



Australian Government

TRAFFICKING IN PERSONS

The Australian Government Response

January 2004 – April 2009

INAUGURAL REPORT OF
THE ANTI-PEOPLE TRAFFICKING INTERDEPARTMENTAL COMMITTEE

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Foreword

We are pleased to present this inaugural report of the Anti-People Trafficking Interdepartmental Committee (IDC).

People trafficking is a complex, transnational crime which may have a traumatic and lasting effect on victims. Fortunately, the number of people trafficked into Australia is low compared to many other countries in the world. Nonetheless, the Australian Government is committed to combating all forms of people trafficking, including trafficking for sexual servitude and labour exploitation.

Between January 2004 and April 2009, the Australian Federal Police undertook over 270 investigations and assessments of allegations of trafficking-related offences, leading to 34 people being charged and seven convictions. There are five trafficking related matters before the Australian courts.

Australia provides a comprehensive range of support services for suspected trafficking victims who are able and willing to assist in a criminal investigation or prosecution. One hundred and thirty-one people have received assistance through the Support for Victims of People Trafficking Program since its inception in January 2004.

Most victims of trafficking identified in Australia have been women working in the sex industry.

Australia's anti-people trafficking strategy, which was established in 2003, is founded on three equally important needs: to do as much as we can to prevent people trafficking; to prosecute offenders; and to provide support to victims of trafficking, including by protecting their human rights.

Over five years has passed since Australia implemented its anti-people trafficking strategy. The strategy now incorporates the work of around ten Commonwealth Government agencies, including the Australian Federal Police, the Office for Women, the Department of Immigration and Citizenship, and the Department of Foreign Affairs and Trade, led by the Attorney-General's Department as Chair of the Anti-People Trafficking IDC.

The Government has implemented a range of initiatives to ensure Australia's anti-trafficking strategy remains responsive and relevant.

Minister Debus established a National Roundtable on People Trafficking in June 2008 which opened up the lines of communication between all of those working, inside and outside of government, with victims of trafficking. The Roundtable is scheduled to meet for a second time on 17 June 2009.

In March 2009, Minister Debus, with the Australian Human Rights Commission and the Anti-Slavery Project, a non-governmental organisation (NGO), launched the national *Guidelines for NGOs working with trafficked people*. The Guidelines were the result of collaboration between Government agencies and NGOs, led by the Australian Human Rights Commission, and will be an invaluable resource to NGOs assisting victims of trafficking.

In March 2009, Minister Plibersek contracted the Australian Red Cross to case manage the Support for Victims of People Trafficking Program. The Red Cross has a strong background in supporting vulnerable groups in Australian society, including extensive experience in dealing with traumatised victims. The Government expects the Red Cross will provide comprehensive and humanitarian support to trafficked people through this new contract.

As noted in the Australian National Audit Office's *Performance Audit Report on the Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, monitoring and measuring progress of the anti-people trafficking strategy is vital to ensure Australia's success in combating this crime. This first report of the Anti-People Trafficking IDC captures the period from the implementation of the strategy in January 2004 up to April 2009. In the future, the IDC will report on outcomes annually.

The Government is also considering changes to enhance support for victims of trafficking. These changes will be announced soon.

We look forward to presenting the next report of the Anti-People Trafficking IDC.

The Hon Bob Debus MP

Minister for Home Affairs

Senator the Hon Chris Evans

Minister for Immigration and Citizenship

The Hon Stephen Smith MP

Minister for Foreign Affairs

The Hon Tanya Plibersek MP

Minister for the Status of Women

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Abbreviations

Asia Regional Trafficking in Persons Project	ARTIP Project
Association of Southeast Asian Nations	ASEAN
Attorney-General's Department	AGD
Australian Agency for International Development	AusAID
Australian Crime Commission	ACC
Australian Federal Police	AFP
Australian Institute of Criminology	AIC
Commonwealth Director of Public Prosecutions	CDPP
Department of Education, Employment and Workplace Relations	DEEWR
Department of Families, Housing, Community Services and Indigenous Affairs	FaHCSIA
Department of Foreign Affairs and Trade	DFAT
Department of Immigration and Citizenship	DIAC
Department of the Prime Minister and Cabinet	PM&C
Interdepartmental Committee	IDC
International Labour Organisation	ILO
International Organization for Migration	IOM
Memorandum of Understanding	MOU
Non-governmental organisation	NGO
Office for Women	OfW
Office of the High Commissioner for Human Rights	OHCHR
Senior Migration Officer (Compliance) (Trafficking)	SMOCT
Thai Department of Social Development and Welfare	DSDW
United Nations	UN
United Nations Children's Fund	UNICEF
United Nations Convention against Transnational Organized Crime	UNTOC
United Nations High Commissioner for Refugees	UNHCR
United Nations Office on Drugs and Crime	UNODC



Executive Summary

Trafficking in persons is a complex form of transnational crime.

While there is little reliable data about the nature and extent of people trafficking, there is general consensus that trafficking in persons affects almost every country in the world.

Men, women and children are trafficked for a range of exploitative purposes including sexual servitude, forced labour and the harvesting of organs.

Opportunities to traffic people into Australia are low because of our strong migration controls and geographic isolation. However, Australia is a destination country for victims of trafficking, mainly from Asia.

Australia implemented its strategy to eradicate trafficking in persons in late 2003: the *National Action Plan to Eradicate Trafficking in Persons*. It focuses on prevention, detection and investigation, criminal prosecution, and victim support and rehabilitation.

Australia ratified the *United Nations Convention against Transnational Organized Crime* in 2004 and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* in 2005.

Australia's whole-of-government response to trafficking in persons has provided support to victims of trafficking for sexual exploitation and other forms of exploitative labour, and has seen the successful prosecution and conviction of a number of people traffickers.

To date, people trafficking investigations here, have involved transnational crimes. This has necessitated close and ongoing cooperation and collaboration between Australian agencies and their counterparts in other countries.

Between January 2004 and April 2009, the AFP undertook over 270 investigations and assessments of allegations of trafficking-related offences, leading to 34 people being charged and seven convictions. There are five trafficking related matters before the Australian courts.

Most victims of trafficking identified in Australia have been women working in the sex industry.

Australia provides a comprehensive range of support services for suspected trafficking victims who are able and willing to assist in a criminal investigation or prosecution. One hundred and thirty-one people have received assistance through the Support for Victims of People Trafficking Program since its inception in January 2004.

Australia has also implemented a visa framework which supports those in genuine need of protection while targeting the traffickers. Where a suspected victim chooses not to assist law enforcement authorities or the person's evidence is insufficient to assist a trafficking investigation or prosecution, the person is assisted in returning to their home country.

Cooperation between governments, between government agencies, and between governments and civil society is key to preventing trafficking in persons, prosecuting the perpetrators and protecting and supporting victims.

The Australian Government is committed to building strong partnerships with the non-profit sector, particularly, in this context, with anti-trafficking non-governmental organisations (NGOs). The National Roundtable on People Trafficking was established in June 2008 as a consultative mechanism between the Government and NGOs on trafficking issues, especially emerging issues.

Australia has taken an active role in international efforts to combat people trafficking. Australia, with Indonesia, co-founded, and co-chairs the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process).

Addressing factors that make people vulnerable to trafficking is an important part of Australia's national and international strategies to prevent trafficking.

In 2008-09, Australia will provide A\$3.7 billion worth of official development assistance through AusAID, to help reduce poverty and promote sustainable development. The aid program also addresses violence against women and children, and includes a number of activities to combat trafficking in persons.

During 2007-08 immigration compliance officers were deployed at 23 Australian missions to collect immigration intelligence, investigate caseload fraud and other immigration malpractice, and combat human trafficking and people smuggling. Under the Government's anti-people trafficking strategy, the Department of Immigration and Citizenship (DIAC) has been funded for three specialist compliance positions to focus on people trafficking preventative work. The three Senior Migration Officer Compliance (Trafficking) (SMOCT) positions are located in Bangkok, Manila and Beijing with each playing a regional role. The preventative work of the specialist positions aims to prevent trafficking at its source by vetting visa caseloads for fraud that may lead to trafficking and analyse trends in visa processing. They also work closely with police and with local government and NGOs to identify ways to prevent trafficking.

The Australian Federal Police (AFP) is also involved in a wide range of cooperative activities with other countries that aim to reduce opportunities for people traffickers to operate in the region.

Obtaining robust statistical information on trafficked persons and related matters remains a major challenge.

The Australian Government has made a strong commitment to improve the evidence base about trafficking in Australia, in our region, and globally.

Australia cooperates fully with the efforts of organisations such as the United Nations Office of Drugs and Crime to improve international data on trafficking in persons.

The Government has also funded the Australian Institute of Criminology (AIC) to analyse trends in trafficking in persons in Australia and in our region.

Australia is committed to ensuring that its anti-trafficking strategy remains relevant and responsive to emerging trends and issues.

The Government is considering enhancements to victim support and to the trafficking visa framework.

