there are also other forms. Examples include trafficking for forced labour in a range of industries including hospitality, mining, forestry, domestic services, and sweatshops; for military recruitment; and for the harvesting of human organs.⁴ Children are also trafficked for sexual and labour exploitation but they can also be trafficked for the purposes of forced marriage, illegal adoption, military service, camel jockeying, begging and other illicit activities.⁵

As will be discussed later, for a variety of reasons, it is inherently difficult to collect accurate and reliable data about human trafficking. However, it appears that, in Australia, most human trafficking victims have been identified as being women working in the sex industry. Australia is a destination for trafficking victims coming mainly from Asia, especially Thailand, and also from countries including Indonesia, China, Malaysia and South Korea (officially called the

⁴ Commonwealth Attorney-General's Department (AGD), '[Australian Government Anti-People Trafficking Strategy](#)', Commonwealth Government Factsheet, June 2009. For more information, see <http://www.ag.gov.au/peopletrafficking>.

⁵ AIC Monitoring Report No 6, p 8.

Republic of Korea).⁶ While Thailand has been the chief source of suspected trafficking victims since 2003-2004, only 10% of investigations and assessments during 2009-2010 related to Thai nationals. It appears that the number of allegations of suspected trafficking of sex workers from the Republic of Korea has increased since mid-2008 such that the Republic of Korea may have become the main source of trafficked sex workers in Australia.⁷ The Commonwealth Government believes that the scale of human trafficking in Australia remains relatively small,⁸ with an estimated 100-200 cases a year in recent times.⁹ This is in contrast with the higher figures provided by non-government organisations and community groups. Project Respect, a non-profit community-based organisation, established in 1998, has often suggested that there are about 1,000 trafficked female victims in Australia at any one time.¹⁰

Numerous persons can be involved in the trafficking chain: initial recruiters; those who arrange transport and fake documents; possibly a broker; and the brothel owner/factory supervisor or householder who receives and exploits the victims.¹¹ While the recruitment process can vary, traffickers often seek out victims living in economic, social or political distress promising them a better life. Alternatively, a person might approach a trafficker to arrange his or her movement to another country but is deceived about the type of work and destination awaiting him or her. Traffickers may also recruit victims with the use of threats or abduction. Sadly, children can be sold to traffickers by their parents or other family members.¹²

⁶ Commonwealth Government Interdepartmental Committee, '[Trafficking in Persons – the Australian Government Response, January 2004 – April 2009](#)' *Inaugural Report of the Anti-People Trafficking Interdepartmental Committee (IDC Inaugural Report)*, pp iii, 7.

⁷ Commonwealth Government Interdepartmental Committee, '[Trafficking in Persons – the Australian Government Response, 1 May 2009 – 30 June 2010](#)', *Second Report of the Anti-People Trafficking Interdepartmental Committee, (Second IDC Report)*, p 26.

⁸ *IDC Inaugural Report*, p 7.

⁹ *IDC Inaugural Report*, p 7; A Schloenhardt, Human Trafficking Working Group, '[Trafficking in Persons in Australia: Myths and Realities](#)', Paper presented at University of Queensland, Brisbane, 22 September 2008, p 3, citing Senator Chris Ellison, then Minister for Justice and Customs, in reply to Senator Linda Kirk, Senate, Legal and Constitutional Legislation Committee, 10 February 2002, as referenced in K Carrington & J Hearn, [Trafficking and the Sex Industry: From Impunity to Protection](#), Current Issues Brief No 28 2002-03, Department of the Parliamentary Library, 2003, p 5.

¹⁰ A Schloenhardt, 'Trafficking in Persons in Australia: Myths and Realities', pp 11-12. Dr Schloenhardt notes that the previous Commonwealth Government rejected these figures.

¹¹ *IDC Inaugural Report*, p 4.

¹² *IDC Inaugural Report*, p 4.

2.1 SOME KEY CONCEPTS IN HUMAN TRAFFICKING

The [*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*](#) (UN *Trafficking Protocol*), ratified by Australia in 2005, is the first binding international instrument to have an agreed definition of ‘trafficking in persons’.

‘Trafficking in persons’ is defined in the *Trafficking Protocol* (Art 3) as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The above definition has been broken into three elements: the *action* by the trafficker (e.g. the recruitment, transportation etc.); the *means* by which this is achieved (e.g. by threats or use of force etc.); and the *purpose* of doing so – which is for exploitation of the person (e.g. sexual exploitation, forced labour etc.).¹³

The Australian Institute of Criminology (AIC) has pointed out that ‘forced labour or services’ has been defined in other legal instruments¹⁴ as work exacted under the menace of penalty and undertaken involuntarily. ‘Forced labour’ is not regarded as the same as merely receiving low wages or having poor working conditions. It essentially involves a severe violation of human rights and restrictions of freedom.¹⁵

As for ‘slavery’, the term has a long history and many treaties seem to consider it as being the exercise of the powers attaching to the right of owning a person (or, because many countries do not legally allow ownership of a person, exercising

¹³ If the trafficking relates to a person under 18, then ‘trafficking’ includes the use of a minor for commercial sexual activity even if there is no force, fraud or coercion involved. It only requires two elements – the action and the purpose: AIC, [‘Labour Trafficking: key concepts and issues’](#), *Transnational Crime Brief*, No 03, March 2009, p 1. See also *IDC Inaugural Report*, pp 9-10.

¹⁴ For example, the now defunct Forced Labour Convention, ILO No 29.

¹⁵ AIC, ‘Labour Trafficking: key concepts and issues’, p 1, citing *Report of the Director General: a global alliance against forced labour: global report under follow up to the ILO Declaration on Fundamental Principles and Rights at Work*, 2005, ILO, Geneva, p 5. For a detailed examination of the issue, see F David, [‘Labour Trafficking’](#), *AIC Reports Research and Public Policy Series* No 108, 2010.

powers *as if* one owns a person).¹⁶ The phrase ‘practices similar to slavery’ appears to be defined to include ‘debt bondage’ or ‘serfdom’ and these will be discussed later.¹⁷

2.1.1 Differences Between Human Trafficking and People Smuggling

At the outset, it is important to differentiate ‘human trafficking’ (sometimes called ‘people trafficking’) from ‘people smuggling’. The AGD explains that human trafficking is a complex crime and very different to people smuggling.

‘Human trafficking’, the AGD notes, refers to physically moving people across borders through deceptive means, coercion or force with the perpetrators being motivated by the prospect of exploiting their victims in the destination country. On the other hand, ‘people smuggling’ is the organised, illegal movement of people across borders, usually on a payment for service basis, and the illegal entry marks the end of the transaction.¹⁸ The two crimes may overlap and either might, as with any form of regular or irregular migration, begin with a desire by the person being moved to improve their life and seek new opportunities for their family. However, there is usually a difference in the method of ‘recruitment’, the issue of consent, the role of violence, and the reality of the situation upon arriving in the destined country.¹⁹ With people smuggling, the movement of the person is not for the purpose of exploiting the person in the destination country and rarely is the person coerced into travelling to that country.²⁰

The [Anti-People Smuggling and Other Measures Act 2010 \(Cth\)](#) was assented to on 31 May 2010. Among other measures, the Act amends Australia’s anti-people smuggling legislative framework and amends a number of Acts, including the

¹⁶ AIC, ‘Labour Trafficking: key concepts and issues’, p 1, citing, among other sources, the [1929 Slavery Convention](#), Art 3; Rome Statute of the International Criminal Court, Art 7(2); J Allain, ‘The definition of slavery in general international law and the crime of enslavement within the Rome Statute’; Guest lecture series of the Office of the Prosecutor, International Criminal Court, The Hague, 26 April 2007, p 13.

¹⁷ [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956](#), Art 1.

¹⁸ AGD, ‘[Australian Government Anti-People Trafficking Strategy](#)’, Factsheet.

¹⁹ AIC Monitoring Report No 6, p 9; F David, ‘Labour Trafficking’, p 5.

²⁰ Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 9. For more information on the distinction between the two concepts, see Australian Institute of Criminology (AIC), ‘People smuggling versus trafficking in persons: what is the difference?’, *Transnational Crime Brief No 2*, 2008.

Commonwealth Criminal Code Act 1995 to introduce a new offence of providing material support to people smuggling and include a new aggravated offence in the Migration Act for people smuggling involving exploitation or danger of death or serious harm. The Act harmonises existing offences between Acts; creates new people smuggling offences; and extends the application of mandatory minimum penalties (5 years) for aggravated people smuggling offences. It also enhances investigative tools and intelligence measures, including those under the *Australian Security Intelligence Organisation Act 1979* (Cth) to enable ASIO carry out its intelligence functions in relation to border security issues.²¹

2.2 WHY DO PEOPLE BECOME VICTIMS OF TRAFFICKING?

As the AIC points out, the circumstances behind a person's becoming a trafficking victim are many and poverty is not the only factor.²² It seems, however, that a common theme influencing regular migration and irregular migration (including human trafficking) is the wish to improve one's quality of life in another land.

Associate Professor Andreas Schloenhardt is a legal academic and project coordinator of the University of Queensland, TC Beirne School of Law's research project on trafficking in persons and the exploitation of foreign workers in the sex industry (the [Human Trafficking Working Group](#)).²³ Dr Schloenhardt has written extensively on various aspects of the trafficking phenomenon and has identified the following 'push and pull' factors influencing human trafficking in both the home and destination countries:²⁴

²¹ See also, Hon R McClelland MP, Commonwealth Attorney-General, [Second Reading Speech](#), Anti-People Smuggling and Other Measures Bill 2010 (Cth), House of Representatives Debates, 24 February 2010; Mark Oberhardt, 'People smugglers sent to jail', *Courier Mail*, 16-17 April 2011, p 27.

²² AIC Monitoring Report No 6, p 9, citing the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), *Vienna forum report: a way forward to combat trafficking*, 2008, UN Office of Drugs and Crime.

²³ The [Human Trafficking Working Group](#) has produced numerous publications on many forms of human trafficking (e.g. labour and sex work). Its website (<http://www.law.uq.edu.au/humantrafficking>) provides links to useful material including legislation, court decisions, reports and seminar papers, information about victims and assistance measures, and current projects being worked on by the group members etc. Given the Queensland focus of much of this Research Brief, a number of references are made throughout to the work of the Working Group and, especially, that of Dr Schloenhardt.

²⁴ A Schloenhardt, *Migrant Smuggling: illegal migration and organised crime in Australia and the Asia Pacific region*, Brill Academic Publishers, The Netherlands, 2003, cited in AIC Monitoring Report No 6, p 9.

- lack of employment in the home country while there is demand for cheap labour in the destination country that may also have better economic conditions and greater job opportunities. This disparity provides opportunities for traffickers to exploit the vulnerabilities of people in search of a better future for their family. The traffickers might do this through providing wrong or misleading information intended to persuade those people into accepting false employment promises;
- there may be a lack of educational opportunities in the home country while such opportunities are widely available in the destination country;
- the home country may have had a natural disaster which causes displacement and loss of homes or have suffered environmental degradation;
- there may be political instability in the home country and/or persecution, abuse and violence arising from civil unrest and war;
- the penalties for illegal migration in the destination country may not provide sufficient disincentive or, in some cases, there may be some corrupt activities in immigration.

Globalisation has also been seen as impacting on crime, including human trafficking – particularly with the increased opportunities presented by sophisticated communications channels and increased cross border movement.²⁵ The AIC notes that human trafficking has been labelled the third most profitable organised crime after drug trafficking and weapon trafficking and that the UN Office on Drugs and Crime (UNODC) and other experts have estimated the total market value of such trafficking to be US\$32 billion.²⁶ It also comments that transnational crime networks, well established in the Asia-Pacific region, may expand to involve more people in more locations, facilitated by improved technology, particularly mobile phones and the Internet. For instance, there are numerous websites that link a user to a potentially trafficked ‘mail order bride’. There is also a proliferation of websites for dating services and human organ brokering.²⁷

Another factor facilitating trafficking of persons is that previously heavily guarded borders, where one needed extensive documentation to get through, are now virtually unpoliced. Nationals can more freely move from one country to another.²⁸

²⁵ AIC Monitoring Report No 6, p 9, citing UN, Economic Commission for Latin America and the Caribbean, *Globalisation and Development*, Chile, 2002.

²⁶ AIC Monitoring Report No 6, p 9, citing a UNODC 2008 Press Release: ‘United Nations general assembly urges stronger action against human trafficking’.

²⁷ AIC Monitoring Report No 6, pp 9-10.

²⁸ AIC Monitoring Report No 6, p 10, citing other sources.

2.3 FINDINGS ABOUT HUMAN TRAFFICKING IN AUSTRALIA

The AIC has noted some key characteristics of trafficked persons. For instance, it appears that most actually come into Australia on a valid visa (although sometimes a false passport is used to procure a valid visa), such as a student, visitor or working holiday visa.²⁹ In some cases, the trafficking victim is escorted during travel by a person posing as a partner or parent.³⁰ This ‘escort’ will usually deal with the immigration and customs officials on behalf of the victim and the victim might even believe that he or she has entered Australia legally.³¹

Often, persons who end up as trafficking victims have involved ‘agents’ to organise travel. These arrangements can result in contracts having to be fulfilled and debts repaid to the agents or traffickers before the persons are able to work independently in Australia and send money home.³² Such ‘debt bondage’ contracts – tending to be found in the sex industry – usually compel women to work for the brothel owner to repay the debt incurred travelling to Australia and for their accommodation. The debt can be tens of thousands of dollars and women may be required to ‘service’ a set number of clients per day – often meaning they work for long hours on most days of the week for the duration of the debt (usually around 6-18 months).³³

Few trafficking victims identified in Australia to date conform to the traditional stereotypes of ‘slaves’ or of trafficking victims in general. The image of being physically restrained or confined does not appear to have been borne out in the trafficking cases actually seen in this country. The victims have not usually been abducted or held at gunpoint. While there may be some who have suffered various restrictions on their freedom (e.g. being escorted when leaving the work premises) and have had their passports taken away until their debt is repaid, many victims can access facilities such as mobile phones.³⁴ In most cases, the restraint has been

²⁹ AIC Monitoring Report No 6, p 37.

³⁰ A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, p 28.

³¹ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 44. The Committee observed that research indicated that many Asian sex workers in Sydney thought they were working on legitimate visas.

³² AIC Monitoring Report No 6, p 37.

³³ A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, pp 9, 10.

³⁴ AIC Monitoring Report No 6, p 8; Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 49; *Second IDC Report*, pp 29-30 (which notes that, of all human trafficking referrals in 2009-2010, around 21% of cases involved seizure of passports as a control method).

psychological through means such as threats of violence, requirements to repay a debt, isolation, manipulation of dubious or illegal migration situations, and a general sense of obligation on the part of the victim.

Human traffickers have tended to be small groups of persons rather than large organised crime bodies but these groups appear to display high levels of organisation and sophistication. The groups have tended to use family or business contacts overseas to enable the recruitment and movement of victims and to commit visa fraud.³⁵ It has been noted that traffickers tend to respond to matters raised in court during prosecutions and those reported in general publications by constantly changing their operations to avoid detection.³⁶

Much of the information under the headings below is drawn from the Commonwealth Government's Anti-People Trafficking Interdepartmental Committee (IDC) inaugural report ([‘Trafficking in Persons – the Australian Government Response, January 2004 – April 2009’](#) (*IDC Inaugural Report*, pp 26-27) and the IDC's second annual report, [‘Trafficking in Persons – the Australian Government Response, 1 May 2009 – 30 June 2010’](#) (*Second IDC Report*), both discussed later.³⁷

2.3.1 Female Sex Industry Workers

Most trafficking victims identified in Australia have been women working in the sex industry in legal and illegal brothels, the majority coming from South East Asia and the Republic of Korea. The *Second IDC Report* (p 25) reports that the Australian Federal Police (AFP) conducted 38 investigations and assessments in relation to human trafficking in 2009-2010 (70% of such relating to the sex industry). It also reveals (p 13, Table 5) that 155 trafficking victims and 132

³⁵ A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, pp 4-5, citing Australian Federal Police Annual Reports between 2003-2004 and 2006-2007; *c.f.* *IDC Inaugural Report*, p 27 (citing F David, ‘Trafficking of women for sexual purposes’, *Research and Public Policy Series* No 95, AIC, 2008, p 34) which states that the groups identified to date do not appear to have the same high levels of organisation and sophistication as drug traffickers.

³⁶ *Second IDC Report*, pp 30-31.

³⁷ Some of the information presented in the *IDC Inaugural Report* was sourced from F David, ‘Trafficking of women for sexual purposes’, pp 34, 39 and the *Australian Federal Police Annual Report 2004-2005*, p 32.

female victims of sexual exploitation had been referred to the Support for Victims of Trafficking Program since it began in January 2004 up to 30 June 2010.³⁸

Australia's sex industry is, for the most part, legal but in many countries from which migrant women and/or trafficked victims come, it is illegal. Thus sex workers in those countries face difficulties in being able to access information about their options for travelling to Australia to become sex workers. For instance, as noted by Scarlet Alliance president, Elena Jeffreys, although working visas should let sex workers in the Republic of Korea (where the sex industry is illegal) come to Australia legally, many Republic of Korean sex workers are not aware of this and think that the sex industry is illegal in Australia as well. In addition, there are countries, such as China and Thailand, which do not have working visa options.³⁹

The circumstances outlined above can mean that women opt for a contract instead of a working visa, thus exposing them to the risk of being trafficked. Such a contract can often be a debt contract. This option can seem attractive, especially when it can offer not only the chance of working in another country but will usually include airfares; visa/passport information; accommodation, food, language and religious support; guaranteed work over an agreed timeframe; and a financial agreement.⁴⁰ The debt is usually measured by the number of clients that the sex worker will have to see to repay the debt.⁴¹ Dr Schloenhardt comments that there is *'to date, no reliable information about the debts incurred by women who have been trafficked to Australia'*, but available information indicates it is likely that the traffickers demand between \$12,000 and \$50,000. It may take 6 to 18 months to pay off the debt involving long hours and 6 or 7 day weeks.⁴²

Some commentators have argued that it is too simplistic to assume that women working under such debt contracts are necessarily victims of human trafficking.