Over the next year, there will be an increased focus on issues related to trafficking for labour exploitation outside the commercial sex industry, including enhanced engagement with peak employer and industry organisations and unions.

The Government is also working with legal education and training bodies, such as the National Judicial College, for assistance in developing resources to assist judges, prosecutors and jurors involved in trafficking cases.

This first report of the Anti-People Trafficking Interdepartmental Committee (IDC) covers the period from the implementation of the Government's anti-people trafficking strategy in January 2004 until 30 April 2009. Subsequent reports will be issued on an annual basis.

Trafficking in Persons

People trafficking is a complex crime and a major violation of human rights.

People trafficking is a very different crime to people smuggling. People trafficking is the physical movement of people across borders through deceptive means, coercion or force. Importantly, people traffickers are motivated by the prospect of exploiting their victims once they reach the destination country. People smuggling, on the other hand, is the organised, illegal movement of people across borders, usually on a payment for service basis.

Due to its clandestine nature, there is little reliable data about the nature and extent of people trafficking at a global, regional or domestic level. Estimates of the annual number of people trafficked across international borders range from 700 000 to four million. However, there is general consensus that trafficking in persons affects almost every country in the world, whether as a source, transit or destination country – or a combination of these.

The nature of people trafficking varies from region to region. Its most visible form involves trafficking in women and children for sexual exploitation. But around the world men, women and children are trafficked for a wide range of other purposes, including

- forced labour in industries such as hospitality, construction, forestry, mining or agriculture
- domestic and sweatshop labour
- illicit adoption
- street begging
- forced recruitment into militia or the armed forces, and
- the harvesting of body organs.

People trafficking occurs within and across national borders.

A range of people may be involved in the trafficking process, including those engaged in initial recruitment, in arranging transportation and in providing false documentation. There may also be a broker; and the brothel owner, factory supervisor or household head who directly exploit trafficked people.

Recruitment processes vary. Traffickers commonly recruit their victims by appealing to their hopes, or that of their families, for a better life or escape from economic, social or political distress. A person may actively seek the assistance of the trafficker or their agent, but be deceived about the nature or conditions of work that they will be doing in the destination country. Children may be sold to the traffickers by a parent or other family member.

Traffickers may also use threats, force or abduction as a means of recruitment.

Trafficking can occur whether people move by legal (that is, with valid travel documentation) or illegal means.

Victims of trafficking are not always physically detained: the level and nature of control that traffickers exert over victims can vary. Traffickers may employ a number of ways of preventing their victims from escaping, including debt bondage, intimidation, threatened or actual physical or sexual violence (against the victim or family members), detention, threat of denunciation to migration authorities, or withholding personal identity documents.

Normative frameworks

The main international legal framework to combat trafficking is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Trafficking Protocol). The purposes of the Trafficking Protocol are: to prevent and combat trafficking in persons; to assist the victims of trafficking; and to promote cooperation among State Parties in order to meet those obligations. The Trafficking Protocol has been ratified by more than 100 States Parties.

However, in shaping its national response to trafficking in persons, a country must also observe its binding legal obligations under other international instruments. A body of international human rights and labour treaties form part of the legal framework for trafficking, including the

- *International Covenant on Civil and Political Rights* (arts. 2, 3, 7, 8, 9, 12, 14, 23 and 26)
- *International Covenant on Economic, Social and Cultural Rights* (specifically arts. 2, 3, 6, 7, 10, 11 and 12)
- *Convention on the Elimination of All Forms of Discrimination against Women* (arts. 2, 6, 9, 11, 12, 14, 15 and 16).
- *Convention on the Rights of the Child* (arts. 7, 16, 19, 28, 31, 32, 34, 35, 36, 37 and 39), and its Optional Protocols on: the sale of children, child prostitution and child pornography (arts. 1, 2, 3 and 8); and on involvement of children in armed conflict (arts. 1-4)
- *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (specifically, arts. 1, 3, 13 and 14)
- *International Convention on the Elimination of All Forms of Racial Discrimination* (arts. 2, 5 and 6)
- ILO Convention No. 29 on Forced or Compulsory Labour (arts. 1, 2 and 6)
- ILO Convention No. 105 on Abolition of forced Labour
- ILO Convention No. 182 on Worst Forms of Child Labour (in particular, art. 3 (1))
- *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (arts. 1, 3, 5, 6 and 7)¹.

¹ In addition to such universal instruments, States may also be party to regional and sub-regional instruments on people trafficking, including the *Council of Europe Convention on Action against Trafficking in Human Beings* which entered into force in February 2008, and the *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* adopted by the States members of the South Asian Association of Regional Cooperation in 2002.

At its sixtieth session in 2004, the then Commission on Human Rights decided to appoint a Special Rapporteur on trafficking in persons, especially women and children. The Special Rapporteur reports annually to the United Nations Human Rights Council. In 2008 the Human Rights Council also appointed a Special Rapporteur on contemporary forms of slavery, its causes and consequences.



The Whole-of-Government Strategy

The Australian Government response

Australia's response to trafficking in persons reflects our obligations as a Party to the *United Nations Convention against Transnational Organized Crime* (UNTOC) (since 2004) and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (since 2005). Australia fully supports the key objectives behind these instruments.

One of these objectives is to facilitate a convergence in national approaches to the criminalisation of trafficking to support efficient international cooperation in investigating and prosecuting trafficking in persons cases. Another is to protect and assist the victims of trafficking in persons with full respect for their human rights.

Australia is a destination country for victims of trafficking, primarily from Asia, particularly Thailand. Other source countries include Indonesia, Malaysia, South Korea and China.

The great majority of victims of trafficking identified in Australia to date have been adult women working in the sex industry.

Fortunately opportunities to traffic people into Australia are low because of our strong migration controls and geographic isolation. This means that the scale of the human trafficking in Australia remains relatively small, particularly in comparison to the experience of other countries in our region.

However, the Australian Government remains committed to working with other governments domestically and internationally, and with intergovernmental and non-governmental organisations to prevent trafficking in persons, prosecute the perpetrators and protect and support victims.

Australia's anti-trafficking strategy

Australia has taken a comprehensive, whole-of-government approach to combating trafficking in persons.

Australia implemented its strategy to eradicate trafficking in persons in late 2003. In addition to ongoing initiatives, the Government committed A\$20 million to a package of new measures. As part of the 2007–08 Budget, an enhanced package of measures was announced, with funding of approximately A\$38.3 million, comprising

- specialist teams within the AFP to investigate trafficking and sexual exploitation offences
- legislation to criminalise trafficking in persons
- a victim support program which provides individualised case managed assistance to eligible victims of trafficking, including accommodation, financial assistance, access to legal advice, training and social support
- research into national and regional trafficking activities by the AIC
- a targeted suite of communications products aimed at those working in or with the sex industry, and their clients
- a *National Policing Strategy to Combat Trafficking in Women for Sexual Servitude*
- enhanced visa arrangements to enable suspected victims and witnesses of trafficking to remain in Australia and support the investigation and prosecution of trafficking offences
- specialist immigration officers posted in Thailand, China and the Philippines, who focus on people trafficking issues and aim to prevent trafficking in source countries, and
- reintegration assistance for trafficking victims who are returned to key source countries in the Asia-Pacific.

These initiatives reflect the four central pillars of Australia's anti-people trafficking strategy: prevention, detection and investigation, criminal prosecution, and victim support and rehabilitation. Together this suite of measures is intended to address the full cycle of trafficking from recruitment to reintegration and give equal weight to the critical areas of prevention, prosecution and victim support.

Although Australia's anti-trafficking strategy was first implemented in late 2003, Australia did not implement the Trafficking Protocol until 2005 when Parliament enacted the necessary amendments to the Criminal Code.

The general position under Australian law is that treaties which we have ratified are not automatically incorporated into Australian law. In the absence of legislation, treaties cannot impose obligations on individuals or create rights in domestic law. If new legislation is required to implement a treaty, it is normal practice in Australia to require that the legislation be passed before seeking Executive Council approval to enter the treaty. This is because subsequent Parliamentary passage of the requisite legislation cannot be presumed, entailing a risk that Australia could find itself legally bound by an international obligation which it could not fulfill.

Governance

Australia's whole-of-government strategy is overseen by an IDC, chaired by the Attorney-General's Department, with membership from the

- Australian Agency for International Development
- Australian Crime Commission
- Australian Federal Police

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

The IDC was established to develop Australia's anti-trafficking strategy. The IDC has a continuing responsibility to monitor the implementation of this strategy and to report to Government on its effectiveness. It also ensures that emerging issues are addressed on a whole-of-government basis. Relevant agencies remain responsible for the administration of the individual components of the strategy. Since the commencement of this strategy, the IDC and individual agencies have focused on improving both monitoring and reporting mechanisms.

In 2008 an Operational Working Group was established as a sub-committee of the IDC to provide a more formal mechanism to resolve operational issues that arise in the management of individual cases. The Operational Working Group has an important role in referring emerging policy issues for the IDC's consideration.

Criminalising trafficking in persons

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* is the most recent of a series of international instruments that deal with trafficking in human beings or related subjects, including slavery, debt bondage, forced labour and child labour. However, it is the first global legally binding instrument with an agreed definition of trafficking in persons. (The Trafficking Protocol entered into force in 2003.)

Article 3, paragraph (a) of the Trafficking Protocol defines trafficking in persons 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 definition of trafficking in the Trafficking Protocol includes the use of minors for commercial sexual activity even if there is no force, fraud, or coercion; it also includes persons who are held against their will to pay off a debt.

A fundamental aspect of the Trafficking Protocol is the obligation to criminalise trafficking, create penalties that take into account the grave nature of these offences, and investigate, prosecute and convict traffickers.

Criminalisation is a key factor not only to enable domestic investigation and prosecution but also to enable international cooperation among States Parties to the UNTOC.

When Australia's whole-of-government response to trafficking in persons was being developed, we recognised that our legal and operational response would need to be sufficiently flexible and responsive to deal with the various manifestations of trafficking.

A substantive legislative review was undertaken to map the obligations contained in the UNTOC and in the Trafficking Protocol to determine the extent to which new laws or offences were needed.

In framing the resultant provisions in the Commonwealth Criminal Code, it was decided to take a broad approach to criminalise trafficking in persons. Accordingly, the Criminal Code (Divisions 270 and 271) is intended to cover conduct which

- occurs both across national borders and within Australia – subject to constitutional limitations
- occurs for a range of (unspecified) exploitative purposes, and
- is not limited to a particular category of victims (men, women and children may be victims).

Commonwealth legislative provisions

Slavery and trafficking offences are set out in divisions 270 and 271 of the Australian Commonwealth Criminal Code.

Slavery offences

Slavery in Australia has been a criminal offence since 1824 due to the application of the *Slave Trade Act 1824*. In 1999, slavery offences were inserted into the Commonwealth *Criminal Code Act 1995* (Division 270). The slavery offences apply to all persons, regardless of whether the conduct occurs within, or outside of Australia. These offences have a maximum penalty of twenty-five years imprisonment.

Trafficking in persons offences

The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* inserted new offences into the Criminal Code that criminalise trafficking in persons activity, fulfilling Australia's legislative obligations under the Trafficking Protocol. The Act came into force on 3 August 2005.

The offences are not limited to trafficking that involves sexual slavery or sexual servitude and instead provide coverage for trafficking in all its forms. The legislation provides for:

- people trafficking offences, where the trafficker organises or facilitates the transportation of the victim into, out of, or within Australia, by using force, threats or deception or by being reckless as to the exploitation of the victim. These offences have a maximum penalty of 12 years imprisonment or, in the case of an aggravated offence, 20 years imprisonment
- ‘debt bondage’ offences, to prevent traffickers from using unfair debt contracts and other similar arrangements to force victims into providing sexual services or other labour to pay off large debts. (‘Debt bondage’ is defined in the Act as occurring when a person pledges his or her services or the services of another person as security for a debt if the reasonable value of those services is not applied to repay the debt or if the length and nature of the services is not defined.) The debt bondage offences provide an alternative in cases where it may be difficult to prove the commission of one of the more serious offences. These offences attract a maximum penalty of 12 months imprisonment, or two years imprisonment where the victim is under 18 years of age, and
- specific trafficking in children offences, which criminalise organising or facilitating the transportation of a child into, out of, or within Australia, where the perpetrator intends or is reckless as to whether the child will be used to provide sexual services or will be exploited. (The elements of this offence are different to the elements of trafficking in adults as it does not require force or deception.) Trafficking in children offences are punishable by a maximum penalty of 25 years imprisonment.

With the exception of offences related to domestic trafficking, all these offence provisions have extended geographical jurisdiction, and can cover circumstances in which the crime has taken place in Australia and overseas, or where the crime has been committed outside Australia by an Australian company, citizen, or resident. (See Appendix 1 for further detail.)

Employer sanctions offences

The *Migration Amendment (Employer Sanctions) Act 2007* made it an offence to knowingly or recklessly employ or refer for work a person who does not have a valid visa or who is working in breach of their visa conditions.

The legislation includes aggravated offences where a person is being exploited through forced labour, sexual servitude or slavery (section 245AH). Penalties for those convicted are up to A\$13 200 and two years imprisonment for individuals, and up to A\$66 000 per illegal worker for companies. Where an aggravated offence is found to have occurred, penalties of up to A\$33 000 and five years imprisonment for individuals and up to A\$165 000 per illegal worker for companies. (See Appendix 1 for further detail.)

Child sex tourism offences

In 1994, the Commonwealth Parliament passed the *Crimes (Child Sex Tourism) Amendment Act 1994* which introduced a new ‘Part IIIA—Child Sex Tourism’ into the Crimes Act. The legislation covers a wide range of sexual activities with children under the age of 16 committed overseas. It is a crime for Australian Citizens or Permanent Residents to engage

in, facilitate or benefit from sexual activity with children (under 16 years of age) whilst overseas. These offences carry penalties of up to 17 years imprisonment for individuals and up to \$500 000 in fines for companies.

These offences have provisions applying an extended geographical jurisdiction that enables offences committed overseas to be investigated and prosecuted within Australia.

This legislation supplements foreign law enforcement efforts by allowing the prosecution of offenders who have escaped the jurisdiction of foreign law enforcement investigation, including where local law does not cover these crimes.

Other relevant Commonwealth legislation

Trafficking in persons is an organised crime that may involve other offences under Commonwealth legislation such as money laundering, taxation offences and immigration offences.

Trafficking in persons is a predicate offence for money laundering. (That is, it is an offence to deal with money or property if these are the proceeds of crime, including in this context, a slavery or trafficking offence, or if these could become instruments of a crime where the crime involved is a Commonwealth indictable offence - see Division 400 of the Criminal Code)²

The Commonwealth *Criminal Code Act 1995* also includes offences associated with using a Carriage Service (ie a mobile telephone or the internet) to commit offences related to the sexual exploitation of children. Again, these offences have extended geographical jurisdiction so that they can be investigated and prosecuted in Australia.

Trafficking offences are specifically designated as serious crimes in the *Telecommunications (Interception and Access) Act 1979*, so law enforcement agencies can by warrant intercept relevant telephone calls and email traffic for the purposes of an investigation. This material can then be used as evidence at trial.

The *Proceeds of Crime Act 2002* (Cth) enables the tracing, restraint and confiscation of the proceeds of crime against certain Commonwealth laws. In some circumstances it can also be used to confiscate the proceeds of crime against foreign law or the proceeds of crime against State law (if those proceeds have been used in a way that contravenes Commonwealth law). The *Mutual Assistance in Criminal Matters Act 1987* also enables authorised agencies, at the request of a foreign country and as authorised by the Attorney-General, to apply for and use production orders, monitoring orders and search warrants in relation to foreign serious offences where it is reasonably suspected that the proceeds or instrument or property-tracking documents are located in Australia.

2 Trafficking related offences in the Criminal Code are indictable offences, except the offence of 'debt bondage' which attracts a penalty of up to 12 months, unless aggravated.

State and Territory criminal offences

State and Territory Governments are responsible for regulating the sex industry.

Most jurisdictions have enacted legislation relating to sexual servitude and deceptive recruiting which would allow them to prosecute cases of trafficking for the purposes of sexual exploitation. However, it is more likely that where State and Territory police come across matters related to trafficking they will refer them to the AFP.

All jurisdictions have a range of offence provisions to cover related crimes such as assault, sexual assault, forced prostitution, kidnapping and deprivation of liberty. State offences may be used in conjunction with Commonwealth offences.

People trafficking, forced labour and sub-standard working conditions

Discussions on people trafficking sometimes conflate issues of trafficking, forced labour and sub-standard working conditions.

People are in a situation of forced labour if they enter work or service against their will and cannot leave it without penalty or threat of penalty.³ Forced labour is defined in the Criminal Code at section 73.2(3): **forced labour** means the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

- a) is not free to cease providing labour or services; or
- b) is not free to leave the place or area where the person provides labour or services.

While many victims of trafficking end up in situations of forced labour, not all victims of forced labour are trafficked. The ILO estimates that globally some 12.3 million people are victims of forced labour, and that 2.4 million of these people are subjected to forced labour as a result of human trafficking.⁴

There is also an important distinction to be drawn between people in forced labour situations and those who may be working in sub-standard employment situations.

Australia's workplace relations system will change from 1 July 2009 when the *Fair Work Act 2009* (FW Act) comes into effect. The FW Act includes a safety net which will apply to all employees in the federal system from 1 January 2010. This includes ten National Employment Standards (NES) that are legislated employment conditions such as maximum weekly hours of work, leave, public holidays, notice of termination and redundancy pay and the right to request flexible working arrangements.