³⁸ See also, A Schloenhardt, Human Trafficking Working Group, '[Exploitation of Foreign Workers in the Sex Industry](#)', who observes there have been reports that persons, including non-citizens in the sex industry, have been exploited and can work in terrible conditions.

³⁹ Scarlet Alliance, '[Visas for Migrant Sex Workers](#)', *Media Release*, 17 June 2009.

⁴⁰ E Jeffreys, 'Anti-trafficking Measures and Migrant Sex Workers in Australia', *Intersections: Gender and Sexuality in Asia and the Pacific*, 19 February 2009, at <http://intersections.anu.edu.au/issue19/jeffreys.htm>, paras 56-57, citing information from the Scarlet Alliance in 2007.

⁴¹ E Jeffreys, 'Anti-trafficking Measures and Migrant Sex Workers in Australia', para 58.

⁴² A Schloenhardt, 'Trafficking in Persons in Australia: Myths and Realities', p 10, citing other research, including the Commonwealth Parliamentary Joint Committee on the Australian Crime Commission Inquiry Report, para 2.17.

Indeed, some have argued that such contract situations are labour matters, not enslavement where debt-bonded women are seen as trafficking victims. The contract period can be very brief and, it is argued, the debt bondage is not slavery because servitude ends with repayment of the debt.⁴³ However, as Jeffreys observes, this is not to downplay or deny the potential for exploitation that can occur as a result of the contract arrangement.⁴⁴

A 2004 Report of the Commonwealth Parliamentary Joint Committee on the Australian Crime Commission [*Inquiry into the trafficking of women for sexual servitude*](#) found that female victims brought into Australia comprised, firstly, those who come intending to work in the sex industry; others who come knowingly intending to work in the sex industry but were misled by traffickers regarding the conditions under which they were to be working; while the third group comprise women who were totally deceived about the fact they were to work as prostitutes in Australia (often being told they would be working in areas such as hospitality or domestic services).⁴⁵ Dr Schloenhardt notes that this assessment seems to be supported by reports from law enforcement agencies and other government information indicating that many of the victims are or may be aware of the type of work they would be doing in Australia. Thus, reports portraying Asian sex workers as ‘victims of a ruthless slave market’ may be too simplistic.⁴⁶

Dr Schloenhardt also observes that reported cases in which women are tricked or deceived about the type of work they would be doing in Australia are few.⁴⁷ However, what the victims may not be aware of are the details about the exploitative nature of their conditions of work – that they might be subjected to violence and intimidation and unable to refuse clients, forced to engage in unsafe

⁴³ E Jeffreys, ‘Anti-trafficking Measures and Migrant Sex Workers in Australia’, para 59, quoting LJ Sandy in research with Cambodian sex workers in contract situations: ‘My Blood, Sweat and Tears: Female Sex Workers in Cambodia – Victims, Vectors or Agents?’, PH.D Thesis, ANU, September 2006, p 144.

⁴⁴ E Jeffreys, ‘Anti-trafficking Measures and Migrant Sex Workers in Australia’, para 60.

⁴⁵ Australia, Commonwealth Parliamentary Joint Committee on the Australian Crime Commission *Inquiry into the trafficking of women for sexual servitude*, Report, June 2004, paras 2.10, 2.13, reproduced in A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, p 6.

⁴⁶ A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, pp 6-7, 28, citing other research esp. L Brockett & A Murray, ‘Thai Sex Workers in Sydney’ in R Perkins et al (eds), *Sex Work and Workers in Australia*, Sydney, UNSW Press, 1994, pp 191ff, p 195.

⁴⁷ A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, p 28. Thus, there have been relatively few successful prosecutions under the anti-trafficking offence provisions of the Commonwealth Criminal Code (Div 271).

sex, held in captivity, or that they may be obliged to pay off a large debt before they are 'free'.⁴⁸ As Dr Schloenhardt notes, in the court cases reported so far (some of which are discussed later), the actual victimisation appears to have related to working conditions and accommodation. Some such situations have amounted to slavery.⁴⁹ There have been some successful prosecutions under Div 270 of the Commonwealth Criminal Code, as will be discussed later.

Jeffreys notes that trafficking-like or slavery-like conditions in the sex industry can be indicated by many different circumstances. Examples of such could be that the women have no choice of premises or are moved suddenly (away from friends or support networks); or the person managing the contract in Australia may decide to increase the debt. Sometimes workers facing such problems might go to authorities (usually through first contacting a sex worker organisation) and become witnesses against their bosses.⁵⁰

The Scarlet Alliance, in particular, is opposed to claims that legalising or decriminalising sex work, as has occurred in Victoria and Queensland, has led to sex trafficking and exploitation, believing these views to be unsupported by evidence. The Scarlet Alliance believes that criminalising sex work just increases the vulnerability of migrant sex workers to trafficking as it reduces sex workers' access to justice.⁵¹ Similarly, it has been suggested that anti-trafficking approaches that are repressive towards sex workers can be counter-productive. For instance, extensive and repetitive raids by police and immigration officials as part of efforts to stamp out trafficking activity can result in pushing workplaces underground, making conditions worse for migrant sex workers.⁵² It might erode the trust of sex workers towards anyone seen as an outsider, which might include outreach bodies.⁵³ This can expose the space to traffickers.

There is also a view to the effect that many migrant sex workers are not victims of sex trafficking, have made a conscious choice to work in the sex industry in Australia, and do not feel the need to be 'rescued', with some going on to argue

⁴⁸ A Schloenhardt, 'Trafficking in Persons in Australia: Myths and Realities', p 7, citing *Australian Government Action Plan to Eradicate Trafficking in Persons*.

⁴⁹ A Schloenhardt, 'Trafficking in Persons in Australia: Myths and Realities', p 28.

⁵⁰ E Jeffreys, 'Anti-trafficking Measures and Migrant Sex Workers in Australia', paras 62-63.

⁵¹ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 126, citing the Scarlet Alliance's submission to the Inquiry (October 2009).

⁵² E Jeffreys, 'Anti-trafficking Measures and Migrant Sex Workers in Australia', para 23.

⁵³ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 127, citing submissions of the Scarlet Alliance to the Inquiry (October 2009).

that there is substantial evidence to suggest that anti-trafficking initiatives are ‘more concerned with eliminating prostitution and stemming migration than in protecting human rights’.⁵⁴

As has been noted by the Victorian Parliamentary Drugs and Crime Prevention Committee’s *Inquiry into People Trafficking for Sex Work* June 2010 Report, the whole issue has been clouded by polarised views about sex work itself where some (including religious groups, some feminists, moral crusaders – not all with similar agendas) see such work as an entrenched form of violence against women and regard trafficking and forced prostitution as part and parcel of that violence. Thus, from this perspective, legislation and policies should be aimed at outlawing prostitution as a means of eliminating sex trafficking. The counter view is that sex work is a legitimate occupation that should be regulated like any other industry and most sex workers, including migrant women, choose to work in it, so it is rarely related to trafficking.⁵⁵ Such divergent views have policy implications for dealing with the whole sex industry trafficking issue.⁵⁶

2.3.2 Child Trafficking

The *IDC Inaugural Report* (p 26) and some other reports⁵⁷ indicate that, so far, there is little evidence of any child trafficking in Australia. A recent AIC Report states that although there have been no child trafficking related prosecutions in Australia as of April 2011, our geographic proximity to countries in the Asia Pacific region, which are variously affected by weak migration systems, poor governance and transnational crime, make the issue relevant to Australian response measures.⁵⁸ The US State Department’s *2010 Trafficking in Persons Report* (which provides an annual review of countries’ anti-trafficking responses and documents those issues relating to trafficking and its victims) states that Australia

⁵⁴ E Jeffreys, ‘Anti-trafficking Measures and Migrant Sex Workers in Australia’, paras 65-66, citing other sources and quoting from P Saunders, ‘Migration, sex work and trafficking in persons’, *Walnut*, 14 October 2002, para 2.

⁵⁵ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 121.

⁵⁶ Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 5.

⁵⁷ See also A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, pp 5, 9, citing E Pearson, ‘Australia’, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance against Trafficking in Women, 2007, pp 28, 29.

⁵⁸ J Joudo Larsen, AIC, ‘[The trafficking of children in the Asia-Pacific](#)’, *Trends and Issues in Crime and Criminal Justice*, No 415, April 2011, p 1.

is a source country for child victims of sex trafficking, mainly involving some teenage Indigenous girls who are sexually exploited at rural truck stops.⁵⁹ The US State Department Report notes that labour trafficking and internal child sex trafficking are less well understood than sex industry trafficking but there has recently been more media and academic focus on child trafficking and forced labour.⁶⁰

Given the diverse reports of child trafficking in Australia, it is difficult to estimate its nature or extent. The University of Queensland's Human Trafficking Working Group [Child Trafficking in Australia](#) webpage sets out the current open-source evidence on child trafficking in Australia, child prostitution, inter-country adoptions and measures taken by Australia to combat the problem. The Working Group has made the following observations from the sources examined:

- existing reports on child prostitution in Australia do not discuss child prostitution trafficking in much detail. Those that do indicate that, for the most part, the practice tends to be engaged in by children themselves who need food, shelter, drugs etc., rather than being an organised activity aimed at sexually exploiting children. However, this does not mean that child trafficking does not exist;⁶¹
- one publicised case of child trafficking concerned a 12 year old Thai girl who was sold to traffickers by her parents and brought to Australia on a false passport. Upon arrival, she was forced to work in a brothel for the following 15 years until she was found by immigration authorities, in 2001, during a raid on the brothel where she worked. The woman was seriously ill, suffering from pneumonia and malnutrition, and was addicted to heroin. She died three days later at Villawood Detention Centre where she had been taken and given

⁵⁹ United States Department of State, *2010 Trafficking in Persons Report*, 10th ed., June 2010, [Country Narratives - Australia](#), p 66. This Report uses information from US embassies, government officials, NGOs, international organisations, published reports, research trips and submitted information (p 18). Dr Schloenhardt has commented that an earlier (2008) US State Department Report is one of the few available sources on forced labour trafficking outside of the sex industry. Subsequent annual reports have continued to provide such information: 'Trafficking in Persons in Australia: Myths and Realities', p 14.

⁶⁰ US Department of State, *2010 Trafficking in Persons Report*, pp 66-67. See also, J Joudo Larsen, AIC, 'The trafficking of children in the Asia-Pacific', p 5 which notes that there is a need to strengthen the evidence base on the issue, especially regarding interpretations of what constitutes child trafficking and underlying causes of the problem, if responses are to be effective.

⁶¹ Examples of reports cited include End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (now called Child Wise), *Speaking for Themselves*, 2004; *Youth for Sale: ECPAT Australia's National Inquiry into the Commercial Sexual Exploitation of Children and Young People in Australia*, 1998.

treatment. The media and public attention that followed resulted in the Joint Parliamentary *Inquiry into the Trafficking of Women for Sexual Servitude*, discussed later;⁶²

- the Commonwealth Government and NGOs have implemented programs to address child trafficking issues, particularly at the source. Those programs include a UNICEF program in the Philippines which ran until 2009 and some World Vision programs aimed at reducing the vulnerability of children in certain source countries to trafficking and at increasing victim support and protection. AusAID also supports programs in the South East Asian region addressing various child protection issues and, during 2010-2014, has invested \$7.5m in developing a program called Project Childhood to help fight child sex tourism in the Mekong Sub-region.⁶³ On the Australian front, in 2009, the group Child Wise joined with The Body Shop Australia in a three year campaign (launched in 45 countries) aimed at raising awareness about child trafficking and encouraging Australians to assist Child Wise in lobbying the Government to do more to address factors in source countries that put children at risk of being trafficked;
- there is a relatively unexplored issue regarding the potential for Australian inter-country adoptions to be vulnerable to exploitation for child trafficking.⁶⁴ In 2008, *Time* magazine ran a story about gangs in poor parts of India kidnapping 'pretty' children and selling them to adoption agencies that changed the children's identities and organised for them to be adopted by unsuspecting couples in countries such as the USA and Australia. Four people were subsequently arrested but charges against implicated adoption agencies were eventually dropped due to lack of evidence (however, an investigation has since been resumed against one of them). It is possible that around a dozen children kidnapped in India may have been adopted by unsuspecting Australian

⁶² See Human Trafficking Working Group, '[Child Trafficking in Australia](#)' website for other examples of child trafficking cases such as that of a woman who, in 2007, received compensation payment from the NSW Victims Compensation Tribunal for mental injuries resulting from her being sexually abused at the age of 13 while working in a Sydney brothel. Her circumstances were that she was trafficked to Australia with the consent of her father who thought she would be working as a nanny. She was discovered at the brothel by immigration officials during a routine inspection 10 days after her arrival and she claimed to have had sex with around 100 men in that time.

⁶³ Other examples of AusAID support for NGO projects concerned with child trafficking include a long-term partnership with UNICEF and support for Save the Children and Child Fund projects and the Mekong Delta Regional Trafficking Strategy 2: *Second IDC Report*, pp 45-46.

⁶⁴ M Purvis, '[Human Trafficking](#)', *House of Lords Library Note 2010/022*, 8 October 2010, p 3, citing US State Department, *2010 Trafficking in Persons Report*.

families, including by Queensland couples.⁶⁵ It has been noted that the Commonwealth Government has indicated it will more thoroughly check inter-country adoptions in the future. It may be that such programs are vulnerable to exploitation by traffickers in countries where there are few checks made of the children involved.

2.3.3 Forced Labour

The US State Department, *2010 Trafficking in Persons Report*, commented that men and women from various Pacific islands, India and other Asian countries are recruited for temporary employment in Australia but, on arrival, some are subjected by unscrupulous employers and agencies to forced labour in agriculture, construction and other sectors. It goes on to state that these people ‘*face confiscation of their travel documents, confinement on the employment site, threats ... and debt bondage ...*’.⁶⁶ The Report, nevertheless, points out that relative to Australia’s population, research indicates that the estimated number of victims is ‘modest’ and that the Australian Government fully complies with the minimum standards for the elimination of trafficking. It also went on to comment on the whole-of-government response initiatives introduced over the past decade (discussed at length below).⁶⁷ A recent AIC report suggests that the precise size of the labour trafficking issue in Australia is unknown and, although just a small number of cases have been reported to relevant government agencies, research and information provided to the AIC indicate that there may be unreported and/or unrecognised labour trafficking instances.⁶⁸

Among the possible reasons for there being few instances of charges in relation to persons being trafficked for the purpose of labour exploitation are difficulties in mounting sufficient evidence, underreporting of cases to authorities, and the fact that many situations of worker exploitation do not amount to the offence of trafficking in persons under Div 271 of the [Commonwealth Criminal Code](#). It has been observed⁶⁹ that many trafficking victims find themselves in forced labour (defined in the Criminal Code, s 73.2, as providing labour or (non-sexual) services

⁶⁵ Human Trafficking Working Group, ‘[Child Trafficking in Australia](#)’, citing Rory Callinan, ‘Stolen Children’, *Time*, 21 August 2008, pp 2-3 and a number of newspaper articles discussing responses of various State Governments, including the Queensland Government.

⁶⁶ US Department of State, *2010 Trafficking in Persons Report*, p 66.

⁶⁷ US Department of State, *2010 Trafficking in Persons Report*, p 66.

⁶⁸ F David (AIC), ‘Labour Trafficking’, p xii.

⁶⁹ For example, by the *IDC Inaugural Report*, p 13.

where the person, because of force or threats, is not free to stop providing such services or is not free to leave the place or area). However, not all victims of forced labour are trafficked. In legal instruments, including ILO conventions, 'forced labour' is not constituted merely by receiving low wages or having poor working conditions. It essentially involves a severe violation of human rights and restrictions of freedom.⁷⁰

The Human Trafficking Working Group's '[Labour Trafficking in Australia](#)' website identifies cases which indicate the existence of labour trafficking but where prosecutions under the anti-trafficking/slavery provisions in the Criminal Code failed. Prosecutions can fail because of the distinction between enslavement and being forced to work for low wages and/or in sub-standard conditions. As the Working Group has commented, the distinction between labour exploitation and trafficking is a difficult one, and is an issue that has not received adequate attention from academics, policy makers, or the courts.⁷¹

A possible reason for there having been less notice taken of labour trafficking than sex trafficking is that much of the media attention and studies to date have focused on sex trafficking. This was also noted by the [Labour Trafficking in Australia](#) website to have occurred within much of the Senate Legal and Constitutional Affairs Committee's discussion during the inquiry into the introduction of the new Div 271 trafficking laws in 2005.⁷²

Some commentators have posed the question: does 'inaction by the criminal law in relation to labour trafficking arise from the perception that sex trafficking is somehow more "wrong" and worthy of punishment while labour trafficking is not'?⁷³ However, the issue received some attention at a forum on labour trafficking

⁷⁰ AIC, '[Labour Trafficking: key concepts and issues](#)', citing *Report of the Director General: a global alliance against forced labour: global report under the follow up to the ILO Declaration on Fundamental Principles and Rights at Work*, 2005, ILO, Geneva, p 5.

⁷¹ Human Trafficking Working Group, '[Labour Trafficking in Australia](#)'.

⁷² Human Trafficking Working Group, '[Labour Trafficking in Australia](#)'. See also, Senate Legal and Constitutional Legislation Committee, [Inquiry into the Criminal Code Amendment \(Trafficking in Persons Offences\) Bill 2004](#), Report, April 2005.