³ Forced labour is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily', ILO Convention no 29 (1930).

⁴ *Combating Forced Labour: a Handbook for Employment and Business*, ILO 2008, page 13.

The safety net also includes the creation of modern awards by the Australian Industrial Relations Commission. These build on the NES and will be industry or occupation-based awards outlining additional minimum standards including minimum wages, overtime and penalty rates, allowances, leave related matters, representation and dispute settlement. A new industrial umpire, Fair Work Australia (FWA), will also set minimum wages for award and agreement-free employees through a national minimum wage order. FWA will include the Office of the Fair Work Ombudsman who will ensure compliance with the workplace relations laws and, where necessary, take steps to enforce the laws through the court system. In cases where an individual has a legal right to work in Australia but is not covered by the federal system, the relevant state or territory workplace relations laws apply.

Australian employers who sponsor and employ foreign workers are covered by the *Migration Act 1958*. There are a number of obligations that employers must be willing and able to meet to sponsor foreign workers, including to comply with any requirements regarding the pay and conditions of workers that are set out under the Migration Act or workplace relations laws.

Table 1: Criminal Code – Divisions 270 and 271

Section	Offence	Maximum Penalty
270.3(1)	Possess or exercise right of control over a slave	25 years
270.3(2)	Commercial transactions involving a slave	17 years
270.6(1)	Causing another person to enter into or remain in sexual servitude (see s270.4 (1) for definition of sexual servitude)	15 years/20 years (aggravated offence*)
270.6(2)	Conducting a business involving the sexual servitude of another (see s270.6(3) for definition of conducting a business)	15 years/20 years (aggravated offence*)
270.7(1)	Intentionally inducing another person to enter into an engagement where the other person is deceived about providing sexual services, the nature of the sexual services to be provided, extent to which the person will be free to leave or cease providing sexual services, involvement of exploitation or debt bondage or confiscation of travel or identity documents (see s270.6(2) for definition of sexual service and s271.1 for definition of deceive)	7 years/9 years (aggravated offence*)
271.2(1), (1A), (1B), (1C)	Trafficking offences involving the use of force or threats, or recklessness as to whether the trafficked person will be exploited (see s271.5 for domestic trafficking offences)	12 years/20 years (aggravated offence#)

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

Table 2: Migration Act 1958

Section	Offence	Maximum Penalty
234	False papers etc Providing false documents and statements ^	10 years
236	Offences relating to visas	10 years
245AB	Allowing an unlawful non-citizen to work	2 years/5 years (aggravated offence**)
245AC	Allowing a non-citizen to work in breach of a visa condition	2 years/5 years (aggravated offence**)
245AD	Referring an unlawful non-citizen for work	2 years/5 years (aggravated offence**)
245AE	Referring a non-citizen for work in breach of a visa condition	2 years/5 years (aggravated offence**)

* aggravated sexual servitude/deceptive recruiting/debt bondage offences refer to an offence committed against a person under 18 years (see s270.8, s271.9)

aggravated trafficking offences are where the offender intended the victim to be exploited by the offender or another person or subjected the victim to cruel, inhuman or degrading treatment or the offender is reckless as to a danger of death or serious harm to the victim (see s271.3 and s271.6)

** aggravated employer sanction offences are where worker is being exploited (ie in a condition of forced labour, sexual servitude or slavery in Australia) and the offender knows of, or is reckless as to, that circumstance.

^ There are various other provisions in the Migration Act that also relate to fraud.

Investigation and prosecution

One of the performance indicators in the *National Action Plan to Eradicate Trafficking in Persons* is the prosecution and conviction of people involved in criminal activities associated with people trafficking.

People trafficking matters are complex and difficult to prosecute. For this reason, Australian Government law enforcement agencies work together to ensure that matters are investigated and prosecuted, and that victims get the support they need.

However, this is only part of the story.

The UNTOC and the Trafficking Protocol establish a framework for international cooperation, including various forms of assistance for the conduct of investigation and prosecution, and for the extradition of offenders.

This is particularly important in the Australian context as all people trafficking investigations to date have involved transnational crimes. That is, while the matter is being prosecuted in Australia, key evidence may be located in the trafficked person's country of origin or in a transit country.⁵ This has necessitated close and ongoing cooperation and collaboration between Australian agencies and their counterparts in other countries, including through international legal cooperation and police-to-police assistance.

International legal cooperation

Mutual assistance and extradition are key tools in the fight against transnational and domestic crime.

- Mutual assistance is the process countries use to provide and obtain formal government-to-government assistance in criminal investigations and prosecutions. This includes one government asking another government to exercise coercive power on its behalf or obtaining evidence that would be admissible at trial.
- Extradition is the process by which one country sends a person to another country to face criminal charges or serve a sentence.

States need streamlined and effective mutual assistance and extradition mechanisms to ensure that those involved in transnational and organised crime are brought to trial.

To this end, the Attorney-General's Department has undertaken a wide-ranging policy review of Australia's extradition and mutual assistance systems. The Australian Government is currently considering options for reform arising from the review. Possible changes will be directed to reducing delays in current processes, and enhancing Australia's ability to cooperate with other countries in fighting crime.

5 F David, 'Prosecuting trafficking in persons: known issues and emerging responses', *Trends and Issues in crime and criminal justice*, Australian Institute of Criminology, June 2008, p 2.

The Government is committed to ensuring that appropriate safeguards and protections are maintained in any amendments to the existing laws, and that possible amendments are subject of full consultation and discussion with interested parties.

Australia also recognises the importance of establishing and maintaining sound regional crime cooperation relationships through the negotiation and implementation of bilateral treaties on extradition and mutual assistance. This is supported by the provision of technical legal assistance to countries in the region to improve frameworks for mutual assistance and extradition.

In 2007, the ASEAN, through its Senior Officials Meeting on Transnational Crime, requested assistance from the AusAID-funded ARTIP Project to develop tools to support the development of more effective international cooperation in the investigation and prosecution of trafficking in persons as a crime.

The ARTIP Project has since prepared a draft resource, *Trafficking in Persons: Handbook on International Cooperation*, which it is preparing to submit to the ASEAN secretariat.

Police-to-police assistance

Police-to-police assistance is informal cooperation that is provided by one country's police force to the police force of another country. Examples of police-to-police assistance include sharing general intelligence, operational briefings and information obtained from voluntary interviews.

The AFP maintains an extensive international network of officers posted in Australian overseas missions. These officers provide a conduit for Australian and overseas law enforcement agencies to exchange information and progress investigations. The 85 liaison officers in the AFP's International Network, work closely with law enforcement partner agencies in 34 cities across 28 countries.

The AFP has also entered into Memorandums of Understanding (MOUs) with its counterparts in a large number of foreign countries, including Malaysia, Thailand and Singapore. These MOUs facilitate cooperation between the policing agencies. In September 2007, the Australian Parliament ratified a cooperation agreement with Europol to enhance cooperation against international crime to facilitate the exchange of operational information between Europol and the AFP.

Where evidence is required from a foreign jurisdiction to support Australian investigations such evidence is obtain through a government-to-government mutual assistance request.⁶

⁶ Police-to-police assistance does not include providing information that must be obtained by the exercise of coercive powers, such as material obtained by search warrant. Such assistance must be sought through a mutual assistance request.

Working with State and Territory law enforcement

States and Territories are responsible for regulating the sex industry under the residual powers of the Australian Constitution.

Most States and Territories in Australia have enacted legislation against the offence of sexual servitude. This legislation is enforced collaboratively by State and federal police.

In 2006, all Australian police ministers agreed on the *Australian Policing Strategy to Combat Trafficking in Women for Sexual Servitude*. The Strategy seeks to provide a national framework for all Australian police services to work together to address this issue. It recognises that, while the AFP has the lead role in the investigation of trafficking offences, State and Territory police play a major role supporting multi-jurisdictional investigations and investigating conduct resulting in sexual servitude. They are often also the first to respond to a trafficking situation. However, where sexual servitude involves people trafficking, the protocol is for the jurisdiction to refer suspected offences/offenders to the Australian Government authorities for investigation.

Under the Policing Strategy, all police services have agreed to work together to achieve a range of objectives, including establishing and maintaining key relationships between agencies in Australia and overseas, developing protocols and procedures for victim protection, and providing training and education for police on victim identification and investigating trafficking offences.

Australian police forces report each year to the Ministerial Council on Police and Emergency Management – Police on progress under the strategy.

Investigations and assessments of people trafficking matters

As people trafficking offences fall primarily under Commonwealth law, primary investigative responsibility rests with the AFP.

The Transnational Sexual Exploitation and Trafficking Team (TSETT) in the AFP investigates trafficking in persons for the purpose of transnational sexual and labour exploitation. (Until March 2009 they were also responsible for the investigation of child sex tourism and offences related to online sexual exploitation of children.)⁷ TSETT members are based in Canberra with investigators in Brisbane, Sydney and Melbourne and with additional support from the Border Function of the AFP, which has members in each capital city across Australia.

People trafficking cases which have come to the attention of authorities in Australia have been detected in some cases through official activity and at other times through individuals or their co-workers seeking assistance. Some cases have been referred by State police; in other cases victims of trafficking have called police, asked their clients to help them or have contacted their

⁷ These matters are now investigated by the Child Protection Operations team.

national embassy in Australia⁸. Many matters have been detected as a result of information from the Department of Immigration and Citizenship following compliance activities.

DIAC has a network of compliance officers in every State and Territory in Australia. Their role is to conduct field operations to locate foreign nationals who have breached their visa conditions or who are unlawfully in Australia. These officers are provided with specific training to identify possible indicators of people trafficking activity during compliance operations. DIAC officers will ask various questions designed to elicit information that might indicate a person has been trafficked. Any indicators are referred to the AFP for further assessment, irrespective of the person's visa status.

Between 1 July 2004 and 30 April 2009 information relating to 287 suspected victims of trafficking was referred to the AFP for assessment by DIAC. Most referrals related to Thai nationals who entered Australia on Tourist visas, followed by South Korean nationals, who entered on a range of visas.

As the threshold for referrals is low, not all matters will result in police investigations. However some of the information will contribute to the broader intelligence picture.

Between January 2004 and April 2009, the TSETT undertook over 270 investigations and assessments of allegations of trafficking-related offences. The majority of these were for matters related to sexual servitude, and a smaller number of investigations where labour exploitation was the primary criminal conduct.

Seventeen investigations and assessments were undertaken in 2007–08. Approximately 58 per cent of those were related to trafficking for sexual exploitation and the remainder related to trafficking for other forms of labour exploitation. There were no reports of government or law enforcement involvement in trafficking.

Investigation of people trafficking matters can be long, complex and resource intensive, particularly given their transnational nature.

There are significant practical challenges in investigating crime across international borders including the challenges of communication, differences in legal and political systems and national institutions. Victims, traffickers and evidence can be located in more than one other country; and the same set of circumstances can generate investigations and prosecutions in more than one jurisdiction.⁹

Larger operations can involve concurrent investigations in multiple locations throughout Australia, and require the support of the AFP's overseas liaison network. For example, between July 2005 and February 2006 the Melbourne TSETT devoted 2 976 police hours to a single operation (in addition to the time of other teams involved). Amongst other things, this investigation required the TSETT to identify key evidence from 27 000 telephone intercepts, many of which were in a foreign language.¹⁰

8 F David, 'Trafficking of women for sexual purposes', *Research and public policy series*, no 95, Australian Institute of Criminology, 2008, p ix.

9 P David, F David and A Gallagher, *Trafficking in Persons: Handbook on International Cooperation*, ASEAN and UNDOC (draft forthcoming), p 1.

10 F David, 'Trafficking of Women for Sexual Purposes', p 34.

The success of such investigations depends in great part upon the assistance of victims of trafficking who are often exposed to intimidation and other risks by the traffickers, may feel pressure to keep working and remitting money home, be fearful of cooperating with law enforcement, or be traumatised as victims of a serious crime.

The safety of victims of trafficking is the paramount consideration. The risk of reprisal is assessed at the outset and continuously reviewed and updated as the investigation and subsequent prosecution unfold.

Investigators and prosecutors also recognise and respect the right and ability of victims of trafficking to decide not to assist with investigations, either initially or at a later stage of the proceedings. However, without their evidence, the elements of the crime are extremely hard to prove. One of the key performance measures contained in the *National Action Plan to Eradicate Trafficking in Persons* is an increased willingness of victims of trafficking and other potential witnesses presenting to the Australian authorities. Given the small number of victims of trafficking identified in Australia, it is not possible to talk credibly about trends. However, more than 70 per cent of suspected victims of trafficking to date have been willing to assist police and prosecutors.

Interagency coordination is essential through the investigation and court proceedings to ensure that victims are appropriately supported and protected. Australian Government operational agencies have established a communication and referral protocol to ensure that the roles and responsibilities of each agency are clearly defined. This helps to ensure that victims are kept up to date about the progress of their case, and that matters proceed as smoothly as possible.

Gaining the cooperation of victims as witnesses can be challenging. Often victims of trafficking fear that law enforcement agencies will treat them as criminals, and incarcerate or deport them. Investigators note the importance of building trust and rapport with victims and other witnesses in these cases. Even when an interview has established trust with victims and witnesses, they are unlikely to provide a full account in a single interview. Suspected victims of trafficking and other witnesses often have limited or no English. As a result, translators are needed throughout the investigation, ideally retaining the same interpreter throughout a case.¹¹

The covert nature of trafficking means that investigators often have difficulty in locating evidence that will corroborate the victim's statement. This has required TSETT officers to locate clients or co-workers at the brothels where the suspected victims of trafficking were held. Similarly, AFP officers may need to travel to the victim's country of origin to interview witnesses or to pursue other lines of inquiry. In the Sieders and Yotchomchin investigation (see Appendix 2), the AFP and Royal Thai Police simultaneously executed arrest warrants in Australia and Thailand. All this adds time, costs and complexity to investigations.¹²

¹¹ Ibid., p 36.

¹² Ibid., p 35.

Working with partner agencies

The cooperation between the AFP, the Royal Thai Police and the Thai Department of Social Development and Welfare (DSDW) is a key factor in providing support to Thai trafficking victims. It assists their return and repatriation to Thailand and provides an avenue to assist law enforcement in Thailand and Australia to combat trafficking.

Recognising the importance of trafficking investigations, the AFP Bangkok office works closely with the DSDW, from the referral of intelligence of suspected victims through to helping victims with financial and educational support packages while they provide evidence in Australian and Thai trials.

DSDW assists the AFP in locating potential victims who have returned to Thailand to engage their assistance in prosecuting traffickers.

AFP referrals regarding trafficking matters are directed to Royal Thai Police, where the AFP's Bangkok office liaises closely to offer assistance if required. DSDW works in close cooperation with the Royal Thai Police on trafficking matters and with the victims to encourage their cooperation with both the RTP and the AFP. Without this work by DSDW, much of the knowledge of these victims of trafficking would not be available to law enforcement.

Prosecutions

Securing prosecutions is a key objective of the Australian Government's strategy to combat people trafficking.

The Office of the Commonwealth Director of Public Prosecutions (CDPP) is an independent prosecuting service established by the Parliament of Australia to prosecute alleged offences against Commonwealth law. The CDPP has no investigative function and matters are referred to the CDPP from the AFP and other investigative agencies.

Decisions about whether to proceed with a people trafficking prosecution are guided by the Commonwealth's *Prosecution Policy*. This means the CDPP must be satisfied that:

- there is sufficient evidence to prosecute the case, and
- the prosecution would be in the public interest. (Generally, the more serious the alleged offence is, the more likely it is that the public interest will require that a prosecution be pursued.)

In making this decision, the prosecutor must evaluate how strong the case is likely to be, when presented in court. (This evaluation continues throughout each phase of the trial process.) The decision can only be made based on admissible evidence, not necessarily all the information gathered during the course of the investigation. The evaluation must take into account such matters as the availability, competence and credibility of witnesses and their likely effect on the arbiter of fact, and the admissibility of any alleged confession

or other evidence. The prosecutor should also have regard to any lines of defence open to the alleged offender and any other factors that could affect the likelihood or otherwise of a conviction.

Since Australia's anti-people trafficking legislation came into effect, investigations have led to 34 people being charged with trafficking-related offences and seven convictions. Only a small number of these cases have run the full course of the legal system. Of the seven convicted defendants, four were convicted for slavery matters, two were convicted for conducting a business involving the sexual servitude of others and one was for deceptive recruiting.

There are currently five trafficking related matters before the Australian courts, involving 11 defendants. Three of the five matters are in the appeal phase.

On 23 December 2008 the first convictions were obtained for trafficking in persons offences pursuant to section 271.2(2B) of the Criminal Code. The defendant in that matter was sentenced to five years imprisonment with a non-parole period of 22 months. The defendant has lodged a notice of appeal against sentence.

The *Yogalingam Rasalingam* case represented the first labour exploitation matter prosecuted in Australia. Following a trial in the District Court of NSW, the defendant was found guilty of dishonestly influencing a Commonwealth public official. However, he was acquitted of the people trafficking offence following a jury verdict of not guilty.

This matter was subsequently investigated by the Workplace Ombudsman. The Yoga Tandoori House Pty. Ltd. – the sole director of which is Yogalingam Rasalingam – was subsequently fined for eight breaches of the applicable restaurant award in the Federal Magistrates Court. Rasalingam also rectified the A\$11 500 in underpayments.¹³

Since the introduction of the *Migration Amendment (Employer Sanctions) Act 2007* there has been one case prosecuted under these provisions and a number of cases are currently under investigation. From commencement of the legislation to 19 January 2009, 936 Illegal Worker Warning Notices have been issued.