⁷³ Human Trafficking Working Group, 'Labour Trafficking in Australia', referring to M Cullen & B McSherry, 'Without Sex Slavery, trafficking in persons and the exploitation of labour in Australia', 34(1), 2009, *Alternative Law Journal*, pp 4-10 (available on Informit). (QPL clients can access Informit via QPL's Concord Research databases. Please see Front Desk for assistance in electronically accessing this article).

held by the AIC in June 2009, attended by government agencies, NGOs, unions, researchers and others.⁷⁴

Workplace Laws and Other Relevant Legislation

The Sex Discrimination Commissioner, Elizabeth Broderick, has pointed out that even if there is insufficient evidence in a particular situation to mount a labour trafficking charge, the worker might still be a victim of human rights violations if he or she is suffering abuses such as racial vilification, sexual harassment, discrimination and exploitation. There may be a number of legal remedies available to a victim, be they through workplace laws or discrimination laws.⁷⁵

For instance, the [Fair Work Act 2009 \(Cth\)](#) sets out minimum entitlements for all federal workplace employees, including migrant workers. The Fair Work Ombudsman (FWO), created by this Act, commenced operation in July 2009. The FWO provides education, assistance and advice about Commonwealth workplace relations as well as enforcing compliance with the Act and related instruments.⁷⁶ While trafficking type offences are not within the FWO's jurisdiction, behaviour might be identified during the FWO's investigations that could amount to trafficking, in which case, the evidence is sent to the AFP. During 2009-2010, the FWO's activities included around 800 investigations involving subclass 457 Business (Long Stay) and other visa holders, recovering over \$500,000 in unpaid entitlements. The *Second IDC Report* (pp 18-19) sets out some cases pursued by the FWO relating to migrant workers that did not amount to slavery/trafficking under the Criminal Code but did involve breaches of the *Fair Work Act*.⁷⁷

A recent AIC report suggests that more focus should be placed on readily detectable cases that do not actually meet the criteria for a labour trafficking offence. This is because certain conduct providing indicators of trafficking (e.g.

⁷⁴ AIC Events, [\(Non-sex industry\) labour trafficking: A forum to discuss trafficking in persons in contexts other than the commercial sex industry](#) (AIC Forum) 18 June 2009. In addition, the AIC has commissioned research on labour trafficking issues and it has recently produced a report examining the available information about labour trafficking; experiences of such by organisations outside Government, and possible further responses: F David (AIC), 'Labour Trafficking'.

⁷⁵ E Broderick, Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination, [Human Rights and Labour Trafficking](#), Speech to the AIC Forum, 18 June 2009 (pp 2-3 of 4), citing the International Covenant on Civil and Political Rights, Art 2(3).

⁷⁶ *Second IDC Report*, p 18.

⁷⁷ The *Second IDC Report* (p 19) notes other FWO services aimed at foreign workers and students, including information about workplace rights in a number of languages.

exercising control over living and working conditions; retention of passports etc.) might be a forerunner to more extreme forms of exploitation.⁷⁸ The report also suggests that there needs to be an approach that seeks to address a gradation of exploitative practices grounded in not just the criminal law but also labour laws.⁷⁹

Since the introduction of the slavery/trafficking legislative provisions, there have been three defendants prosecuted for offences in circumstances involving exploitation in sectors outside the sex industry.⁸⁰ In an unreported 2007 NSW District Court decision of *R v Yogalingam Rasalingam*, a restaurant owner (Rasalingam) was charged, under Div 271 of the Criminal Code, with trafficking a man from India to New South Wales to work in Rasalingam's restaurants. It appears that the man worked long hours each day, seven days a week. The man told the court that he had had his passport and airline ticket taken upon arrival in Australia and that it had been implied by Rasalingam that the man would be deported if he complained to the police. Rasalingam was acquitted of trafficking because the elements of 'forced labour' could not be established.⁸¹ However, the then Office of Workplace Services brought an action under workplace laws against the company owned by Rasalingam for failing to comply with the relevant award. The action was successful with the Federal Magistrate ordering the company to pay \$18,200 in penalties into Commonwealth revenue.⁸²

Employer Sanctions under the Migration Act

In 2007, the [Migration Act 1956 \(Cth\)](#) was amended to make it an offence for employers to knowingly or recklessly employ or refer an unlawful non-citizen to work in Australia without a visa or to employ or refer a non-citizen to work in breach of visa conditions (ss 245AA-AK). A penalty of up to 2 years imprisonment for individuals (up to \$66,000 for companies for each illegal worker) applies and is more severe if there was slavery, forced labour or sexual servitude

⁷⁸ F David (AIC), 'Labour Trafficking', pp xii, xiii.

⁷⁹ F David (AIC), 'Labour Trafficking', p xiii.

⁸⁰ Apart from the two cases discussed here, there is also the Queensland case of *R v Kovacs and Kovacs*, discussed later in the context of the slavery offences in the Criminal Code.

⁸¹ *R v Yogalingam Rasalingam*, unreported, District Court of NSW, Puckeridge J, 9 October-2 November 2007, cited in AIC, '[Labour trafficking: prosecutions and other proceedings](#)', *Transnational Crime Brief*, No 5, June 2009.

⁸² *Fryer v Yoga Tandoori House Pty Ltd* [2008] FMCA 288, discussed in E Broderick, 'Human Rights and Labour Trafficking', pp 3-4 of 4 and by A Schloenhardt, Human Trafficking Working Group, '[Labour Trafficking in Australia](#)'.

involved (up to 5 years imprisonment for individuals and up to \$165,000 per illegal worker for companies).⁸³

Subclass 457 Visas

The Subclass 457 Business (Long Stay) visa (457 visa) allows skilled foreign workers to enter Australia and work for up to three years in an area of specific need where the skills required are not available locally. Under the system, the overseas worker has the possibility of eventually being able to apply for permanent residency. The Human Trafficking Working Group's [Labour Trafficking in Australia](#) website notes the popularity of the 457 visas but comments that they could also make visa holders vulnerable to exploitation. The holders' vulnerability arises from their dependence on their sponsor for continuing employment until they are able to apply for permanent residency.⁸⁴ The Working Group referred to various reports about workers being underpaid and subjected to unsafe conditions of work. However, it is often the case that the incidents would not fulfil the offence of trafficking in persons criteria.

Changes were made to the 457 visa regime in 2009, seeking to improve its integrity and to '*ensure that it continues to provide industry with needed skills while not undermining local training and employment opportunities*'.⁸⁵ The changes sought to also respond to recommendations made by a review of the 457 visa system by industrial relations expert, Barbara Deegan (the Deegan Review), following concerns about integrity of the system.

The measures announced in April 2009 included: indexing the minimum salary level for all Subclass 457 visa holders by 4.1% from 1 July 2009 in line with all employees' total earnings to ensure that wages for migrant workers are in step with local wages; implementation of a market based minimum salary for all 457 visa holders from mid September 2009 to ensure 457 visa holders are not exploited and local conditions are not undermined; increasing the minimum language requirements for obtaining 457 visas for trade occupations and chefs; progressive introduction of formal skills assessment for 457 visa applicants from high risk countries; introduction of a requirement for potential employers seeking access to the program to have a strong record of, or demonstrated commitment to, employing

⁸³ See also, *Second IDC Report*, p 24. In May 2010, the Minister [announced](#) a review to determine the effectiveness of penalties for employers who hire illegal workers: '[Illegal hire firms must face prosecution](#)', *Media Statement*, 21 May 2010.

⁸⁴ See also, F David (AIC), 'Labour Trafficking', pp 31ff.

⁸⁵ Hon Chris Bowen MP, Minister for Immigration and Citizenship, '[Government announces changes to 457 visa program](#)', *Media Statement*, 1 April 2009.

local labour and to non-discriminatory work practices (to address concerns that some employers may discriminate against local workers by employing overseas labour); and development of training benchmarks for training local labour.⁸⁶

In September 2009, the [*Migration Legislation Amendment \(Worker Protection\) Act 2008 \(Cth\)*](#), which sought to further protect 457 visa holders, commenced. A chief measure in the legislation is the ability of the Australian Taxation Office to disclose information to the DIAC and allow it to be shared with other enforcement agencies, such as the FWO. The aim of the disclosure provisions was to help ensure that 457 visa holders are being paid correctly and are not subjected to unfair or unsafe treatment. Further, trained immigration officers are given expanded powers to monitor workplaces and to enter sites to determine if employers are meeting the redefined sponsorship obligations (breach of which carries a fine of up to \$33,000 and may give rise to cancellation of an employer's approval as a sponsor). Other changes relevant to 457 visa holders included making it easier to change employers without needing a new visa application; requiring sponsors to pay travel costs to allow sponsored workers to leave Australia; and imposing an obligation on sponsors not to recover certain costs from sponsored persons such as migration agent costs.⁸⁷

2.4 SOME FACTS AND STATISTICS ON THE EXTENT OF TRAFFICKING

For a variety of reasons, it is difficult to obtain robust statistical information enabling the provision of evidence-based data about human trafficking both in our region and globally. A crucial question, yet unanswered, is how big the problem really is. As discussed earlier, there is a difference of opinion between the Commonwealth Government and NGOs and community groups about the extent of human trafficking in Australia.

There are various problems encountered when compiling comparative data between countries including the reliability, availability and comparability of information. This is due to discrepancies in methodology and various other weaknesses.⁸⁸ In addition, many source countries (of trafficked persons) lack the capacity to collect data.⁸⁹

⁸⁶ Hon Chris Bowen MP, 'Government announces changes to 457 visa program'.

⁸⁷ See also, Hon Chris Bowen MP, '[New worker protection laws will allow tax checks](#)', *Media Statement*, 14 September 2009; *Second IDC Report*, p 19.

⁸⁸ *IDC Inaugural Report*, p 44.

⁸⁹ AIC Monitoring Report No 6, p xi.

Importantly, it should be remembered that the very covert nature of human trafficking is another reason for the dearth of information.

Another difficulty in documenting the number of known cases of human trafficking is that data is often collected to cater for a purpose of a particular program being run by the relevant agency or NGO collecting the information. Even larger scale efforts to document human trafficking across the world (e.g. by UNICEF and the International Labour Organisation (ILO)), produce variations in data from year to year.⁹⁰

On an international basis, there are few systematic data collections and a lack of standardised data and definitions, although the UN *Trafficking Protocol* (discussed later) has somewhat improved the situation regarding definitions. It has also been noted that data collection has tended to concentrate on sexual exploitation of women and children at the expense of other types of trafficking and their victims and, to date, there has been little research focus on perpetrators.⁹¹ Further, it can often be difficult to determine when exploitation crosses over into trafficking – particularly when considering labour exploitation where cases are more likely to be prosecuted as breaches of labour laws rather than as criminal offences, thereby resulting in an underrepresentation of men as trafficking victims and undercounting of labour trafficking offences.⁹²

It has been observed that, without an idea of the size of the issue globally, it is difficult for countries to give human trafficking a higher priority than other major local or international threats and to assess whether any particular combative measures will have an effect.⁹³ The limitations on data collection, including those identified above, hamper information sharing among nations necessary to acquire a global understanding of human trafficking and of how all the components interrelate. In turn, it is difficult to know how to respond through evidence-based policies.⁹⁴ Without a more exact knowledge of the extent of the problem, it is rather difficult to determine where intervention is most required.

⁹⁰ IDC Inaugural Report, p 45.

⁹¹ AIC Monitoring Report No 6, p xi.

⁹² AIC Monitoring Report No 6, p 16, citing US Government Accountability Office (GAO), *Human trafficking: better data, strategy, and reporting needed to enhance US anti-trafficking efforts abroad*, Report to the chairman, committee on the judiciary and the chairman, committee on international relations, House of Representatives, July 2006.

⁹³ United Nations Office on Drugs and Crime (UNODC), [*Global Report on Trafficking in Persons*](#), February 2009, Executive Summary (pages are not numbered).

⁹⁴ UNODC, [*Global Report on Trafficking in Persons*](#), Introduction by Antonio Maria Cost, Executive Director, UNODC.

Australia cooperates with international organisations to improve international data, including providing information for the United Nations Office on Drugs and Crime (UNODC) *Global Report on Trafficking in Persons 2009*.⁹⁵

The Commonwealth Government has also funded the Australian Institute of Criminology (AIC) to analyse trafficking trends.⁹⁶ The AIC's Trafficking in Persons Research Program seeks to enhance knowledge about, and inform responses to, human trafficking and also considers emerging trends and issues in the Asia-Pacific region. The Program will seek to build an accurate picture of the nature and extent of human trafficking in Australia.⁹⁷ During 2009-2010, the AIC began projects to fill knowledge gaps in areas such as labour trafficking; community attitudes; offender issues; risks and protections regarding human trafficking in the region; and risks and protections as perceived by sex workers.⁹⁸

It has been observed⁹⁹ that the main collections and databases are: the UN Global Initiative to Fight Human Trafficking (UN.GIFT) – under the auspices of the UNODC; the US Department of State Trafficking in Persons (TIP) Database; and the International Organisation for Migration (IOM) Counter Trafficking Module Database.¹⁰⁰

⁹⁵ The UNODC, *Global Report on Trafficking in Persons* seeks to offer an analysis of available information on the response to the issue around the world as well as including near-comprehensive data on national legislative and enforcement activity for 155 countries and territories (see Executive Summary).

⁹⁶ The AIC has conducted research on various human trafficking issues, attending research forums and participating in international research networks. These have resulted in various AIC publications: see *IDC Inaugural Report*, p 46. In addition to the abovementioned forum on trafficking for labour exploitation held in June 2009, the AIC co-convened a forum in September 2009, bringing together a number of agencies, NGOs, academics and others to identify existing research to date on the various forms of human trafficking in the Pacific region: *Second IDC Report*, p 52.

⁹⁷ AIC Monitoring Report No 6, pp xii, 3.

⁹⁸ *Second IDC Report*, p 51.

⁹⁹ See Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, pp 18, 19.

¹⁰⁰ The AIC has commenced analysis of the IOM dataset for Indonesia on trafficked persons.

2.4.1 Other Information and Data

The [AIC Monitoring Report No 6](#) observes that Australia is viewed as a key destination for persons trafficked out of South East Asia and that, of the 113 trafficked persons identified as at December 2008, almost 70% came from South East Asia. The Report went on to note that it is unlikely that Australia will experience a significant increase in the number of trafficked persons from this region. The reasons given include that most persons who become trafficking victims are in search of better economic opportunities and these opportunities now exist within their own region and in countries closer by than Australia. Further, movement throughout that region without the appropriate travel documents has fewer risks than travelling to well-protected Australian seaports and airports.¹⁰¹ On the other hand, as the Report points out, the Pacific, with its nearness to Australia, lack of employment opportunities there compared with plentiful opportunities for work in Australia, and issues around crime and governance, make it an area to watch.¹⁰²

As noted earlier, the Commonwealth Government believes that the scale of human trafficking in Australia is relatively small, with around 100-200 cases a year.¹⁰³ This is in contrast to a more sobering estimation provided by some NGOs. Project Respect, for instance, has suggested that there are about 1,000 trafficked female victims in the Australian sex industry at any one time.¹⁰⁴ The organisation also believes that the number could also be greater as some women may have managed to leave their situation; some may have been trafficked here for other purposes, such as for labour exploitation. Further, many victims go undetected and, even when identified, victims are not willing to speak about their plight for fear of retribution or they are too traumatised to do so.¹⁰⁵

¹⁰¹ See also, JJ Larsen (AIC), 'Migration and people trafficking in Southeast Asia', *Trends and Issues in Crime and Criminal Justice*, No 401, November 2010, p 5.

¹⁰² AIC Monitoring Report No 6, p xiii.

¹⁰³ IDC Inaugural Report, p 7; A Schloenhardt, '[Trafficking in Persons in Australia: Myths and Realities](#)', p 3, citing Senator Chris Ellison, then Minister for Justice and Customs, as referenced in K Carrington & J Hearn, [Trafficking and the Sex Industry: From Impunity to Protection](#), p 5.

¹⁰⁴ A Schloenhardt, 'Trafficking in Persons in Australia: Myths and Realities', pp 11-12. Dr Schloenhardt notes that the previous Commonwealth Government has rejected these figures. See also, Human Trafficking Working Group, [Statistics and Other Data](#).

¹⁰⁵ Project Respect, '[How are women trafficked?](#)', http://projectrespect.org.au/our_work/trafficking/why_trafficking.

3 CONVENTIONS AND PROTOCOLS

Australia ratified the United Nations [*Convention Against Transnational Organised Crime*](#) in 2004 and the supplementary [*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*](#) (UN Trafficking Protocol) in 2005. The *Trafficking Protocol* is the most recent international instrument to deal with human trafficking and related issues such as slavery. Together with the Convention, the *Trafficking Protocol* provides a framework for international cooperation in investigating and prosecuting human trafficking.¹⁰⁶

The *Trafficking Protocol* obliges signatories to criminalise trafficking; to impose penalties that reflect the severity of trafficking offences, and to investigate, prosecute and convict offenders. While providing a definition of ‘trafficking in persons’ it deliberately leaves some terms undefined to give signatories some flexibility in interpretation.¹⁰⁷ To implement its obligations under the Protocol, the Commonwealth Government engaged in a review of existing laws to determine if new legislation was required. The outcome was the insertion of new laws in the Commonwealth Criminal Code, discussed below, to specifically criminalise human trafficking.¹⁰⁸ In 2009, UNODC released a [*Model Law against Trafficking in Persons*](#) to promote the implementation of the Protocol by Member States by comprehensively outlining a framework to assist States in legislating on the issue. The Human Trafficking Working Group has commented that the Commonwealth Criminal Code was used as a reference point for certain of the concepts in the Model Law.¹⁰⁹

A number of provisions in international human rights and labour treaties touch on human trafficking and those include: the [*International Covenant on Civil and Political Rights*](#), the [*International Covenant on Economic, Social and Cultural Rights*](#), the [*Convention on the Elimination of All Forms of Discrimination Against Women*](#), the [*Convention on the Rights of the Child*](#) (plus its Protocols); and various ILO Conventions (Nos 29, 105, 182).¹¹⁰ Two ‘Special Rapporteurs’ on trafficking in persons and on slavery report annually to the UN Human Rights Council. The

¹⁰⁶ *IDC Inaugural Report*, p 9; AIC Monitoring Report No 6, p 11.

¹⁰⁷ *IDC Inaugural Report*, pp 9-10; AIC Monitoring Report No 6, p 11.

¹⁰⁸ *IDC Inaugural Report*, p 10.

¹⁰⁹ See also Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, pp 65-66.

¹¹⁰ See the *IDC Inaugural Report* (p 5) for other instruments.

UNODC, through programs such as the UN Global Initiative to Fight Trafficking (UN GIFT), is the lead international agency in combating human trafficking.¹¹¹

Many countries, including Australia, have responded to human trafficking through legislative measures as well as financial support and various programs focusing on the prevention of trafficking and protection of victims. The United States Government, in addition to the introduction of domestic anti-trafficking legislation, engages in international initiatives, including providing financial support for anti-trafficking projects around the world and funding for a number of research activities.¹¹² The United Kingdom's response has included an [*Action Plan on Tackling Human Trafficking*](#); the enactment of anti-trafficking laws under the *Sexual Offences Act 2003* (UK) specifically targeting trafficking into, out of, and within, the UK to commit a sexual offence; offence provisions under the *Asylum and Immigration (Treatment of Claimants) Act 2004* (UK) covering non-sexual exploitation of trafficking victims; and immigration offences under the *Immigration Act 1971* (UK). Combating human trafficking has been identified as a key priority for the new Conservative and Liberal Democrats coalition government.¹¹³

The European Union has been responding to trafficking, much of which has been found to originate in Africa, by providing funding aimed at improving regional collaboration. The Council of Europe has taken action through measures such as adopting the [*Convention on Action against Trafficking in Human Beings*](#) which has led to awareness raising workshops and various legal initiatives.¹¹⁴

4 AUSTRALIAN RESPONSE

The Commonwealth Government established a whole-of-government Anti-People Trafficking Strategy in 2003 to combat human trafficking as well as implementing a range of other initiatives.¹¹⁵ Australia ratified the *Trafficking Protocol* in September 2005, following the introduction of the new trafficking offence provisions in the Commonwealth Criminal Code. Since 2003, in addition to

¹¹¹ Other bodies and programs have also been established to help address the issue: AIC Monitoring Report No 6, pp 11-12.

¹¹² AIC Monitoring Report No 6, p 13.

¹¹³ M Purvis, *House of Lords Library Note*, pp 6-7, 14-15.

¹¹⁴ AIC Monitoring Report No 6, p 14.

¹¹⁵ AGD, [‘People Trafficking’](#) website; AIC Monitoring Report No 6, p 22.

ongoing measures, the Government has committed more than \$50 million for a range of anti-trafficking initiatives, a number of which will be discussed later.¹¹⁶

Most states and territories have laws against offences that make up different types of human trafficking, such as sexual servitude, but enforcement can often require a joint state and federal approach.¹¹⁷ However, most human trafficking type offences tend to fall under Commonwealth legislation, meaning most investigations are undertaken by the AFP. Various programs and activities aimed at combating human trafficking also exist at state and territory levels.

5 COMMONWEALTH LEGISLATIVE MEASURES

Divisions 270-271 of the [Commonwealth Criminal Code](#) create offences dealing with slavery, trafficking in persons, trafficking in children, and debt bondage. These offence provisions have only been in place over the last decade.

Although slavery has been a criminal offence since 1824, the modern slavery offences were introduced into the Criminal Code in 1999. Trafficking offences were added in 2005.

In 1990, the Australian Law Reform Commission (ALRC) considered modern day slavery laws in Australia and found that the only laws in place were British Imperial Acts. The ALRC recommended that modern slavery offences be created. This recommendation was endorsed by the Model Criminal Code Officers Committee (MCCOC) of the Standing Committee of Attorneys-General in 1998. Accordingly, in 1999, the Commonwealth Parliament enacted new provisions dealing with slavery, sexual servitude, and deceptive recruitment for sexual servitude as a new Div 270 of the Criminal Code.¹¹⁸

In 2004, after some publicity about trafficking of women for the sex industry,¹¹⁹ a Parliamentary Joint Committee on the Australian Crime Commission was asked to

¹¹⁶ IDC, '[Trafficking in Persons – the Australian Government Response, 1 May 2009 – 30 June 2010](#)', *Second Report of the Anti-People Trafficking Interdepartmental Committee*, (Second Report of the IDC), p 3.

¹¹⁷ *IDC Inaugural Report*, p 18.

¹¹⁸ J Jolly, Human Trafficking Working Group, '[Trafficking in Persons: A Critical Appraisal of Criminal Offences in Australia](#)', Human Trafficking Working Group Website – Legislation, p 12.

¹¹⁹ An example being media focus on the plight of the woman, discussed earlier, who had been trafficked to Australia to work in a brothel as a child, was found ill and malnourished 15 years later, and who died in an immigration centre, despite receiving treatment.

inquire into the adequacy of Australian laws on trafficking for the purposes of sexual servitude. The Committee's June 2004 Report on the [*Inquiry into the trafficking of women for sexual servitude*](#) noted that there were already effective Commonwealth laws but, in light of Australia's pending ratification of the UN *Trafficking Protocol*, recommended a range of legislative amendments. This was followed by Commonwealth legislation (which underwent Committee referral and report and a number of amendments during its passage through Parliament) inserting Div 271 into the Criminal Code to create a range of offences regarding international and domestic trafficking in persons, as well amending and broadening Div 270 in various respects. With the new laws in place, Australia then ratified the *Trafficking Protocol*.¹²⁰

The definitions in Divs 270 and 271 reflect those in the UN *Trafficking Protocol* and target key aspects of trafficking: movement, fraud, deception, coercion and exploitation.¹²¹ The laws aim to cover conduct inside and outside of Australia (within Commonwealth Government constitutional competence) and are not limited to any particular victim categories (i.e. men, women and children can all be victims).

The structure of the offences in Div 271 has been criticised by some commentators as confusing and repetitive but it has also been suggested that the offences could be restructured and rephrased to overcome these issues and to make prosecutions easier.¹²² Some law enforcement experts believe that the trafficking offences in Div 271 could be seen as being more concerned with the *means* by which a person is brought to Australia than their actual *treatment* once here. However, Div 270 (slavery etc.) could be used as an alternative offence provision where the elements of the trafficking offence cannot be established but there has been exploitation at the end point in Australia. This is because Div 270 criminalises the exploitation aspect in the absence of being able to prosecute the trafficking process aspect.¹²³ However, while Div 270 provides an alternative offence provision, there are some anomalies. For instance, it has been suggested that the penalties attaching to trafficking offences in Div 271 are inconsistent with, and generally of less severity than, those for slavery in Div 270.¹²⁴

¹²⁰ See J Jolly, pp 12-13, also referring to the *Inquiry into the trafficking of women for sexual servitude*, Report, pp vii, xiv.

¹²¹ AIC Monitoring Report No 6, p 23.

¹²² J Jolly, pp 35-36.

¹²³ J Jolly, p 49, referring to other research.

¹²⁴ J Jolly, p 50.

It has also been pointed out that, even if Div 270 could be seen as a ‘fall back’ (where exploitation can be proved but not the movement), if ‘forced labour’ is the form of exploitation rather than ‘sexual servitude’ or ‘slavery’, Div 270 may not apply. Only ‘sexual servitude’ and ‘slavery’ are set out as offences in Div 270, not ‘forced labour’. Yet Div 271 makes ‘slavery’, ‘sexual servitude’, and ‘forced labour’ the end point types of exploitation in the trafficking offences.¹²⁵

Given the constraints of this Research Brief, only a short summary of each offence provision can be provided under the headings below.¹²⁶

5.1 SLAVERY

Various ‘stand-alone’ slavery offences are created under Div 270 of the [Commonwealth Criminal Code](#). ‘Slavery’ is defined as ‘*the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person*’ (s 270.1).

Section 270.2 then goes on to state that slavery is unlawful and s 270.3 sets out slavery offences. The offences apply whether the conduct occurs inside or outside of Australia. Those offences (and maximum penalties) are:

- intentionally possessing a slave or exercising over a slave any other powers attaching to the right of ownership; engaging in slave trading; entering into a commercial transaction involving a slave; or facilitating slave trading or commercial transactions involving a slave – 25 years imprisonment;
- entering into or facilitating a commercial transaction involving a slave, or facilitating slave trading and being reckless as to whether the transaction or act involves a slave, slavery or slave trading – 17 years imprisonment;

Sexual servitude offences are set out in ss 270.4-270.9. ‘*Sexual servitude*’ is defined in s 270.4 as a condition where a person provides sexual services and is not free to stop doing so or to leave the place where they are provided because of the use of force or threats.

A person who engages in conduct causing another person to enter into or remain in sexual servitude intending to cause, or is reckless as to causing, that sexual servitude is guilty of an offence. Further, conducting any business involving sexual servitude and knowing about, or being reckless as to, that sexual servitude is

¹²⁵ J Jolly, p 49.

¹²⁶ As also summarised in the *IDC Inaugural Report*, pp 10-12 and *Second IDC Report*, pp 22-24.

an offence (s 270.6). In either case, the penalty is up to 15 years imprisonment or 20 years for an aggravated offence (i.e. committed against a minor – see s 270.8));

A ‘*deceptive recruiting*’ offence is provided under s 270.7. If, intending to induce another person to enter into an engagement to provide sexual services, a person deceives another person about: the fact that sexual services will be provided; the nature of the services to be provided; the extent to which the person will be free to leave or to cease providing the services; the amount or existence of any debt that might be owed; or that the engagement will involve exploitation or debt bondage or the confiscation of travel or identity documents, that person commits an offence. The penalty is up to 7 years imprisonment, or 9 years for an aggravated offence.¹²⁷

The offences of sexual servitude and deceptive recruitment have an extended geographical reach, seeking to apply where the crime has been committed in Australia and overseas or it is committed overseas by an Australian citizen, resident or company (see s 270.5 and s 15.2).

5.1.1 High Court Case – *R v Tang*

The High Court decision in *R v Tang*¹²⁸ considered the meaning and constitutionality of the slavery provisions in the Criminal Code.

The defendant, Ms Tang, owned a licensed brothel in Victoria. Five Thai women had voluntarily come to Australia to work as prostitutes on a contract worker basis on the understanding (although there was nothing in writing) that they would owe a debt of \$45,000 to the syndicate which purchased them and this would be worked off by servicing customers. Ms Tang had a share in the syndicate. Once the ‘debt’ was paid off, the women would be free to work for themselves. Each woman was to work in Ms Tang’s brothel six days per week, serving up to 900 customers over four to six months to repay the debt. At trial it was found that the women were financially deprived and vulnerable upon arriving in Australia. Their visas had been obtained illegally and, on arrival, their passports and return fares were kept by Ms Tang in case they needed to be shown to authorities and to prevent the women leaving. The women were lodged and fed. They were not kept locked up but were effectively restricted to the brothel due to the hours they worked and by fear of detection from immigration authorities. However, it was also established that the women were well fed and provided for, were given more freedom towards the end

¹²⁷ Section 270.7(1A) sets out the factors to which a jury may have regard to determine if a person has been deceived (e.g. economic relationship between the two persons; extent of dependence of the person on the offender).

¹²⁸ *R v Tang* [2008] HCA 39.

of their contracts, and two of the five women had repaid their debts and had voluntarily stayed to work as prostitutes.¹²⁹

Ms Tang was convicted of five offences of intentionally possessing a slave and five offences of intentionally exercising over a slave a power attaching to the right of ownership under s 270.3 of the Criminal Code. Ms Tang was sentenced (effectively to 10 years imprisonment) but successfully appealed and a new trial was ordered. The Commonwealth then appealed the order for the retrial to the High Court and Ms Tang cross-appealed. In August 2008, the High Court upheld the original convictions and remitted the matter to the relevant lower court for sentencing. For the first time, the High Court considered the slavery offences in the Criminal Code and it also clarified the elements of those offences.

Gleeson CJ noted (at para 33) that the reference, in s 270.1, to powers attaching to the right of ownership exercised over a person in 'slavery' is a reference to powers of such a nature and extent that they are attributes of 'effective ownership', not 'legal ownership'. Legal ownership is not possible in Australia.

Gleeson CJ also said (at paras 42-43) that it was not necessary for the prosecution to prove that Ms Tang intended to exercise power over the slave in the knowledge or belief that the power was one she had as an owner rather than as an employer. Gleeson CJ also commented (at para 32) that harsh and exploitative conditions of labour do not of themselves amount to slavery. Whether factors, such as control of movement, amount to slavery is a question of degree. His Honour pointed out (para 44) that the distinction between slavery and harsh conditions of labour did not lie in Ms Tang's knowledge about her rights but, rather, it may be found in the nature and extent of the powers exercised over a person.

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

Thus, an accused does not have to know that a person is a slave or what a slave is. What is required is an intention to engage in the relevant conduct – to make the women objects of purchase, the capacity to use them and their labour in a substantially unrestricted manner, to control and restrict their movements, and to

¹²⁹ *R v Tang* [2008] HCA 39, paras 15-16, per Gleeson CJ.

use their services without commensurate compensation (para 50).¹³⁰ Further, the fact of there being a contract is not inconsistent with a condition of slavery.¹³¹

Some commentators have observed that, as a result of the High Court's reasoning, the slavery offence in s 270.1 is a useful alternative in prosecuting human traffickers. This is because there is no need to prove that the traffickers knew they were dealing with the person as a slave. As Gleeson CJ said (para 44), evidence that a trafficker had such knowledge would be rare.¹³² However, some have argued that this result may have a downside – it may have diminished the high threshold usually needed to secure a conviction for serious offences.¹³³

5.1.2 Queensland Court of Appeal Case – *R v Kovacs*

The 2008 Queensland Court of Appeal decision in *R v Kovacs*¹³⁴ involved a married couple from a small town near Weipa and is the first case under the slavery provisions involving a domestic setting. During 2000, the Kovacs decided to have a Filipina woman come to Australia to work in their food store and as a helper in their own home. Mr Kovacs and his friend, O, planned to go to the Philippines to find a suitable woman and for O (who was an Australian citizen) to marry the woman to enable her to legally enter Australia. When this plan failed, Mrs Kovacs approached an acquaintance in the Philippines who suggested that her niece might be suitable. The niece (G) was 25, on a low income, had a sick son, and was living in substandard accommodation. G was encouraged by her family to go to Australia with the Kovacs in order to help G's family financially. The Kovacs told G she would be paid \$800 (which G assumed would be paid monthly, apart from an amount to cover expenses of bringing her to Australia) and would have to work for five years before she could leave.

¹³⁰ The other justices, apart from Kirby J, agreed (although Hayne J delivered his own extensive reasoning). Kirby J thought that there must be an intention to deal with the women as slaves knowing they were slaves (see, e.g. paras 92-105).

¹³¹ In August 2009, the Victorian Court of Appeal, taking into account a number of matters arising since the sentence was first imposed on Ms Tang, gave her a total effective sentence of 9 years with a 5 year non-parole period: see *Second IDC Report*, p 32.

¹³² Human Trafficking Working Group (Dr Andreas Schloenhardt (Coordinator)), [Case Report: *R v Wei Tang*](#), Case Summary, p 5.

¹³³ Human Trafficking Working Group, [Case Report: *R v Wei Tang*](#), Case Summary, p 5.

¹³⁴ [R v Kovacs](#) [2008] QCA 417.

G married O to enable her to come to Australia and, when G later arrived in Australia, she was met by Mr K who took her to a motel. He raped her three times over the next few days and then drove her to his home town where G was put to work in the shop (from 6 am-6 pm Monday to Friday) and from 6 am to noon on Saturdays. G did domestic work at the Kovacs' house from 10 pm to 11 pm each night and had no work free days. G received no regular wage but the Kovacs did give her family some money on a couple of occasions and paid for her son's medicine. Mr K had sex with G on many occasions at the shop and sometimes gave her 'pocket money' of around \$20 or \$30. He told her that if she reported the rape to the police they would all go to gaol. A year later, G tried to escape but she was forcibly taken back by the Ks who took her passport. A few months later, the Ks' estranged daughter visited the Ks and G told the daughter that Mr K had raped her repeatedly and asked for help to escape. The daughter gave G money (which she combined with her 'pocket money' from Mr K) to fly to Cairns. G contacted authorities and reported the matter.

The Ks were convicted of arranging a marriage to procure a visa, intentionally possessing a slave and intentionally possessing and exercising power over a slave. Mrs K was sentenced to 4 years imprisonment and Mr K was sentenced to 8 years imprisonment for the slavery offences and both were sentenced for one year for the marriage offence. Both had non-parole periods. In 2008, the Ks appealed their convictions on 7 grounds, 2 of which were established.

It was argued that there had been a misdirection to the jury concerning the elements of the offence and a failure to give adequate directions to the jury. Muir JA, who delivered the leading judgement, found (para [19]) that while the jury had been misdirected about the need to establish an intention to exercise a power over the person as a slave (which was negated in *R v Tang*), the misdirection did not influence the result. His Honour also found that the jury had been adequately directed on this point (paras [27]-[32]). Various other grounds of appeal were also unsuccessful (paras [44-53]). However, Mr K succeeded on certain evidential errors made by the primary judge (paras [76-84]). Mrs K also succeeded on the final ground of error (paras [59]-[84]). Accordingly, the slavery convictions were set aside and retrials ordered.

A retrial was held in the Cairns Supreme Court in February 2010. Mrs K was found guilty of using and possessing a slave and Mr K pleaded guilty to the same charges. Mrs K received a 4 year gaol term and Mr K was sentenced to 8 years

imprisonment. However, both will be eligible for parole within the next 12 months for time already served.¹³⁵

5.2 TRAFFICKING IN PERSONS

The ‘*trafficking in persons*’ offences are contained in Div 271 of the [Commonwealth Criminal Code](#). There are eight offences covering trafficking in all its forms, including ‘debt bondage’. The offence provisions (apart from those relating to domestic trafficking – s 271.11) apply where the crime has been committed in Australia and overseas or where it is committed overseas by an Australian citizen, resident or company.

5.2.1 Organising or Facilitating Entry or Exit

It is an offence under s 271.2(1)-(1C) of the Commonwealth Criminal Code for a person to organise or facilitate the entry or proposed entry, or receipt of, a person (a victim) into Australia, or the exit or proposed exit of a victim out of Australia:

- using force or threats to obtain the victim’s compliance; or
- being reckless as to whether the victim will be exploited by that person or another after that entry or receipt.