The relatively low number of prosecutions in Australia to date reflects the fact that our anti-trafficking laws are relatively new, and that investigations of trafficking in persons are generally complex and lengthy.

The prosecution process can also be long and convoluted. For example, the trial of Wei Tang in 2005 was one of the first prosecutions under Australian anti-trafficking laws (she was originally arrested in 2003). Following an initial trial, a re-trial, a successful appeal by the defendant and a further appeal by the CDPP, the Australian High Court in August 2008, upheld the original conviction and remitted the matter to the Victorian Court of Appeal to address sentencing. (The Court of Appeal's decision has yet to be handed down.)

13 *Fryer v Yoga Tandoori House Pty Limited* [2008] FMCA 288.

This case is significant as it not only provides the first consideration by the High Court of the slavery offences contained in the Criminal Code but also clarified the application of the general principles of criminal responsibility contained in Chapter 2 of the Criminal Code.¹⁴ Gleeson CJ focused on the issue of what kinds of factors indicate a relationship of slavery

how is a jury to distinguish between slavery, on the one hand, and harsh and exploitative conditions of labour, on the other? The answer to that, in a given case, may be found in the nature and extent of the powers exercised over a complainant. In particular, a capacity to deal with a complainant as a commodity, an object of sale and purchase, may be a powerful indication that a case falls on one side of the line. So also may the exercise of powers of control over movement which extend well beyond powers exercised even in the most exploitative of employment circumstances, and absence or extreme inadequacy of payment for services. The answer, however, is not to be found in the need for reflection by an accused person upon the source of the powers that are being exercised. Indeed, it is probably only in a rare case that there would be any evidence of such consideration.¹⁵

Training

AFP investigators working in TSETT are required to undertake the AFP's specialist training program, the Transnational Sexual Exploitation Investigations Program. The two-week program commenced in 2004 and is a residential training program for investigators. A key objective of the program is to develop the knowledge and skills required to successfully conduct complex, sensitive and/or protracted investigations of offences involving sexual exploitation and child sex tourism in a multi-jurisdictional and international environment.¹⁶

The training program focuses on a number of learning outcomes, including

- identification of relevant legislation
- identification of relevant best practice investigation procedures
- key issues and considerations in victim-led, reactive investigations of trafficking
- understanding cultural issues that impact on a victim's ability and willingness to become a witness in a trafficking investigation
- displaying sensitivity to cultural issues when conducting interviews, and
- identifying and demonstrating behavioural interview techniques when dealing with adult victims of human trafficking.

14 The Court held that the prosecution had made out the required elements of the offences. The prosecution did not need to prove that she knew or believed that the women were slaves. The critical powers she exercised were the power to make each woman an object of purchase, the capacity to use the women in a substantially unrestricted manner for the duration of their contracts, the power to control and restrict their movements, and the power to use their services without commensurate compensation. See also David, *Ibid.*, p 50.

15 *The Queen v Tang* [2008] HCA 39, para 44.

16 F David, 'Trafficking of women for sexual purposes', p 11.

The program includes presentations from NGOs about the different perspectives on trafficking. In the past, this has included presentations from Project Respect, a NGO with a specific focus on trafficking issues, and the Scarlet Alliance, the peak body representing Australian sex workers, and the Australian Human Rights Commission (AHRC).¹⁷

The program was primarily developed to meet the needs of AFP investigators. However, the course is also open to investigators from other police services, including State and Territory police services and foreign law enforcement agencies.

As at 30 September 2008, 132 investigators had completed the course. This included 90 investigators from the AFP, 24 investigators from the State and Territory police (all jurisdictions), one representative from DIAC, and 17 investigators from foreign police services.

Since late 2003, DIAC has provided training on trafficking in persons issues to onshore Compliance Officers. When DIAC's College of Immigration was established this training was incorporated as a module in the eight week Compliance Training Program designed specifically for onshore Compliance Officers. The people trafficking module of the Compliance Training Program includes guest speakers from the AFP and a NGO. NGO speakers have included the Anti-Slavery Project and Scarlet Alliance. Training sessions and briefings on people trafficking are also provided to staff going overseas and to investigations staff and staff working within the border environment. Information on people trafficking is also provided as part of the Temporary Business visa (Subclass 457) Business Monitoring Program.

The CDPP also recognises the need to ensure that its prosecutors receive appropriate training and development to enable them to deal appropriately with victims. To that end, the CDPP has conducted training sessions to develop prosecutors' skills when dealing with victims. For instance, a number of prosecutors have received training in dealing with the cross cultural issues associated with people trafficking matters. Some prosecutors have also received training in the area of child eyewitness testimony and interviewing.

The central role of victim-witnesses

The cooperation of suspected victims is essential to the investigation and prosecution of people trafficking. The major impediment to prosecuting trafficking related offences is the reluctance of people to give evidence of the offence, particularly as they (or their families) may have been the subject of violence or threats of violence.

Because the evidence of individual victims is heavily relied on in human trafficking prosecutions, corroboration of this evidence is often necessary to meet the high standard of proof required to be met in criminal proceedings. Corroboration of this evidence is often challenging. The CDPP has discontinued the prosecution of trafficking offences against a number of defendants due to insufficient evidence. This number includes the four co-defendants in the Kwok trial (Kwok, Ong, Tan & Yoe) and the three co-defendants in the Xu trial (see Appendix 2).

¹⁷ Ibid., p 12.

Moreover, the credibility of witnesses is subject to vigorous testing by defence counsel. This is a basic element of our adversarial system. Thus, victim-witnesses in trafficking matters have been challenged for giving prior inconsistent statements, or for having been involved in visa fraud or income tax offences. Prosecutors have had to deal with community stereotypes regarding foreign sex workers. Counsel may also argue that witness testimony has been ‘bought’ or tainted by inducements (eg access to victim support or visa arrangements) offered by the authorities.

In the matter of Sally Xu, Ngoc Tran and Jamie Qi, the Crown alleged that the New South Wales police ‘rescued’ Ms K, a young Thai woman, from the brothel where she had been held against her will. At trial, the defence ran a proactive case in which they portrayed Ms K as a willing sex worker who only expressed disquiet at the brothels in Sydney as a result of not making enough money. Ms K gave evidence for 11 days, including six days of cross-examination by defence counsel. The jury was unable to reach a verdict on any of the ten counts before them (except one, of which they acquitted the defendant). Ms K returned to Thailand, and indicated that she would not give evidence at a re-trial because she had found the experience traumatic. Without Ms K’s evidence, the Crown was not able to proceed.¹⁸

Equally challenging has been convincing the court that a given circumstance constitutes slavery or servitude when the situations of many victims in Australia do not conform to the popular image of people trafficking involving abduction, violence and physical restraint, having involved more subtle forms of coercion and control.¹⁹ The CDPP’s experience so far indicates that in labour exploitation cases (as opposed to sexual exploitation cases) evidentiary difficulties can arise in proving, for example, that the conditions in which a victim worked amounted to exploitation.

At the meeting of the National Roundtable on People Trafficking in June 2008, participants identified training for legal practitioners and jurors on trafficking issues as an initiative which may improve the experience of victims of trafficking who choose to give evidence in court proceedings. The Attorney-General’s Department is currently working with the National Judicial College of Australia to develop additional education resources for judges on people trafficking.

Support for witnesses

In the 2007–08 Federal Budget, the CDPP was provided with funding of A\$8.2 million over four years to prosecute trafficking-related matters, develop strategies for the education and training of staff and manage victims of trafficking. The CDPP has provided training to develop prosecutors’ skills when dealing with victims.

In November 2008, the CDPP commenced a Pilot Witness Assistance Service and employed one full-time Witness Assistance Officer, based in Sydney. The Witness Assistance Officer is available to provide information and some support to victims and

¹⁸ David, ‘Prosecuting trafficking in persons: known issues, emerging responses’, *Trends and Issues in crime and criminal justice*, no 358 2008, AIC, Canberra, p 3. See also Appendix 2.

¹⁹ That is, in a number of Australian cases the victim has not necessarily been physically restrained but has apparently enjoyed a degree of freedom.

witnesses of Commonwealth crimes prosecuted by the CDPP, including victims of human trafficking, slavery, sexual servitude, debt bondage and labour trafficking. This assistance may include providing information about the court process, providing a court familiarisation tour, referral to counseling and other community services, liaising between victims and legal officers, providing information about victim impact statements and keeping victims and witnesses informed of key developments in the case.

The CDPP has also developed materials for victims and witnesses that explain the criminal justice system and their place in it. These materials are available on the CDPP website <<http://www.cdpp.gov.au/>>.

What these cases indicate about people trafficking in Australia

Though the number of matters prosecuted to date is relatively small, it is beginning to yield insights into the nature of people trafficking in Australia.

Most victims of trafficking identified in Australia have been women working in the sex industry (in both legal and illegal brothels). Generally the women have been recruited from countries with a poor socio-economic environment and are attracted by the perception of improved economic opportunities in Australia.