It is an offence under s 271.2(2) to organise or facilitate the entry or proposed entry, or receipt of, a victim into Australia or the exit, or proposed exit of the victim out of Australia deceiving the victim about the fact that the entry, proposed entry, receipt, or any arrangements for the victim’s stay will involve the provision by the victim of sexual services or will involve the victim’s exploitation or debt bondage or the confiscation of the victim’s travel or identity documents. Section 271.2(2A) provides an equivalent offence regarding organising/facilitating a victim’s exit or proposed exit from Australia deceiving the victim about those same matters.

It is an offence under s 271.2(2B) for a person to organise or facilitate the entry or proposed entry, or receipt of, the victim into Australia where, although there is an arrangement for the victim to provide sexual services, the person deceives the victim about: the nature of the services, or the extent of the victim’s freedom to leave, or to cease providing the services, or the amount or existence of any debt owing or claiming to be owed. Section 271.2(2C) provides an equivalent offence

¹³⁵ Human Trafficking Working Group, ‘Case Report: *R v Melita Kovacs & Zoltan Kovacs*’, [Case Reports](#), 2 March 2010. Mr K is already serving 7 years for another unrelated sexual assault. Some other case law examples involving slavery offences can be found in the *Second IDC Report*, Appendix 1.

regarding organising/facilitating a victim's exit or proposed exit from Australia to provide sexual services in another country.

For the above offences, the maximum penalty is 12 years imprisonment and 20 years for an aggravated offence of trafficking. An 'aggravated offence' is committed where the offender intends that the victim will be exploited by the offender or another person; or where the offender subjects the victim to cruel, inhumane or degrading treatment; or the offender engages in conduct that gives rise to danger of death or serious harm to the victim and is reckless as to this danger (s 270.3).

5.2.2 Trafficking in Children

Section 271.4 of the [Commonwealth Criminal Code](#) creates specific trafficking in children offences. An offence is committed where an offender organises or facilitates the entry or proposed entry, or receipt, of a person under the age of 18 and, in doing so, intends or is reckless about whether the child will be used to provide sexual services or will be otherwise exploited by the offender or someone else. No threats, force or deception need to be established for a child trafficking offence whereas, for offences involving adult victims, such elements are required to be made out. The offence attracts up to 25 years imprisonment. An equivalent offence and penalty regarding organising/facilitating a child's exit or proposed exit from Australia in such circumstances is also provided for.

5.2.3 Domestic Trafficking and Domestic Trafficking in Children

Sections 271.5 of the [Commonwealth Criminal Code](#) makes it an offence for a person to organise or facilitate the transportation or proposed transportation of a victim within Australia through the use of force or threats to obtain compliance, or where the person is reckless as to whether the victim will be exploited after the transportation.

It is also an offence if the person deceives the victim about the fact that the transportation, or any arrangements made for the victim after the transportation, will involve the victim in providing sexual services or his or her exploitation, debt bondage, or the confiscation of his or her travel or identity documents. It is also an offence where, although there is an arrangement for the victim to provide sexual services, the person deceives the victim about: the nature of the services, the extent of the victim's freedom to leave, or to cease providing the services, or the amount or existence of any debt owing or claiming to be owed.

The maximum penalty is 12 years imprisonment, and 20 years for an offence of aggravated domestic trafficking (see s 271.6 which provides for an ‘aggravated offence’ in similar terms as in s 271.3).

Section 271.7 covers domestic trafficking in a person under 18 and, again, there is no need to prove deception, force or threats. The penalty for domestic trafficking in children is up to 25 years imprisonment.

5.2.4 Debt Bondage

The trafficking in persons offences also include ‘*debt bondage*’ to prevent traffickers using unfair debt contracts etc. to force victims into servitude to pay off debts. Debt bondage offences also provide an alternative where it is difficult to establish that one of the more serious offences above has been committed.¹³⁶

The Dictionary in the [Commonwealth Criminal Code](#) defines ‘*debt bondage*’ as (in summary) the status or condition that arises from a pledge by a person of his or her personal services, or of another person under his or her control, as security for a debt owed, or claimed to be owed, by that person if:

- the debt amount owed/claimed to be owed is manifestly excessive; or
- the reasonable value of those services is not applied toward the liquidation of the debt/purported debt; or
- the length and nature of those services are not respectively limited and defined.

Debt bondage will therefore arise where the debt the victim has to pay by way of rendering personal (sexual or non-sexual) services is hugely inflated and is not commensurate with the cost incurred by the trafficker in bringing the victim to Australia.¹³⁷

The offence of debt bondage is created by s 271.8 of the [Commonwealth Criminal Code](#). The offence occurs if a person intentionally engages in conduct to cause a person to enter into debt bondage. The provision also sets out the evidence that the court or jury can consider to establish the offence. Such matters include: the economic relationship between the offender and the victim; the terms of any agreement; the victim’s personal circumstances (e.g. ability to speak and understand English or the language in which the inducement or deception occurred; his or her legal migration status in Australia; his or her dependence on the offender). The maximum penalty is 12 months imprisonment.

¹³⁶ *IDC Inaugural Report*, p 11.

¹³⁷ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 75.

The aggravated offence provision is contained in s 271.9 (where the victim is under 18 years) and imposes a penalty of up to 2 years imprisonment. It has been argued by anti-trafficking advocates and others that the penalties for debt bondage seem low. However, some commentators believe that the offence being a summary, rather than an indictable, offence is an advantage. This means it is triable by a judge or magistrate, not by a possibly unsympathetic jury. Some commentators see the attitude of juries as the reason for low conviction rates for trafficking offences.¹³⁸

5.2.5 Cases Under the Anti-trafficking Offence Provisions

Given the relative newness of the trafficking offences in Div 271 and the complexities of prosecuting such offences, there have been few convictions and reported cases.¹³⁹ Another important factor is the underreporting of this type of crime. Most of the cases detected in Australia have involved Thai women.¹⁴⁰ However, since mid-2008, allegations involving trafficking of Thai nationals have decreased with a corresponding increase in the number of reports of workers being trafficked from the Republic of Korea. Between January 2004 and April 2009, of the 34 people charged with human trafficking and related offences, 7 had been convicted. A large proportion of these were brothel owners and managers involved in sexual servitude and/or slavery offences.¹⁴¹ During 2009-2010, there were 6 convictions. The majority related to Div 270 slavery offences.¹⁴² Few prosecutions have involved trafficking but two cases under Div 271 of the Criminal Code are now discussed.

R v Yogalingham Rasalingam

In the unreported 2007 NSW District Court decision of *R v Yogalingham Rasalingam*, discussed earlier under the 'forced labour' heading, a restaurant owner was prosecuted under s 271.2 (facilitating entry of a person to Australia,

¹³⁸ As noted by the Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, pp 75-76, citing J Debeljack, S Kneebone, M Cullen & F Ransom, 'The legislative framework for combating trafficking in persons', Monash University Castan Centre for Human Rights Law, Melbourne, 2009, p 22.

¹³⁹ *IDC Inaugural Report*, p 22.

¹⁴⁰ AIC Monitoring Report No 6, p 37.

¹⁴¹ *IDC Inaugural Report*, pp iii, 22.

¹⁴² *Second IDC Report*, p 31.

recklessness as to exploitation of that person) and the slavery provisions in s 270.3 but was found not guilty on both charges. The elements of ‘forced labour’ could not be established.¹⁴³ Instead, the owner was convicted of a migration related offence.¹⁴⁴

R v Dobie

One of the few successful prosecutions under Div 271 is [*R v Dobie*](#).¹⁴⁵ Keith Dobie, a Gold Coast hairdresser, was accused of having been, between 2005 and 2006, directly involved in the deceptive recruitment of at least two Thai women in his newly created prostitution racket. The women were vulnerable due to their limited English skills, disadvantaged backgrounds and because they were in Australia illegally. It was believed that the women had previously worked in the sex industry in Thailand and were aware they would be employed as prostitutes in Australia, but were deceived about their conditions of employment. Dobie told one woman that it was up to her how much work she did and told the other that she would have two days off every week. None of these statements were true as the women were expected to attend a client whenever a client called. The women apparently worked nine hour days, servicing up to five men each day, and were confined to their rooms. One of the women was verbally abused when she did not want to provide certain types of sexual services and the other when she wanted to leave (paras [12]-[16]).

Dobie pleaded guilty to seven offences but those relevant to this discussion relate to the two counts of trafficking. Dobie appealed against his sentence and the trafficking conviction, arguing that the elements of s 271.2(2B) regarding ‘deceptive recruitment’ were not established because each deception here was not about the extent to which the victim would be free to cease providing the sexual service. The Queensland Court of Appeal disagreed, finding that s 271.2(2B)(c)(iii) (that the person deceives the victim about, among other things, ‘*the extent to which the other person will be free to cease providing sexual services*’) had a broad reach and was intended to catch deceptions about the freedom to cease providing sexual services upon certain conditions or during certain periods. Dobie was wrong in contending that the section was meant to apply only to deceptions about freedom to terminate the actual arrangement and permanently stop providing the services (paras [24]-[28]). Thus, Dobie’s appeal against conviction and

¹⁴³ Unreported, District Court of NSW, Puckeridge J, 9 October-2 November 2007.

¹⁴⁴ Discussed in A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, pp 23-24. See also, *Fryer v Yoga Tandoori House Pty Ltd* [2008] FMCA 288.

¹⁴⁵ [*R v Dobie*](#) [2009] QCA 394. Fraser JA delivered the main judgement with which Cullinane and Lyons JJ agreed.

sentence was dismissed. Fraser JA commented (para [48]) that the ‘*pernicious and callous nature of the applicant’s offending, carried out in a persistent way over a period of time and where the applicant had a relevant criminal history*’ made the 5 year prison sentence, with a 22 month non-parole period, appropriate.¹⁴⁶

Apart from the above human trafficking cases and others not discussed here,¹⁴⁷ there have been some prosecutions involving immigration offences relating to trafficked persons.¹⁴⁸

5.2.6 Child Sex Tourism Offences

In 1994, amendments were made to Commonwealth legislation to create a range of child ‘sex tourism’ offences. Under Div 272 of the Commonwealth Criminal Code, it is an offence for Australians to engage in sexual intercourse with children under 16 whilst overseas, or cause a child to engage in sexual intercourse in the presence of the Australian defendant while overseas.

The new [*Crimes Legislation Amendment \(Sexual Offences Against Children\) Act 2010*](#), among other things, introduced a number of new child sex tourism offences to ensure that conduct that would be an offence in Australia is also an offence if committed by Australians while overseas. Penalties were also increased from 17 years imprisonment to 20 years for sexual intercourse with a child under 16 years. It is also an offence to engage in sexual activity (other than sexual intercourse) with a child under 16 while overseas; or to cause a child to engage in sexual intercourse in the presence of the Australian defendant while overseas (carrying a penalty of up to 15 years gaol). Higher penalties apply – up to 25 years imprisonment – for aggravated offences where the offender is in a position of trust or authority or where the child has a mental impairment. Other offences (for which a range of penalties apply) include persistent sexual abuse of a child outside Australia; sexual activity or sexual intercourse with a young person at least 16 but under 18 years while overseas where the defendant is in a position of trust or authority. Offences leading up to the actual sexual act are punishable by lengthy gaol terms (e.g. procurement carries up to 15 years imprisonment; grooming

¹⁴⁶ In February 2010, Dobie made another application for an extension of time to appeal against his convictions for all offences to the QCA but this application was dismissed.

¹⁴⁷ The *Second IDC Report*, Appendix 1, discusses the prosecution of Netthip under Div 270 and under Div 271: organising entry, reckless as to exploitation (s 270.2(1B)); debt bondage (s 271.8) and, also, for migration offences. Netthip pleaded guilty to a slavery charge and migration charge but the remaining trafficking charges were withdrawn.

¹⁴⁸ See A Schloenhardt, ‘Trafficking in Persons in Australia: Myths and Realities’, pp 25-27.

attracts up to 12 years in gaol, while planning sexual activity is punishable by 10 years imprisonment).

The Act also creates an offence (in new Div 273 of the Criminal Code) for dealings in child pornography or child abuse material by Australians overseas and imposes maximum penalties of 15 years gaol (25 years for an aggravated offence).¹⁴⁹

5.2.7 Other Applicable Legislation

Human trafficking can also be caught by other Commonwealth criminal legislation. For instance, it can be a predicate (i.e. a base or foundation) offence to money laundering if the money or property are proceeds of crime (i.e. a trafficking or slavery offence) under the Criminal Code.¹⁵⁰ Similarly, the Commonwealth [Proceeds of Crime Act 2002](#) may enable the tracing, restraint and confiscation of the proceeds of any such crimes.¹⁵¹

As noted earlier, the [Migration Act 1956 \(Cth\)](#) imposes various penalties on employers for knowingly or recklessly employing or referring a non-citizen to work without a visa or in breach of visa conditions. A number of cases discussed earlier have also involved charges under provisions of this Act regarding false migration documentation and other types of migration fraud.

Under the [Mutual Assistance in Criminal Matters Act 1987 \(Cth\)](#), agencies authorised by the Commonwealth Attorney-General can, at the request of another country, apply for, and use various orders and search warrants in relation to foreign

¹⁴⁹ The Act contains a number of other offences to combat sexual activity involving children, including a new aggravated offence aimed at online child pornography where the offender is in Australia; an offence for use of a carriage service (e.g. mobile phone or Internet) to transmit indecent communications to a child; an offence for using a carriage service for sexual activity with a child as well as new offences regarding use of the post for child sex activities (see Divs 471, 474). A new scheme to enable the forfeiture of child pornography or child abuse material was also introduced (Part 1E *Crimes Act 1914* (Cth)). See also, Hon B O'Connor MP, [Second Reading Speech](#), Crimes Legislation Amendment (Sexual Offences Against Children) Bill 2010 (Cth), *House of Representatives Hansard*, 4 February 2010, pp 408-410.

¹⁵⁰ *IDC Inaugural Report*, p 12.

¹⁵¹ In February 2010, the Commonwealth Parliament passed the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 and the Crimes Legislation Amendment (Serious and Organised Crime) Bill (N 2) 2009 to enable more effective prevention, investigation and prosecution of organised crime (strengthening law enforcement coordination and capability) and target the proceeds of such crimes through tougher criminal assets confiscation provisions): see *Second IDC Report*, p 21.

serious offences where it is reasonably suspected that the proceeds, instruments or property tracking documents are located in Australia.¹⁵²

Human trafficking is seen as a complex form of transnational organised crime. In November 2009, the Commonwealth Government released its Organised Crime Strategic Framework. The *Second IDC Report* (p 20) said that this Framework establishes a comprehensive and coordinated response (via policy, regulatory, law enforcement and intelligence agencies) to target the most significant threats from organised crime in order to reduce its impact on the community.

6 OTHER COMMONWEALTH GOVERNMENT MEASURES

As noted recently by the previously mentioned Victorian Parliamentary Drugs and Crime Prevention Committee's Report, the international and transnational nature of human trafficking tends to give the main responsibility of addressing the issue to the Commonwealth Government. The complexity of the problem requires a comprehensive and coordinated policy framework.¹⁵³ The main policy measure to combat trafficking is the Commonwealth's Government's *Whole of Government Anti-People Trafficking Strategy*. Before discussing this Strategy, the role of the Commonwealth Government's Interdepartmental Committee (IDC), which oversees the Strategy and coordinates efforts of the Government in addressing human trafficking, is considered.

6.1 THE INTERDEPARTMENTAL COMMITTEE (IDC)

The IDC was established in 2003. It is chaired by the Attorney-General's Department (AGD) and comprises representatives of Government with responsibilities in anti-trafficking matters. The IDC monitors the implementation of the Strategy and reports to the Government on its effectiveness. It also seeks to ensure that emerging issues are addressed by a whole-of-government response.¹⁵⁴ In brief, the main Commonwealth Government agencies comprising the IDC are:

¹⁵² See *IDC Inaugural Report*, p 12 where it is also noted that the Commonwealth [*Telecommunications \(Interception and Access\) Act 1979*](#) enables law enforcement agencies to obtain a warrant to intercept telecommunications regarding trafficking offences to be used in prosecutions of such crimes (see s 5D(3A)).

¹⁵³ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 85.

¹⁵⁴ *Second IDC Report*, p 4.

- the AGD – the lead agency charged with the role of coordinating all agencies’ responses, reporting and management, development of necessary legislation, giving financial assistance etc.;
- the AFP – responsible for investigating Commonwealth offences, including the slavery and anti-trafficking offences under the Criminal Code, and works with counterparts in other countries;
- the Department of Immigration and Citizenship (DIAC) – responsible for ensuring compliance with the *Migration Act 1958*, working with AFP officers on domestic and overseas trafficking cases, and handling visa applications;
- the Office for Women – administers the Support for Victims of People Trafficking Program (discussed later);
- the Australian Agency for International Development (AusAID) manages the Commonwealth Government’s international aid program. AusAID falls under the Department of Foreign Affairs & Trade umbrella. Its aid programs seek to address the key factors driving trafficking and it funds specific projects in the South East Asia region, some of which are described later;
- the Commonwealth Director of Public Prosecutions (Commonwealth DPP) – prosecutes Commonwealth trafficking offences;
- the Australian Crime Commission (ACC) – responsible for conducting intelligence assessments regarding trafficking cases;
- the AIC, whose role has been discussed previously;
- the Department of Foreign Affairs & Trade – responsible for international liaison and provision of an entry point through Australian embassies and also coordinates the Bali Process, discussed later.¹⁵⁵

Other agencies included in the IDC are the Department of Education, Employment and Workplace Relations; the Department of the Prime Minister and Cabinet.

6.2 THE ANTI-PEOPLE TRAFFICKING STRATEGY

The Australian Government’s [Whole of Government Anti-People Trafficking Strategy](#) (the Strategy) accompanying the *National Action Plan to Eradicate Trafficking in Persons*, unveiled in 2003, implements Australia’s obligations under the *Trafficking Protocol*. Initial funding of \$20m over four years was provided.¹⁵⁶ During 2009-2010, the Government committed \$9.2m to various anti-trafficking

¹⁵⁵ AIC Monitoring Report No 6, pp 25-26.

¹⁵⁶ AGD, ‘[Australian Government Anti-People Trafficking Strategy](#)’.

measures and revised the Strategy.¹⁵⁷ Overall, since implementation of the Strategy, the Government has committed more than \$50 million to support a range of anti-trafficking initiatives.¹⁵⁸ The Strategy seeks to address the whole trafficking cycle from recruitment to reintegration and focuses on four elements: prevention; detection and investigation; prosecution; and victim support. Key measures – bringing together the work of a number of Commonwealth Government agencies – include:¹⁵⁹

- the AFP's Transnational Sexual Exploitation and Trafficking Team (TSETT) which is dedicated to the investigation of people trafficking. TSETT investigators must undertake a specialist training program to develop the skills and knowledge required to successfully undertake sensitive and/or protracted and complex investigations of sexual exploitation and child sex tourism type offences in a multi-jurisdictional and international environment. State and territory police can also attend;¹⁶⁰
- the *Australian Policing Strategy to Combat Trafficking in Women for Sexual Servitude*, signed by all Australian Police Ministers in 2006, aims to set out a national framework for police across all Australian jurisdictions to collaborate in the fight against sexual servitude. If sexual servitude involves human trafficking, the protocol is for the state or territory that initially responds to the relevant conduct to refer the matter to Commonwealth authorities for investigation. The Policing Strategy also aims to facilitate the development of relations between agencies within and outside of Australia, including creating protocols and procedures for victim protection, and providing police training.¹⁶¹ In light of the increasing detection of trafficking victims in areas outside the sex industry, the Commonwealth is revising and broadening the Policing Strategy to embrace all forms of human trafficking, to provide a national framework for police services to respond to this, and to identify and share best practice in training, investigations and other matters;¹⁶²

¹⁵⁷ US Department of State *2010 Trafficking in Persons Report*, p 67.

¹⁵⁸ *Second IDC Report*, p 3.

¹⁵⁹ AGD, '[Australian Government Anti-People Trafficking Strategy](#)'; Hon Brendan O'Connor MP, Minister for Home Affairs, *Statement to Parliament – The Government's Response to Trafficking in Persons*, p 5.

¹⁶⁰ *IDC Inaugural Report*, pp 23-24. See also, *Second IDC Report*, pp 35-36.

¹⁶¹ *IDC Inaugural Report*, p 18.

¹⁶² *Second IDC Report*, p 34-35. The revised Strategy is undergoing key stakeholder consultation, including state and territory police. Once endorsed, it will be presented to the Ministerial Council for Police and Emergency Management – Police for consideration.

- visa arrangements under the People Trafficking Visa Framework for possible victims and witnesses to remain in the country to assist with investigations and prosecutions and other measures through the Support for Victims of People Trafficking Program ((discussed later);
- reintegration support for victims who return to their own countries (discussed later);
- a targeted Communication Awareness Strategy to increase awareness about trafficking in the sex industry (discussed later);¹⁶³
- improvements in legislative responses to human trafficking and trafficking related activities, and in prosecution support, including funding and training;
- increased regional cooperation to combat human trafficking (discussed later),
- AIC research into national and regional trafficking activities;
- specialist immigration officers deployed to Thailand, China, and the Philippines to focus on human trafficking issues and to seek to prevent trafficking at its source (discussed later).

A review of the Strategy was undertaken by the Australian National Audit Office (ANAO) to consider its management ([*Performance Audit Report on the Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*](#) (2009)). One recommendation by the ANAO was for a more systematic annual reporting of Strategy outcomes which was adopted by the release of the '[*Trafficking in Persons – the Australian Government Response, January 2004 – April 2009*](#)' *Inaugural Report of the Anti-People Trafficking Interdepartmental Committee*, discussed below.

The Office for Women has implemented various measures suggested by the ANAO regarding its Support for Victims Program, including the negotiation of a new contract with the Australian Red Cross for providing case management services. In addition, the DIAC has addressed ANAO recommendations relating to visa cancellation procedures and is seeking to improve referral processes. The AFP had also responded to ANAO recommendations by reviewing and expanding its investigation guidelines for its TSETT.¹⁶⁴

Partnerships have been formed and strengthened between Government and NGOs. NGOs often have access to grassroots type information about human trafficking and its victims which could inform Government policy. NGOs are increasingly referring possible incidents of trafficking to authorities, with 5 referrals being received from NGOs in 2009-2010, representing around 13% of total referrals for that period. The abovementioned TSETT specialist training program includes

¹⁶³ IDC *Inaugural Report*, p 36.

¹⁶⁴ Hon Brendan O'Connor MP, *The Government's Response to Trafficking in Persons*, pp 3-4.

presentations from NGOs about different perspectives on trafficking.¹⁶⁵ Funding has also been granted to relevantly involved NGOs to provide outreach for victims and to conduct awareness initiatives on human trafficking. In October 2008, total funding of \$1 million was provided to four NGOs to support their anti-trafficking efforts: the Australian Catholic Religious Against Trafficking in Humans; the Anti-Slavery Project; Project Respect and the Scarlet Alliance.¹⁶⁶

6.2.1 National Roundtable on People Trafficking

Key anti-trafficking NGOs¹⁶⁷ have also been included in the National Roundtable on People Trafficking, established in 2008, which also includes service providers, victims support organisations, and legal, employer and union sectors.¹⁶⁸ The outcome of the first Roundtable in June 2008 was the establishment of a working group to develop, along with the Australian Human Rights Commission and the Anti-Slavery Project, the *National Guidelines for NGOs Working with Trafficked People*, designed to assist NGOs in helping victims.¹⁶⁹ These guidelines have been updated to provide the latest information about visa framework and victim support changes.¹⁷⁰

In June 2009, the Minister for Home Affairs convened a second National Roundtable, with a focus on labour trafficking.¹⁷¹ At the meeting, changes to the

¹⁶⁵ *Second IDC Report*, pp 29, 35.

¹⁶⁶ *Second IDC Report*, p 39. The roles of these NGOs are explained in pp 39-40 of that Report and also later in this Brief.

¹⁶⁷ Including the Anti-Slavery Project, Project Respect, Scarlet Alliance, The Salvation Army, Sisters of St Joseph.

¹⁶⁸ Other organisations represented at the Roundtable include the Australian Chamber of Commerce and Industry, the Australian Medical Association, Australian Workers Union, Australian Human Rights Commission, Law Council of Australia, Victims Support Australia: See Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, pp 85-86.

¹⁶⁹ The working group was led by the Australian Human Rights Commission.

¹⁷⁰ *Second IDC Report*, p 40.

¹⁷¹ Hon Brendan O'Connor MP, *The Government's Response to Trafficking in Persons*, pp 5-6. A working group was formed to develop strategies for raising awareness about fair work issues for migrant workers: *Second IDC Report*, pp 38, 40.

operation of the visa framework and victim support program were also announced.¹⁷²

6.3 TRAFFICKING IN PERSONS – ANTI-PEOPLE TRAFFICKING INTERDEPARTMENTAL COMMITTEE REPORTS

In accordance with recommendations of the ANAO for more systematic reviews of outcomes of the Government's Strategy, the '[Trafficking in Persons – the Australian Government Response, January 2004 – April 2009](#)' *Inaugural Report of the Anti-People Trafficking Interdepartmental Committee (IDC Inaugural Report)* was released by the Minister for Home Affairs, Hon Brendan O'Connor MP, on 17 June 2009. The *IDC Inaugural Report* considers the operation and effectiveness of the Strategy and covers the period from the implementation of the Strategy in January 2004 up to 30 April 2009. It is intended that the IDC will report on an annual basis and, on 19 November 2010, the '[Trafficking in Persons – the Australian Government Response, 1 May 2009 – 30 June 2010](#)', *Second Report of the Anti-People Trafficking Interdepartmental Committee, (Second IDC Report)* was released.

Apart from considering the measures implemented by the Strategy, outlined earlier, the *IDC Inaugural Report* noted other developments (outlined in the Executive Summary) while the *Second IDC Report* provides an update on these matters for the period between 1 May 2009 and 30 June 2010. The main points are discussed below.

Between January 2004 and April 2009, the AFP's TSETT undertook over 270 investigations and assessments of allegations of trafficking related offences which led to 34 persons being charged and 7 convictions. Most related to sexual servitude – mostly women in the sex industry – and a smaller number involved labour exploitation (*IDC Inaugural Report*, p 19).

The AFP conducted 38 trafficking investigations and assessments in 2009-2010. Around 70% of the investigations related to trafficking for sexual exploitation; the remainder being associated with other forms of labour exploitation. Of these investigations and assessments, 31% related to Malaysian nationals and 23% to Republic of Korean nationals.¹⁷³ Six people were convicted in 2009-2010 for slavery/trafficking offences (*Second IDC Report*, pp 25-26, 31).

¹⁷² *Second IDC Report*, p 6.

¹⁷³ The *Second IDC Report*, p 26, notes that investigational bias needs to be accounted for regarding the 'inflated Malaysian figure' as Malaysians have, in fact, accounted for just 13% of all investigations and assessments since 2003-2004.

While Thailand has appeared to have been the main source country of trafficked sex workers since 2003-2004, it appears that the Republic of Korea may have overtaken Thailand as the main source country for suspected trafficked sex workers (*Second IDC Report*, p 26).

Trafficking cases in Australia have been detected through official activity or due to individuals or their co-workers seeking assistance, or through referrals by state police. Sometimes sex worker victims ask their clients to help them (*Second IDC Report*, p 29). To improve awareness among clients of sex workers about human trafficking in the sex industry, the AGD has, over 2009-2010, endeavoured to increase the coverage of public notice style advertisements in Australian newspapers which encourage clients to call an AFP hotline (*Second IDC Report*, pp 40-41). It appears that up to 95% of key Australian newspapers carry the advertisements for free.

Many possible trafficking cases are detected through the DIAC undertaking compliance activities (e.g. in brothels to locate foreign nationals who have no visa). From 1 January 2004 to 30 April 2009, the DIAC referred information to the AFP relating to 287 suspected trafficking victims (*IDC Inaugural Report*, p 19). Between 1 July 2009 and 30 June 2010, the DIAC referred 32 reports of possible trafficking to the AFP (*Second IDC Report*, p 29).¹⁷⁴

Close legal and investigative cooperation between Australian authorities and foreign counterparts is crucial in investigating human trafficking, an essentially transnational offence. Mutual assistance and extradition are key tools in combating trafficking offences and the Commonwealth Government is undertaking a review of Australia's systems in this area. Australia cooperates with and assists countries in our region to improve mutual assistance and extradition frameworks (including work through the ASEAN) (*IDC Inaugural Report*, pp 16-17).

Australia has been actively involved in international efforts to fight human trafficking, including through participation in various forums; measures to build law enforcement partnerships with overseas counterparts; development assistance and other capacity building efforts. These initiatives will be explored below. In terms of development assistance, around \$4.3 billion is being provided through the Australian Agency for International Development (AusAID) in 2010-2011 ((*IDC Inaugural Report*, p 17; *Second IDC Report*, pp 42-49). Regional assistance and funding initiatives are discussed later in this Brief.

¹⁷⁴ DIAC has compliance officers in each Australian jurisdiction and these officers are given specific training to identify possible indicators of trafficking during compliance activities. Those sent overseas are provided with training in country-specific issues: *Second IDC Report*, pp 29, 36.

The success of trafficking investigations often depends upon the assistance provided by victims who may fear retribution if they cooperate with law enforcement agencies or who may be suffering from trauma (*IDC Inaugural Report*, p 24). This matter is discussed later in the context of Victim Support and Protection. Thus, victim safety is seen to be paramount, meaning that reprisal risks must be continually assessed as the investigation proceeds. Nevertheless, it is reported that, during 2009-2010, over 81% of suspected victims have been willing to assist with investigations and/or prosecutions (*Second IDC Report*, p 25).

Australia is cooperating in efforts, including with international organisations, to improve the ability to provide evidence-based data about human trafficking in our region and globally. As noted earlier, the AIC has been funded to analyse trafficking trends.

7 AUSTRALIA'S ROLE IN INTERNATIONAL EFFORTS AGAINST HUMAN TRAFFICKING

Pursuant to the international cooperation framework provided by the *Convention against Transnational Organised Crime* (UNTOC) and the *Trafficking Protocol*, Australian authorities work with other countries to assist with investigations, prosecutions and extradition of offenders.¹⁷⁵ In 2010, as part of its commitments under the Convention, Australia participated in expert level discussions on human trafficking as part of the January meeting of the UNTOC Working Group on Trafficking in Persons.¹⁷⁶ Only some of Australia's international activities can be dealt with here but the *IDC Inaugural Report* (pp 37-44) and the *Second IDC Report* (pp 42-49) provide further details.

Australia participates in international forums such as the [UN Commission on Crime Prevention and Criminal Justice](#). In the immediate region, Australia works with other countries through various forums. With South East Asia being a known significant source of victims of trafficking, responses have included measures initiated by ASEAN. During 2009, Australia participated in dialogues on human trafficking in the UN General Assembly, urging more countries to ratify the Convention and the *Trafficking Protocol* and has commented about matters such as

¹⁷⁵ *IDC Inaugural Report*, p 16. Australia is also active in encouraging countries in the Pacific region to ratify the *Trafficking Protocol* if they have not yet done so. There has been a low rate of ratification in the region (*Second IDC Report*, p 42).

¹⁷⁶ *Second IDC Report*, p 42.

the importance of supporting victims of trafficking and the need to also look at trafficking outside of the sex industry.¹⁷⁷

Australia has an Ambassador for People Smuggling and Trafficking Issues who works with other countries and bodies, such as the Australian Red Cross, to promote Australia's approach to prevention and combating of human trafficking.¹⁷⁸

7.1 THE BALI PROCESS

Beginning in 2002, in conjunction with Indonesia, Australia co-founded and now co-chairs the [*Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*](#). The Bali Process is a voluntary forum – comprising representatives from around 38 countries – which seeks to improve regional cooperation, awareness and information sharing and to address matters that cause people to become vulnerable to trafficking.¹⁷⁹ Much of its work is through technical workshops on matters such as law enforcement and identity documents and public awareness. There are also various cooperative activities between interested countries, the UN High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM).¹⁸⁰ Recent work has included developing model legislation to prosecute trafficking offences to encourage Asian Pacific countries to criminalise human trafficking.¹⁸¹

At an April 2009 meeting, it was agreed that an Ad Hoc Group mechanism would be activated to deal with irregular migration in the Asia Pacific region through bringing together key source, transit and destination countries and, also, relevant international organisations to develop a regional response.¹⁸²

¹⁷⁷ *Second IDC Report*, p 43.

¹⁷⁸ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 89.

¹⁷⁹ AIC Monitoring Report No 6, p 14.

¹⁸⁰ The IOM assists trafficking victims through repatriation, settlement and reintegration packages and compiles data and information on trafficking issues, especially in our immediate region. Australia provides funding to the IOM: Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 88.

¹⁸¹ *IDC Inaugural Report*, p 38; Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 68. Other activities have included workshops on child sex tourism, victim support workshops and a side event at a UN GIFT forum to explain the role of the Bali Process: *IDC Inaugural Report*, p 39.

¹⁸² *Second IDC Report*, pp 42-43.

7.2 COMMIT

The Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) process, established in 2004 by six countries in the Greater Mekong Subregion (e.g. China, Laos, Thailand), seeks to develop an approach to trafficking which is comprehensive and collaborative.¹⁸³

7.3 MEASURES TO ADDRESS FACTORS DRIVING HUMAN TRAFFICKING

As previously discussed, key factors causing people to fall victim to human trafficking, particularly forced labour, are poverty or poor socio-economic circumstances, unemployment, and political instability. The recent global financial downturn has also added to the mix.¹⁸⁴ Australia provides financial development assistance through various projects to deal with poverty and to promote sustainable development, particularly in our immediate region (two thirds of the poorest people in the world live in the Asia Pacific, where the ILO has estimated that there may be around 1.3 million victims at any one time).¹⁸⁵ Countries known to be key sources of human trafficking (including Cambodia, south-west China, Lao PDR, Burma, Thailand and Vietnam) are a large focus of Australian aid efforts and it has been said that many of those countries are dependent on overseas aid to resource their anti-trafficking efforts.¹⁸⁶ As noted above, AusAID is administering around \$4.3 billion in official development assistance during 2010-2011, focussing on the Asia Pacific region.

In terms of building regional capacity to fight human trafficking and to raise public awareness of laws and regulations aimed at preventing the practice, Australia supports a number of legal, administrative, policy and advocacy measures throughout our immediate region. AusAID funds a number of projects on these aspects such as:

- the Asia Regional Trafficking in Persons Project (ARTIPP). This 5 year, \$21m project, which began in 2006, focuses on promoting a more coordinated

¹⁸³ AIC Monitoring Report No 6, p 15.

¹⁸⁴ *IDC Inaugural Report*, p 39; *Second IDC Report*, p 44.

¹⁸⁵ Hon Brendan O'Connor MP, [*The Government's Response to Trafficking in Persons*](#), pp 6-7; *IDC Inaugural Report*, p 40. Such assistance is also part of Australia's commitment to implementing the Millennium Development Goals (agreed targets set by nations to reduce poverty and achieve other development objectives by 2015. There are 8 goals: *IDC Inaugural Report*, p 39; *Second IDC Report*, p 44.