There is no evidence of any child trafficking occurring in Australia.

Few of the victims of trafficking identified here to date fit the traditional image of slavery or popular stereotypes about trafficking. They have not been abducted, held at gunpoint or kept in chains.²⁰ The situation is more complex. The majority of victims identified to date were sex industry workers in their country of origin or knew that they would be working in the sex industry in Australia, prior to being trafficked. However, until they arrived in Australia, many of these victims were not aware that their working and living conditions would amount to exploitation. Many have had access to mobile telephones while here in Australia; and only some have been physically restrained, through detention in brothels and safe houses. In each case, coercion and control has involved a range of subtle methods such as threats of violence, obligations to repay debt, isolation, manipulation of tenuous or illegal migration situations and a general sense of obligation.²¹

The groups detected in sex trafficking have been small rather than large organised crime groups. Those involved tended to use family or business contacts overseas to facilitate recruitment, movement and visa fraud. People trafficking matters have also generally involved other crime types, including immigration fraud, identity fraud, document fraud and money laundering.²²

²⁰ F David, 'Trafficking of women for sexual purposes', p 39.

²¹ *Ibid.*, p 39.

²² *AFP Annual Report, 2004–05*, p 32.

Offenders active in this area have shown adaptability to law enforcement activity and migration governance. However, the groups involved in human trafficking identified to date do not appear to have the same high levels of organisation and sophistication as drug traffickers.²³ Many of the facilitators and escorts in the sex-trafficking industry in Australia are Asian. Although a small number of cases have involved victims from Eastern Europe and West Africa, intelligence does not indicate any shift towards the involvement of organised crime groups in human trafficking from these regions to Australia.²⁴

One area of interest is the relatively high proportion of female defendants. It is unclear whether this trend will continue. However, it does support United Nations Office for Drugs and Crime (UNODC) data which suggests that a disproportionate number of women are involved in human trafficking, not only as victims but also as traffickers.²⁵

Protection and assistance to victims

Australia's People Trafficking Visa Framework

Potential witnesses may be reluctant to testify in a trafficking case if they fear that they may be required to return to their home country at the end of the trial, possibly to face the persons who trafficked them. The Government has in place a comprehensive visa framework that enables persons who are suspected victims of trafficking to remain lawfully in Australia if they are assisting, or have assisted, with an investigation or prosecution of people trafficking offenders. The Attorney-General's Department, Department for Immigration and Citizenship and the Office for Women (OfW) have provided advice to the Government on options for a simpler and more flexible People Trafficking Visa Framework and other associated measures under the anti-people trafficking strategy. This advice is being considered by the Government with an announcement expected shortly.

The visa framework is designed to support those in genuine need of protection and is underpinned by a support program for victims of trafficking. It comprises the Bridging F visa, the Criminal Justice Stay visa and the Witness Protection (Trafficking) (Temporary and Permanent) visas. The visa framework applies to all suspected victims of trafficking, regardless of the industry to which they may have been trafficked.

- The Bridging F visa, introduced on 1 January 2004, is valid for up to 30 days and is available to suspected victims of trafficking who are able and willing to assist with an investigation. Bridging F visas can also be granted to immediate family members in Australia. There are no work rights associated with a Bridging F visa but people receive intensive victim support through the Support for Victims in Trafficking Program.

²³ F David, 'Trafficking of women for sexual purposes', p 34.

²⁴ *AFP Annual Report, 2005–06*, p 35.

²⁵ United Nations Office on Drugs and Crime (UNODC), *A Global Report Trafficking in Persons*, 2009.

- Criminal Justice Stay Visas allow a person to remain in Australia lawfully for the period of criminal justice proceedings. People holding these visas continue to have access to the Victims of Trafficking Support Program and also have work rights.
- Witness Protection (Trafficking) Visas - temporary and permanent, allow a person who has made a significant contribution to the investigation or prosecution of an alleged trafficking offence, and who may be in danger if they return to their home country, to remain in Australia lawfully. Immediate family members in Australia can also be granted these visas.

Where a suspected victim chooses not to assist law enforcement authorities or the person's evidence is insufficient to assist a trafficking investigation or prosecution, the person is assisted in returning to their home country.

Between 1 January 2004 and 30 April 2009, 119 suspected victims of trafficking have been granted Bridging F visas, 73 suspected victims have been granted Criminal Justice Stay visas (within the People Trafficking Visa Framework), and 17 suspected victims have been granted Witness Protection (Trafficking) (Temporary) visas, with more being considered. At the time of granting the Bridging F visa, 79 people were located in New South Wales, 31 in Victoria, 5 in Queensland, two in the Australian Capital Territory, and one in each of South Australia and Western Australia.

Table 3: Trafficking Visas issued by year

VISA TYPE	2004–05	2005–06	2006–07	2007–08
Bridging Visa F	31	11	16	34
Criminal Justice Stay Visa	23	8	18	18
Witness Protection (Trafficking) Temporary Visa	0	0	4	13
Witness Protection (Trafficking) Permanent Visa	0	0	0	0

Review of the People Trafficking Visa Framework

As part of reviewing assistance to victims, DIAC completed a review of the effectiveness of the People Trafficking Visa Framework in consultation with non-government and government organisations. Suggestions put forward ranged from simplification, including more flexibility for the visa framework, to de-linking visas from law enforcement activities.

The inaugural National Roundtable on People Trafficking provided further input through consultation with trafficking-specific non-government organisations, service providers, victims of crime organisations, bodies such as the Law Council of Australia, and employer and union representatives.

Follow-up discussions were held with government agencies and the AGD, DIAC and OfW have provided advice to the Government on options for a simpler and more flexible People Trafficking Visa Framework and other associated measures under the anti-people trafficking strategy. This advice is being considered by the Government with an announcement expected shortly.

Support for Victims of People Trafficking Program

Australia provides a comprehensive range of support services for suspected trafficking victims who are able and willing to assist in a criminal investigation or prosecution.

Possible victims may be identified through a number of avenues, including immigration officials, law enforcement agencies, NGOs, hospitals, medical practitioners, consulates and government departments. They are referred to the AFP for assessment and, where appropriate, entry to the Support for Victims of People Trafficking Program (the Program).

The Program provides assistance for both male and female victims of trafficking. The Program was first established in 2004 with two phases of support and initial funding of A\$5.6 million over four years. A further A\$4.1 million over four years was announced in the 2007–08 Federal Budget to maintain the original Program and allow for a third phase of support, the Temporary Trial Support Stream (see below for more details). The Program is demand driven with the aim of providing appropriate social support, promoting independence and financially supporting victims at a level similar to existing income support programs.

The OfW administers the Program, which is delivered on the ground by a contracted case management service provider. Individual case managers are allocated to possible trafficking victims when they enter the Program.

The initial and primary concern of both the AFP and the case manager is the safety and welfare of the possible trafficking victim. It is also important that the client has their options and entitlements clearly explained to them, so they can make an informed decision about participating in a criminal investigation or prosecution, and entering the Program.

Victims of trafficking have specific and quite individual support needs. They may be at risk from traffickers, have few safe networks in Australia and few friends outside the exploitative conditions they were found in. Their English language skills may be low, and their physical and mental health may be compromised.²⁶ For this reason, the Program provides individualised case management and access to a tailored range of support services to suit each client's particular circumstances.

Individual case managers are responsible for ensuring the appropriate delivery of support services, to meet clients' individual needs. This includes such things as assisting them to establish social and community supports, to obtain legal, migration, financial and other advice, and counseling and medical support. Dependent children living with a parent who is on the Program receive indirect support, as the case manager may assist with arranging child-care or schooling, or accessing parenting support. The Program also offers access to English language and skills-based training to facilitate clients' rehabilitation and reintegration with the community whether they return home or stay in Australia after they leave the Program.

²⁶ 'Support for Victims of People Trafficking Program'.

In addition to ongoing support, case managers offer a 24-hour response to urgent matters affecting clients.

In total, 131 people have received assistance through the victim support program since its inception in January 2004.

The Program has supported victims trafficked into Australia for the sex industry and a range of other industries. Just over one in 10 of those who have received support under the Program have been victims of labour trafficking outside of the sex industry.

The Program has provided support to both male and female victims of trafficking, though the great majority (over 90%) have been women. (Australian police have not received any credible referrals of child victims trafficked into Australia since the Government's anti-trafficking strategy was established in 2003.)

Table 4: Geographic distribution of clients of the Support for Victims of People Trafficking Program

Location of Client	Total number
NSW	83
SA	2
VIC	41
WA	1
Qld	4
Total	131

Sixty-three per cent of clients supported by the Program up to 30 April 2009 have been Thai nationals. Statistics suggests that, more recently, women from South Korea are also being trafficked into Australia. (There are indications that the prohibition of prostitution in South Korea in late 2004 has been a push factor for a number of South Korean sex workers coming to Australia).