¹⁸⁶ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 87, citing ARTIPP, 'Project design document', 2005, Bangkok (esp. p 11).

approach to criminal justice responses to trafficking throughout the SE Asian region and works closely with ASEAN countries. It seeks to strengthen law enforcement responses and to improve policy, legal, research and outreach capabilities.¹⁸⁷ Up to June 2010, ARTIPP had, among other things, provided training and capacity building to over 4,500 law enforcement officials prosecutors and judges throughout the region; developed standard operation procedures for police in all ASEAN countries and assisted in cross-border cooperation on trafficking cases;¹⁸⁸

- the Tripartite Action to Protect Migrants in the Greater Mekong Sub-region from Labour Exploitation is a 5 year, \$10.5m project commencing in 2010 to be implemented by the ILO. The aim is to reduce the exploitation of vulnerable migrant workers and their families in the Sub-region through strengthening recruitment and labour protection measures, promoting legal migration, and raising community awareness of exploitative practices. The ILO wishes to help at least 20,000 migrant workers to avoid or get out of exploitative conditions.¹⁸⁹

7.4 PREVENTING TRAFFICKING AT ITS SOURCE

The Commonwealth DIAC has Senior Migration Officers (Integrity) (Trafficking) in Bangkok, Guangzhou and Manila who attempt to prevent trafficking at its source. This is done in a number of ways including close scrutiny of visa applications. Officers are trained to identify trafficking indicators and trends in processing of visas. Officers have also engaged in discussions with relevant agencies in the relevant source countries about general trafficking issues and law enforcement strategies. It has been observed that these officers, in conjunction with the AFP, have played a key role in identifying trafficking links to Australia, especially from Bangkok and, in 2010, the work has led to convictions and imprisonment.¹⁹⁰

During 2007-2008, immigration compliance officers (now called 'integrity officers') were sent to 23 Australian missions to collect immigration intelligence,

¹⁸⁷ *IDC Inaugural Report*, pp 40-41.

¹⁸⁸ *Second IDC Report*, p 45.

¹⁸⁹ *Second IDC Report*, p 45. AusAID is also involved in or has developed: Project Childhood to help combat child sex tourism in the Mekong Sub-region; MTV EXIT Campaign to support awareness raising media and other activities aimed at young people. It also supports NGO projects: see *Second IDC Report*, pp 45-46.

¹⁹⁰ *IDC Inaugural Report*, p 43; *Second IDC Report*, p 46.

investigate caseload fraud and other malpractices, and to combat human trafficking and smuggling. In addition, the AFP has a large international network of officers posted in overseas missions providing a means by which Australian and overseas law enforcement agencies can share general intelligence information and progress investigations. It also has Memoranda of Understanding with foreign counterparts including in Malaysia, Thailand and Singapore and a cooperation agreement with Europol.¹⁹¹

7.5 CAPACITY BUILDING AND TECHNICAL ASSISTANCE

The DIAC provides technical assistance to a number of countries to help fight human trafficking and people smuggling. In terms of the Middle East, Asia and the Pacific, the DIAC has (among other things) implemented document examination equipment and provided training to immigration officers at airports and other borders which helps such officers more accurately identify fraudulent travel documentation. It has also been involved in boosting agencies' capacity to capture data and recognise trends in irregular migration; and has provided immigration investigations training.¹⁹²

The AFP also conducts training courses for its overseas counterparts.¹⁹³ In March 2010, the AFP hosted a visit of a delegation from the Republic of Korea, with the intention of strengthening relationships and promoting cooperation between Australia and the Republic of Korea in investigating cases of suspected human trafficking. This is quite important given the apparent increase in the reports of suspected trafficking of sex workers from the Republic of Korea.¹⁹⁴

¹⁹¹ *IDC Inaugural Report*, pp 2, 17. See also, *Second IDC Report*, p 46.

¹⁹² *Second IDC Report*, p 47.

¹⁹³ *IDC Inaugural Report*, p 44.

¹⁹⁴ *Second IDC Report*, p 26. This was followed up in May 2010 with meetings with and briefings to Republic of Korea law enforcement agencies regarding AFP investigations regarding suspected trafficking of sex workers from the Republic of Korea. The *Second IDC Report* (p 27) cites a TSETT national investigation into a Republic of Korea human trafficking syndicate allegedly operating in Victoria, NSW and Queensland which ended in the arrest of a man from the Republic of Korea who was subsequently sentenced to 2 years and 7 months imprisonment for immigration and passport offences. For various other assistance, training and capacity building measures engaged in by the AFP, see the *Second IDC Report*, pp 47-48.

The AGD has also undertaken a number of legal assistance projects on human trafficking in various countries, particularly to improve legislative responses in our region.¹⁹⁵

8 SUPPORT AND PROTECTION FOR VICTIMS

The *IDC Inaugural Report* (p 27) notes that victims of trafficking offences and other potential witnesses for the prosecution may not be comfortable about giving evidence against offenders if they might face retribution when they return to their home countries or they fear immediate reprisals against their families there.

Other challenges identified in the *IDC Inaugural Report* (p 20) to gaining victims' cooperation as witnesses include victims' fear that the authorities will see them as criminals and deport them; their limited grasp of English which calls for the involvement of interpreters; and difficulties in locating evidence that will corroborate victims' accounts. It has also been noted that, at the trial, victims giving evidence can become traumatised when challenged by defence lawyers about having given an earlier inconsistent statement, or for being involved in visa fraud or by suggesting that they have been induced to testify through incentives (e.g. access to support services) (p 25). Recently, the Commonwealth ODPP has offered training to help prosecutors deal with trafficking victims and developed a witness assistance service to provide information to victims and other witnesses about court processes etc (pp 25-26). Despite these issues, the *Second IDC Report* (p 25) notes that 81% of persons identified as trafficking victims helped with an investigation and/or prosecution.¹⁹⁶

8.1 THE COMMONWEALTH GOVERNMENT'S VISA FRAMEWORK

The Commonwealth Government's People Trafficking Visa Framework is underpinned by a Support for Victims of People Trafficking Program, both forming part of the Anti-People Trafficking Strategy. The Visa Framework enables suspected victims to lawfully remain in Australia to assist with an investigation or

¹⁹⁵ *Second IDC Report*, pp 48-49.

¹⁹⁶ In late 2010, the AGD released '[The Criminal Justice Response to Slavery and People Trafficking: Reparation; and Vulnerable Witness Protections](#)' *Discussion Paper*, inviting public comment on 'available criminal sanctions for slavery and people trafficking offences. Comment is also invited on matters with relevance for people trafficking prosecutions including protections available for vulnerable witnesses, the use of victim impact statements, and the availability of reparation orders in criminal proceedings': see [AGD website](#). Submissions closed in February 2011.

prosecution and also applies to victims who have assisted in such investigations and prosecutions.¹⁹⁷

The Visa Framework is governed by the [Migration Act 1956 \(Cth\)](#) and the [Migration Regulations 1994 \(Cth\)](#). As noted earlier, the ANAO's Report, reviewing the Commonwealth Government's Anti-People Trafficking Strategy, found some room for improving certain aspects of the Visa Framework. Accordingly, after consultation with a range of stakeholders, amendments were made to the Visa Framework, aimed at simplifying it and providing more support for victims. The changes came into effect on 1 July 2009.¹⁹⁸

It is no longer the case – since July 2009 – that victims must hold a visa under the Visa Framework to be able to access the Support for Victims of People Trafficking Program (Support Program). Thus, if a victim has a valid visa when found by authorities, he or she can stay on that visa while considering whether or not he or she wants to assist in the investigation.¹⁹⁹ Victims are now only granted visas under the Visa Framework if they have entered without a valid visa or otherwise unlawfully.

If a victim is in Australia unlawfully, he or she can be given a Bridging Visa F which is available to victims and to immediate family members, allowing the holder to stay in Australia for 45 days or until a date the Minister specifies (visas that were issued before 1 July 2009 allowed for 30 days). It seems that the period of this visa enables law enforcement agencies to decide if the victim will be able to benefit the investigation or prosecution and gives the victim the chance to decide if they wish to assist. Victims are provided with an initial 45 days support under the Assessment Stream of the Support Program regardless of willingness to assist police. Further, as seen below, victims may be able to obtain assistance if they are willing but unable to assist because of trauma or they need time to reflect and recover. Such assistance is provided for the initial 45 days under the Assessment Stream and a further 45 days under an Extended Intensive Support Stream. If the suspected victim does not hold a valid visa, a second Bridging Visa F for up to 45 days can be given on a case-by-case basis.²⁰⁰

¹⁹⁷ IDC Inaugural Report, p 27.

¹⁹⁸ Hon Brendan O'Connor MP, Minister for Home Affairs, Hon Tanya Plibersek MP, Minister for the Status of Women & Hon Chris Evans MP, Minister for Immigration and Citizenship, 'Improved Support for Trafficking Victims', *Joint Media Release*, 17 June 2009; *Second IDC Report*, p 6.

¹⁹⁹ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 94.

²⁰⁰ *Second IDC Report*, p 7.

The Bridging Visa F also provides access to intensive support mechanisms through the Support Program, which is discussed further below. Holders can access a clothing, accommodation and food allowance, an emergency allowance, medical treatment and counselling, English training and appointments with legal practitioners. The visa holder is not allowed to work and he or she must satisfy reporting obligations.²⁰¹

If it is determined that the Bridging Visa F holder can assist with the criminal justice process, a Criminal Justice Stay Visa (CJSV) can – at the discretion of the Minister – be issued which allows the person to remain in Australia during the criminal proceedings or investigation and to access the Support Program (enabling access to a case manager, accommodation assistance, medical and counselling care, English language programs and benefits such as a Health Care Card, if eligible). Holders of the CJSV have limited work rights.²⁰²

Once the investigation or criminal proceedings have been completed, the CJSV is cancelled. However, the victim might be able to obtain a Witness Protection Visa. Prior to July 2009, the first step was to apply for a Trafficking Witness Protection (Temporary) Visa which could be granted if the victim had ‘significantly contributed to’ and cooperated in the relevant criminal justice process and would face danger if he or she returned to his or her home country. This temporary visa required regular renewal and, after 3 years, the holder applied for a Trafficking Witness Protection (Permanent) Visa. Between 1 January 2004 and 30 June 2009 only 2 victims and 3 of their dependants were granted Permanent Visas. Since the new arrangements came into effect, 21 Permanent Visas have been issued.²⁰³

Effective from 1 July 2009, the temporary visa was removed from the Visa Framework and victims in need of witness protection now apply directly for a Witness Protection (Permanent) Visa to remain permanently in Australia. For this visa to be issued, the Commonwealth Attorney-General must be able to certify that the victim has made a ‘contribution’ (rather than a ‘significant contribution’, as previously required) to an investigation (where the CDPP has decided not to proceed) or prosecution (whether or not there was a conviction) and the DIAC Minister considers that the victim may be in danger if he or she were to return to his or her own country. Further, the victim must not be undergoing prosecution

²⁰¹ A Schloenhardt, Human Trafficking Working Group, ‘[Visas for Victims of Trafficking, Australia](#)’, Victim Support webpage, current as of 26 January 2010, p 3.

²⁰² A Schloenhardt, ‘Visas for Victims of Trafficking, Australia’, p 3; Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 95.

²⁰³ A Schloenhardt, ‘Visas for Victims of Trafficking, Australia’, p 4; *Second IDC Report*, pp 9, 10.

relating to human trafficking offences.²⁰⁴ The visa can now also be applied for earlier in the criminal justice process, in response to an independent trigger, rather than having to wait until the end of the prosecution and it can also be granted to immediate family members, even those overseas.²⁰⁵ The Witness Protection Visa provides access to income support, Medicare and work rights.

Between 1 July 2009 (when the framework reforms began) and 30 June 2010, 15 suspected trafficking victims were granted Bridging F visas; 11 were granted CJSVs; 15 victims and 6 of their dependants were granted Witness Protection (Permanent) Visas.²⁰⁶

The Visa Framework has been perceived by some as being linked to a victim's participation in the criminal justice system.²⁰⁷ Dr Schloenhardt has observed that many commentators²⁰⁸ have criticised this approach as neglecting the needs of trafficked persons who are, in essence, victims of crime. It has been argued that the ability of a victim – facing possible reprisals in their home country – to remain in Australia being contingent upon the evidence the victim can provide might add to the victim's trauma. Ultimately, this stress might impact on his or her ability to help police and prosecutors.²⁰⁹ On this basis it has been contended that the right to protection for victims should be inherent rather than tied to their ability to help in a prosecution. Italy has been cited as an example of a country where visas for trafficking victims have not been linked to the criminal justice process and, it is contended, this has led to Italy having one of the world's highest success rates for

²⁰⁴ 'Improved Support for Trafficking Victims', *Joint Media Release*; *Second IDC Report*, p 9.

²⁰⁵ *IDC Inaugural Report*, pp 27-28; *Second IDC Report*, p 8.

²⁰⁶ *Second IDC Report*, p 9.

²⁰⁷ A Schloenhardt, [Visas for Victims of Trafficking, Australia, Commentary](#), Victims Support webpage, current as of 11 November 2009, pp 3 & 4.

²⁰⁸ A Schloenhardt, 'Visas for Victims of Trafficking, Australia, Commentary', p 7 & 9, citing a number of articles, including the Human Rights and Equal Opportunity Commission (HREOC) (now the Australian Human Rights Commission (AHRC)), 'For trafficked people, Government changes put human rights first', HREOC Media Release, 17 June 2009; E Broderick, 'Trafficking: The Need for a Human Rights Based Approach', speech to the Inaugural Anti Trafficking Forum, 2008, p 7; Amnesty International, 'New permanent visas still do not fully protect trafficking victims', *Amnesty News*, 19 June 2009; B McSherry & S Kneebone, 'Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights', *International Journal of Human Rights*, 12(1), 2008, p 81.

²⁰⁹ A Schloenhardt, 'Visas for Victims of Trafficking, Australia, Commentary', pp 10-11, citing other research.

detecting and prosecuting traffickers.²¹⁰ Thus, it may be that a visa framework that supports victims could also assist the prosecution of traffickers.

Some commentators have argued that the July 2009 reforms have not gone far enough to address this issue and consider that support and assistance to victims have not been completely separated from cooperation with law enforcement. In doing so, reference has been made to the *UN High Commissioner for Human Rights Guidelines for Trafficked Persons* which state that access to adequate physical and psychological care should not be conditional on the capacity or willingness of victims to cooperate in legal proceedings.²¹¹

Although the eligibility requirements for Witness Protection Visas have been relaxed, not all victims will necessarily meet them. In addition, some victims may not be willing to assist in investigations or prosecutions due to trauma and for other reasons mentioned earlier. In such a case, the victim can only stay in Australia if he or she qualifies for a Protection (Class XA) Visa. This is available if the victim can prove that he or she satisfies Australia's obligations to protect a person under the *Convention Relating to the Status of Refugees* and *Protocol* (the victim has a well founded fear of persecution in his or her home country for reasons of race, religion, nationality, membership of a particular social group or political opinion).²¹² Dr Schloenhardt notes that only a small number of victims have received those Protection Visas. There has been difficulty, illustrated by various Refugee Review Tribunal decisions, in proving membership of a particular social group to which Australia has protection obligations.²¹³

Some commentators have noted that Art 18 of the *UN High Commissioner for Human Rights Guidelines for Trafficked Persons* indicates that trafficking victims should be granted refugee status if their home countries will not or cannot protect them.²¹⁴ Accordingly, Australia's Visa Framework – premised on the capacity and

²¹⁰ A Schloenhardt, 'Visas for Victims of Trafficking, Australia, Commentary', pp 8 & 9, citing a number of articles and a submission by the HREOC to a Senate Committee Inquiry into the Criminal Code Amendment, 2004.

²¹¹ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 96, referring to J Burn, 'Prioritising protection – a new visa framework for trafficked people', *Bulletin*, vol 41, 2009, pp 3-10.

²¹² A Schloenhardt, 'Visas for Victims of Trafficking, Australia', pp 5-6.

²¹³ A Schloenhardt, 'Visas for Victims of Trafficking, Australia', p 6.

²¹⁴ A Schloenhardt, 'Visas for Victims of Trafficking, Australia, Commentary', p 6, citing other commentary including B McSherry & S Kneebone, p 80. He also notes that Australia has, in the past, recognised women from a particular society may be part of a particular social group and thereby entitled to protection under the *Refugee Convention*.

willingness of a person to cooperate in the criminal justice system – has been criticised by some as being in conflict with human rights principles and as lagging behind international best practice.²¹⁵

Despite the abovenoted criticisms, many aspects of the 2009 reforms have been praised. Some commentators regard the changes as solving some previous access problems, simplifying the Visa process, and as de-linking victim support from visa status because the holding of any valid Australian visa allows a victim to access the Support Program.²¹⁶ The amendments were commended by the Australian Human Rights Commission as ‘*humanitarian and compassionate improvements which will help people recover from appalling violations of their basic human rights*’. In particular, the AHRC saw the new permanent Witness Protection Visa as offering greater security by giving victims a permanent place in Australia.²¹⁷

8.2 SUPPORT FOR VICTIMS OF PEOPLE TRAFFICKING PROGRAM

The Support for Victims of People Trafficking Program (Support Program) was established in 2004. It is administered by the Commonwealth Government (Office for Women) and delivered by contract case managers from the Australian Red Cross. The Support Program provides financial assistance to trafficking victims at a level similar to income support programs. The *Second IDC Report* (p 11) notes that it is ‘*demand driven, with the aim of supporting clients to meet their basic needs for safety, food, accommodation, mental and physical health and wellbeing and promoting independence*’. In July 2009, the Program was extended to identified victims regardless of their willingness to assist with investigations. The separation of victim support from visa status in July 2009 has been seen as a major reform by many groups.²¹⁸

There are four streams of assistance. The first stream is the Assessment Stream, access to which no longer requires that the person hold a visa under the Visa

²¹⁵ See A Schloenhardt, ‘Visas for Victims of Trafficking, Australia, Commentary’, pp 14-15, citing a number of commentators and their research. Conversely, there are a number of reports indicating that many victims just want to go home as soon as they are able.

²¹⁶ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 96.

²¹⁷ A Schloenhardt, ‘Visas for Victims of Trafficking, Australia, Commentary’, p 16, citing various sources and the AHRC, ‘For trafficked people, Government changes put human rights first’, *HREOC Media Release*, 17 June 2009. However, Amnesty International does not believe the new permanent visas fully protect victims: ‘New permanent visas still do not fully protect trafficking victims’, *Amnesty International News*, 19 June 2009.

²¹⁸ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 96.

Framework Program so victims on current visas have time to consider their options over the 45 day period of assistance.²¹⁹ A person without a valid visa may be granted a Bridging F Visa for 45 days and, as noted earlier, victims are provided with various types of assistance according to need such as secure accommodation, a living and food allowance, funds for essential items, health care, counselling, interpreters and legal services. Assistance is tailored to the individual and gives additional help to those with mental conditions such as trauma.

The second stream is the Extended Assessment Stream, providing a further 45 days of assistance to victims who wish to assist police but are unable to due to their circumstances (e.g. trauma).²²⁰ Previously, such persons were removed from Australia if they were ineligible for another visa (e.g. a Protection Visa).²²¹

The Justice Support Stream provides less intensive support during the time when the criminal justice process is underway. Clients can seek out rental assistance; a Health Care Card, if needed and if they are eligible for such; assistance with accommodation; help to buy essential household items; access to Medicare and the Pharmaceutical Benefits Scheme; access to legal services and interpreters and help to seek employment.²²²

The final stream, the Temporary Trial Support Stream, is for those victims who return to Australia to give evidence in the prosecution proceedings and includes short term accommodation provision and a weekly living and food allowance.

The Support Program is also available to persons who may no longer be eligible to stay on one of the visas within the above framework, offering advice and assistance about their ability to obtain another type of visa. Not all victims may want to remain in Australia nor assist in investigations. Thus, victims returning to their home country are able to access limited reintegration assistance. Since July 2009, the Support Program has incorporated a 20 day transition period for those persons.²²³

Since its introduction in January 2004 up to 30 June 2010, 155 persons have received assistance through the Support Program, the majority (132) being women working in the sex industry. Twenty three (23) were victims of labour trafficking

²¹⁹ A Schloenhardt, '[Support Schemes for Victims of Trafficking in Persons: Australia](#)', Victim Support webpage, current as on 11 November 2009, p 2.

²²⁰ 'Improved Support for Trafficking Victims', *Joint Media Release*.

²²¹ Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 193.

²²² Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 193.

²²³ A Schloenhardt, 'Support Schemes for Victims of Trafficking in Persons: Australia', p 7.

outside the sex industry.²²⁴ Thai nationals have comprised the majority of clients up to April 2009, with growing numbers of Republic of Korea female clients. However, between 1 May 2009 and 30 June 2010, most new clients were from Malaysia (11) and the Republic of Korea (6), with only 1 from Thailand. There were 65 persons on the Support program during the 2009-2010 financial year.²²⁵

It appears that the only state or territory to provide assistance to victims who do not qualify for the Commonwealth Government's Program is Victoria. The program is outsourced to Project Respect, a NGO victim support body which focuses on women trafficked into the sex industry and was established with Victorian Government funding.²²⁶ Project Respect works with the Refugee and Immigration Law Review Centre, the Red Cross and other community organisations to provide services including emergency temporary accommodation, language classes and other social/educational activities.²²⁷

A number of NGOs offer assistance and services to trafficking victims outside of government programs. Dr Schloenhardt, as part of the Human Trafficking Working Group's project, has examined the services offered by eight NGOs, most of which are based in Victoria. The NGOs discussed by Dr Schloenhardt provide free services to victims and play a vital role in their rehabilitation. He notes that there is somewhat of a gap in assistance provided. While most of the NGOs considered offer assistance with matters such as immigration law and sexual assault support (which may or may not help victims, depending on their circumstances), almost none provide specialist support for victims, mainly due to lack of expertise.²²⁸

The main NGOs specifically aimed at assisting trafficking victims considered by Dr Schloenhardt are:²²⁹

²²⁴ *Second IDC Report*, p 12-13.

²²⁵ *Second IDC Report*, pp 12.

²²⁶ AIC Monitoring Report No 6, pp 30-31; A Schloenhardt, 'Support Schemes for Victims of Trafficking in Persons: Australia', p 7, citing F David, *Trafficking of Women for Sexual Purposes*, p 17.

²²⁷ A Schloenhardt, 'Support Schemes for Victims of Trafficking in Persons: Australia', p 7, citing F David, p 17.

²²⁸ A Schloenhardt, '[Support by Non-Government Organisations for Victims of Trafficking in Persons: Australia](#)', Victim Support website, current as on 12 May 2009, p 2.

²²⁹ A Schloenhardt, 'Support by Non-Government Organisations for Victims of Trafficking in Persons: Australia', pp 2-9.

- Project Respect (www.projectrespect.org.au), the most well known NGO of this type, providing a broad range of specific and general services, referrals and outreach to support women in the sex industry;
- Scarlet Alliance (www.scarletalliance.org.au), based in NSW, is an advocacy group supporting sex workers to achieve social, legal and political equality. It advises on law reform in the area of trafficking, and also provides health and safety training to sex workers;
- the Anti-Slavery Project & University of Technology (UTS) Community Law Centre (www.antislavery.org.au) operates out of the NSW UTS and its services are aimed at slavery/trafficking victims (e.g. legal support and helping victims deal with police investigations of trafficking offences, including extreme labour exploitation). It also provides assistance to other NGOs in identifying cases of trafficking and slavery;
- the Samaritan Accommodation (it has no website and falls under the Salvation Army umbrella) is a hostel in Sydney designed for slavery/trafficking adult female victims and the only service of this kind in Australia. It also provides legal and medical support and assistance with other victim issues.²³⁰

As noted earlier, one outcome of the first National Roundtable on People Trafficking was the March 2009 release of the [Guidelines for NGOs Working with Trafficked People](#), seeking to provide NGOs with the necessary tools to work effectively in supporting trafficking victims.

8.2.1 Helping Victims to Reintegrate

Assisting victims of human trafficking to successfully reintegrate into their communities involves the efforts of government, NGOs and other organisations. NGOs require enough funding to provide the necessary services and AusAID has played a vital role here. AusAID often collaborates with NGOs in Australia and the victim's home country and some programs have been delivered jointly with the IOM.²³¹

²³⁰ Other NGOs whose assistance is not specifically tailored to trafficking victims but which may be able to help are: the Refugee and Immigration Legal Centre Inc (www.rilc.org.au); Victorian Centres Against Sexual Assault (www.casa.org.au); Red Cross Australia (www.redcross.org.au); the Asylum Seeker Resource Centre (www.asrc.org.au).

²³¹ *IDC Inaugural Report*, p 41. One such project, receiving AusAID funding, is a pilot project for Thai trafficking victims identified in Australia returning to Thailand. For other NGO projects AusAID supports, see *IDC Inaugural Report*, pp 41-42.

9 STATE AND TERRITORY MEASURES

Given the international context of the human trafficking issue and constitutional limitations, most legislative measures, policies, and other anti-trafficking responses have been at the Commonwealth Government level. However, there is some involvement of state and territory law enforcement authorities and relevant agencies.

9.1 POLICING AND INVESTIGATIONS

In most instances, matters involving trafficking are referred to the AFP and dealt with as Commonwealth offences.²³² The specialist AFP anti-trafficking team, TSETT, does, however, rely on the cooperation of, and information from, state and territory police and state regulatory bodies, such as the Prostitution Licensing Authority (PLA) in Queensland. Such agencies tend to provide the initial response to a reported trafficking incident before handing it to the AFP. All Australian police services are signatories to the abovementioned Australian Policing Strategy to Combat Trafficking in Women for Sexual Servitude which sets out the roles and responsibilities of state and territory police.

The Queensland Police Service (QPS) also has various crime squads to detect trafficking cases, and the QPS works with the PLA to regulate prostitution services and to check on illegal operators to establish the existence of human trafficking cases.²³³

9.2 LEGISLATION

In 1998, the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (MCCOC) released a Report recommending that all jurisdictions enact legislation to create a 'national scheme' of laws prohibiting slavery, sexual servitude and deceptive recruiting and proposed a number of model offences.²³⁴ These proposed model offences formed the basis of the initial 1999

²³² AIC Monitoring Report No 6, pp 30-31.

²³³ Human Trafficking Working Group, [Government Agencies webpage](#). The *Second IDC Report* (p 35) notes that this strong working relationship has resulted in a joint human trafficking investigation.

²³⁴ A Schloenhardt, 'Australia, State & Territory Offences Relating to Trafficking in Persons', [Human Trafficking Working Group website - Legislation](#), 22 July 2009, p 2, referring to the MCCOC's *Report on Slavery Chapter 9: Offences against Humanity*, 1998, pp 12, 14, 15 & 17.

Commonwealth slavery offences which were later extended to embrace trafficking in persons under Divs 270-271 of the Commonwealth Criminal Code. It was envisaged that the Commonwealth would cover slavery and trafficking (given the extra-territorial nature of such offences and the existence of international conventions) while the states and territories would pass laws mirroring Div 270 relating to sexual servitude and deceptive recruiting for sexual servitude within each jurisdiction. The MCCOC noted that there were practices amounting to servitude or slave-like treatment existing within states and territories and these could be criminalised at that level.

Apart from Tasmania and Queensland, all states and territories have enacted sexual servitude and deceptive recruiting offence provisions, making one or both types of conduct an offence. The state and territory provisions reflect those in Div 270 of the Commonwealth Criminal Code, apart from the slavery offences, which were seen as within Commonwealth legislative purview.²³⁵ Despite Queensland and Tasmania not having these offence provisions, Dr Schloenhardt notes that those states do, however, have other offences that could possibly apply to human trafficking situations. Further, all jurisdictions have a range of ordinary criminal offences (e.g. rape, assault, sexual assault) which would potentially cover domestic trafficking related activity.²³⁶

While Queensland has no legislation targeted specifically at human trafficking, sexual servitude or deceptive recruitment, as Dr Schloenhardt observes, the Queensland [Criminal Code](#) does contain the following offence provisions:²³⁷

- knowingly enticing or recruiting a person under 18 or an intellectually impaired person in order to engage in carnal knowledge (s 217); and
- knowingly enticing or recruiting a person to engage in a sexual act by use of threats or intimidation, false pretence, or administering a substance with intent to stupefy or overpower a person to enable a sexual act to be engaged in with the person (s 218).

Both attract a maximum penalty of 14 years imprisonment, which Dr Schloenhardt notes is higher than the similar deceptive recruiting for sexual services under the Commonwealth Criminal Code.²³⁸

²³⁵ A Schloenhardt, 'Australia, State & Territory Offences Relating to Trafficking in Persons', pp 2-3.

²³⁶ A Schloenhardt, 'Australia, State & Territory Offences Relating to Trafficking in Persons', p 3.

²³⁷ A Schloenhardt, 'Australia, State & Territory Offences Relating to Trafficking in Persons', pp 22-23.

²³⁸ A Schloenhardt, 'Australia, State & Territory Offences Relating to Trafficking in Persons', p 21.

9.3 PROSTITUTION LAWS

Queensland and some other Australian states and territories have gradually decriminalised or legalised prostitution. Queensland has a brothel licensing scheme under the [Prostitution Act 2009 \(Qld\)](#) to increase the regulation and monitoring of the sex industry and to limit the exploitation of sex workers. Commercial sexual services can be provided as long as they operate within the legal framework. Legal sex work in Queensland comprises private sole operators working alone, provided they do not publicly solicit for prostitution purposes (which is an offence under s 73); and sex work in a licensed brothel. A brothel licence is obtained from the Prostitution Licensing Authority (PLA) pursuant to Part 3 of the Act. Licences are granted only to persons who meet the legislative criteria and are considered by the PLA as 'suitable' (having regard to a number of matters such as the applicant's reputation and honesty; past convictions; financial viability; health and safety arrangements for workers).²³⁹ Any other type of sex work is illegal (e.g. unlicensed brothels, street workers, two sex workers sharing one premises, and out-calls provided by legal brothels).

Persons 18 years and over can lawfully work in the sex industry, including migrants who hold a valid visa. While, according to the Scarlet Alliance, there are many sex workers with migrant backgrounds (although this also includes women who are second generation Australians or permanent residents), sex worker association representatives have pointed out that many of these sex workers with migrant backgrounds are not trafficking victims.²⁴⁰

As was discussed earlier in this Brief, the diverse opinions about the sex industry in general may impact upon attempts to quantify the numbers of trafficked sex workers. There is one view (held by some activists, some feminists and some NGOs, sometimes referred to as a 'neo-abolitionist' viewpoint) which sees all migrant sex workers as victims of exploitation and trafficking, whereas the counterview (held by some sex industry advocates and support groups) is that there are many migrant sex workers who choose to work in the sex industry and do not identify themselves as having been exploited, trafficked or in need of rescue. Such polarised perspectives have implications for conceptualising the nature and extent

²³⁹ Ineligible applicants include minors, insolvent persons, liquor licence holders, persons convicted of specified disqualifying offences, persons who have had a prostitution licence cancelled in the past three years (s 8).

²⁴⁰ Commonwealth Department of Families, Housing, Community Services & Indigenous Affairs, '[Trafficking of women for sexual purposes](#)', *Research and Public Policy Series - No. 95*, last modified 8 April 2009.

of trafficking in the sex industry and, consequently, the measures adopted to address the issue.²⁴¹

Although there have been Commonwealth Government inquiries into sex worker trafficking, until the abovementioned Victorian Parliamentary Committee's inquiry, similar inquiries at the state level were limited. The *Inquiry into People Trafficking for Sex Work* Report made 30 recommendations and noted that although investigation and prosecution of such offences is primarily the responsibility of Commonwealth authorities, the states can have a part in combating sex trafficking through regulatory oversight of brothels and sex work.²⁴² The Victorian Government is yet to respond to the Report.²⁴³

Among the Committee's recommendations were that a specialist unit be established in the Victorian Department of Justice to, among other things, implement sex trafficking policy, liaise with other relevant bodies, assist victims, and regulate and monitor all aspects of the sex industry, including sex trafficking. It also recommended further human trafficking offences be introduced and that obtaining sexual services from trafficked women be criminalised. It also proposed, among other things, new police responsibilities; greater entry powers to brothels; broad social education campaigns to address demand for trafficked women and to raise awareness; more resources for NGOs which help victims; appropriate training for all those who may encounter trafficked women (e.g. health workers, immigration officials, media, local council workers, judiciary); more support for victims; criminal compensation for victims; and better research into sex trafficking issues.

To date, there appears to have been few anti-trafficking responses to the demand side of the human trafficking issue. While the Commonwealth Criminal Code now contains child sex tourism offences, there seems to be little focus in legislation and law enforcement on Australians who seek the services of women whom they know have been, or who are very likely to have, been trafficked. The Victorian Parliamentary Committee considered that this lack of attention to the 'demand side' is partly due to limited research into the matter. It was noted that various European countries had moved to either:

²⁴¹ Also discussed in Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, pp 29-31, 121-128.

²⁴² Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 3.

²⁴³ Response from the Government has been delayed due to the November 2010 Victorian State election and subsequent change of government. To track the progress of such response, please go to <http://www.parliament.vic.gov.au/dcpc>.

- completely criminalise the purchasing of commercial sex to remove the demand for sex workers (e.g. Sweden where its effectiveness has been much debated);²⁴⁴ or
- make it an offence to purchase sexual services where the client *knows* the sex worker has been trafficked or is *reckless about whether* the sex worker has been trafficked (e.g. Finland).²⁴⁵

The Committee considered that it was appropriate that the act of intentionally, knowingly or recklessly obtaining services from a trafficked sex worker be an offence in Victoria with severe penalties attached.²⁴⁶ It was also noted that such a ‘punitive’ approach to tackling demand needed to be accompanied by education programs to raise awareness that the worker may be a trafficking victim.²⁴⁷

Another important step is, of course, making the general public aware of human trafficking in all its forms and that it may exist right next door.

²⁴⁴ Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 160.

²⁴⁵ Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 163.

²⁴⁶ Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 164.

²⁴⁷ Drug and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work*, p 166 & Ch 14.

APPENDIX A

List of Acronyms

ACC:	Australian Crime Commission
AFP:	Australian Federal Police
AGD:	Commonwealth Attorney-General's Department
AHRC:	Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission (HREOC))
AIC:	Australian Institute of Criminology
ANAO:	Australian National Audit Office
ASEAN:	Association of Southeast Asian Nations,
AusAID:	Australian Agency for International Development (manages the Commonwealth Government's international aid program)
Commonwealth DPP:	Commonwealth Director of Public Prosecutions
CJSV:	Criminal Justice Stay Visa (allows a person to remain in Australia during the criminal proceedings or investigation and to access the Victim Support Program)
DIAC:	Commonwealth Department of Immigration and Citizenship
IDC:	Commonwealth Government's Interdepartmental Committee
ILO:	International Labour Organisation
IOM:	International Organisation on Migration
MCCOC:	Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General
NGO:	Non-Government Organisation
PLA:	Prostitution Licensing Authority (Queensland)
TSETT:	Australian Federal Police Transnational Sexual Exploitation and Trafficking Team

UN:	United Nations
UNHCR:	United Nations High Commissioner for Refugees
UNODC:	United Nations Office on Drugs and Crime
UN.GIFT:	United Nations Global Initiative to Fight Human Trafficking (under auspices of UNODC)
UNTOC	United Nations Convention against Transnational Organised Crime

APPENDIX B

Key Sources & Websites

Australian Institute of Criminology (AIC), [‘Labour Trafficking: key concepts and issues’](#), *Transnational Crime Brief*, No 03, March 2009

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Schloenhardt, A, Human Trafficking Working Group, '[Trafficking in Persons in Australia: Myths and Realities](#)', Paper presented at University of Queensland, Brisbane, 22 September 2008

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United Nations Office on Drugs and Crime (UNODC), '[Global Report on Trafficking in Persons](#)', February 2009

UNODC, '[Model Law against Trafficking in Persons](#)', 2009

United States Department of State, '[2010 Trafficking in Persons Report](#)', 10th ed., June 2010, '[Country Narratives - Australia](#)'

Victorian Parliament, Drug and Crime Prevention Committee, '[Inquiry into People Trafficking for Sex Work](#)', Final Report, June 2010

Main Conventions and Protocols

[*Convention Against Transnational Organised Crime*](#)

[*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*](#)

Websites

[Human Trafficking Working Group](#) (including [Child Trafficking in Australia](#); [Labour Trafficking in Australia](#); [Government Agencies webpage](#))

[Anti-Slavery Project & University of Technology \(UTS\) Community Law Centre](#) (www.antislavery.org.au)

[Project Respect](#) (www.projectrespect.org.au)

[Scarlet Alliance](#) (www.scarletalliance.org.au)

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