At the same time, the findings of the ACC's People Trafficking for Sexual Exploitation (PTSE) Determination (which operated from 2003-06) indicated that while many foreign sex workers knew they were coming to Australia to work in the sex industry, and experienced working conditions and remuneration comparable to Australian sex workers, they were controlled through the use of financial contracts.²⁷

²⁷ As intelligence collection and analysis activities through the PTSE Determination were conducted in the period 2003–06, there is a risk the intelligence environment may have shifted in response to changing political, legislative, social, economic and environmental factors.

Table 5: Support for Victims of People Trafficking Program – Country of Origin/Citizenship

Country of Origin/Citizenship	Total numbers
Brazil/Portugal	1
China	3
Czech Republic	1
Hong Kong SRA/China	2
India	3
Indonesia	5
Macedonia	1
Malaysia/China	1
Singapore	1
South Korea	23
Thailand	73
Uzbekistan	1
Malaysia	14
Philippines	2
Total	131

The majority of identified trafficking victims to date have been located in New South Wales.

The Program is currently divided into three phases:

- Assessment Stream (previously Phase 1) – intensive support for up to 30 days during which victims are assessed as able and willing to contribute further to an investigation by the AFP. Usually the person enters the Program on a Bridging F visa which is valid for up to 30 days
- Justice Support Stream (previously Phase 2) – less intensive support until the investigation and prosecution of a people trafficking matter is finalised. To be eligible for the Justice Support Stream, a victim must be granted a Criminal Justice Stay visa; and
- Temporary Trial Support Stream (previously Phase 3) – intensive support (similar to that provided under the Assessment Stream) for victims who return to Australia to give evidence pertaining to a trafficking in persons prosecution. Recipients are entitled to short term accommodation and a weekly living and food allowance. This phase was introduced in the 2007–08 Federal Budget.

After the Support for Victims of People Trafficking Program

At the same time as providing responsive and appropriate support, the Program case managers encourage clients to develop independence and provide them with an opportunity to heal from what are often highly traumatic experiences.

Mrs A came to Australia to work in the sex industry, with a goal to earn money to send to her children and other family members in Thailand. Once she arrived in Australia, it became clear that she had been deceived about the nature and conditions of the work she was to do. She was significantly underpaid and forced to work excessive hours, as well as being threatened and physically and verbally abused by her trafficker.

When she first joined the Program she was experiencing physical and emotional health problems. However, as she settled into her life in Australia and on the Program, and she was provided with a range of support services and referrals, she became increasingly independent.

She has taken English language classes and gained work experience. She married an Australian man and has had another baby, and developed strong social networks both within and separate to her family unit. She has also visited her children who still reside overseas. Mrs A's involvement in the investigation and prosecution of her trafficker has now been finalised and she has been described as happy and content in her new life.

Other avenues of assistance

The Australian Government is committed to upholding its obligations and responsibilities under international law. The Government recognises that issues surrounding the trafficking of persons are complex and varied, and considers these issues in the context of Australia's international obligations and their implications for immigration law and regulations.

If a person holds a Bridging F visa or Criminal Justice Stay visa and the AFP are unable to proceed with an investigation they may withdraw support for the visa.

Should this occur in the case of the person holding a Bridging F visa the suspected victim will be advised of the reasons for which the AFP are not proceeding with the investigation, advised of their immigration status by a DIAC officer, and given support and advice by their OfW appointed case manager. The OfW appointed case manager will also provide advice on community support available should they be eligible to remain in Australia on another type of visa, and information on support programs available in their home country. Under the Support for Victims of People Trafficking Program, they are also supported to seek migration advice from an independent registered migration advice provider.

If the AFP withdraw support for a Criminal Justice Stay visa they must decide whether they will seek a Certificate from the Attorney-General – the first criterion to be met for a temporary Witness Protection (Trafficking) visa.

Clients of the Program who are deemed to be at risk of harm if they return to their home country as a result of their contribution to an investigation or the prosecution of trafficking offenders, may be eligible for temporary Witness Protection (Trafficking) visa. A temporary Witness Protection (Trafficking) visa can lead to a permanent Witness Protection (Trafficking) visa. Holders of this visa are not currently eligible for assistance through the Program.

Where a suspected victim chooses not to assist law enforcement authorities or the person's evidence is considered insufficient to assist a trafficking investigation or prosecution, the person is assisted in returning to their home country, unless they hold a valid visa or are able to establish their eligibility to remain in Australia under another class of visa in the *Migration Act 1958*. Eligibility for another class of visa is dependent on the individual's circumstances and is assessed on a case-by-case basis. For example, a person may be eligible to apply for a Protection visa or a Bridging visa while making arrangements to depart Australia.

The Australian Government also offers some reintegration assistance for victims of trafficking who return to their countries of origin, which are discussed in the section titled 'Building Partnerships in our Region and Beyond'.

The Support for Victims of People Trafficking Program

The program provides individualised case management and a range of support to victims. The person is identified as eligible by the AFP. Usually the person enters the Program on a Bridging F visa which is valid for up to 30 days. Holders of this visa do not have work rights.

Assessment Stream

Within the 30-day Assessment Stream victims have access to the following support as needed:

- short term, secure accommodation (approved by the AFP)
- a living allowance (with an additional allowance available if there are dependent children)
- a food allowance (with an additional allowance available if there are dependent children)
- an amount for the purchase of essentials such as clothing and toiletries
- access to health care, including counseling
- access to interpreters
- an allowance for emergency items, and
- access to legal services.

Justice Support Stream

If the AFP/CDPP require the person to remain in Australia a Criminal Justice Stay visa can be granted for this purpose. A suspected victim holding a Criminal Justice Stay visa will be eligible for the Justice Support Stream. Criminal Justice Stay visa holders are permitted to undertake paid employment.

In the Justice Support Stream clients have access to the following support as needed:

- Special Benefit, Rent Assistance and a Health Care Card administered by Centrelink (if needed and if they meet eligibility requirements)
- assistance with securing longer term accommodation
- assistance to purchase essential furniture and household items
- access to the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme
- access to legal services and interpreters
- assistance to obtain employment and training (including English language training) if desired, and
- links to social support.

Persons returning from overseas to give evidence in a prosecution of a trafficker are also provided with intensive support for the periods just before, during and just after the trial. Their entry to Australia will be facilitated through the grant of a Bridging F visa.

Temporary Trial Support Stream

During the Trial Support Stream clients will receive case managed support and:

- secure accommodation (approved by the AFP)
- a living allowance (clients are not able to undertake paid employment), and
- a food allowance.

An Evolving Strategy

Building partnerships with the community

The National Roundtable on People Trafficking

The Australian Government is committed to building stronger partnerships with the non-government sector, particularly, in this context, with anti-trafficking NGOs.

In June 2008, the Minister for Home Affairs, the Hon Bob Debus MP, convened the Australian Government's first National Roundtable on People Trafficking (NRPT). The purpose of the NRPT was to provide an opportunity to reframe relationships between the Government and NGOs and to establish a consultative mechanism on trafficking issues, especially emerging issues.

With the support of the Minister for Immigration and Citizenship, Senator the Hon Chris Evans, the Minister for Foreign Affairs, the Hon Stephen Smith MP and the Minister for the Status of Women, the Hon Tanya Plibersek MP, the NRPT demonstrated the Government's commitment to combating people trafficking and to transparent and consultative processes.

The NRPT was attended by a variety of organisations, including: the Anti-Slavery Project, the Australian Chamber of Commerce and Industry, the Australian Medical Association, Australian Women Lawyers, the Australian Human Rights Commission (AHRC), the Law Council of Australia, the National Association of Community Legal Centres, the National Association of Services Against Sexual Violence, Project Respect, the Salvation Army, Scarlet Alliance, Sisters of St Joseph and Victim Support Australasia Inc.

Among other outcomes of the NRPT, a Working Group comprising NGOs and government agencies was established to develop guidelines for NGOs dealing with trafficking victims. The Working Group was chaired by the Sex Discrimination Commissioner of the AHRC. The Australian Government endorsed the *Guidelines for NGOs Working with Trafficked People* in December 2008.

The Guidelines were officially launched by the Minister for Home Affairs and the President of the AHRC, Catherine Branson QC, in March 2009. The Guidelines are available for download from <www.ag.gov.au/peopletrafficking>.

AGD has produced an initial print-run of the Guidelines in hardcopy and CD for distribution to NGOs across Australia. A summary of the Guidelines was published to highlight the general principles of service provision to victims of trafficking. The summary has also been translated into five languages in addition to English: Chinese, Thai, Tagalog, Korean and Vietnamese.

Further details about the NRPT, including a press release issued by the Minister for Home Affairs, can be found at <<http://www.ag.gov.au/peopletrafficking>>, and at Appendix 3.

Financial support for the work of non-governmental organisations

In October 2008, the Australian Government announced A\$1 million in funding to help four Australian NGOs in their efforts to combat people trafficking.

The Anti-Slavery Project, Project Respect, the Scarlet Alliance and Australian Catholic Religious Against Trafficking in Humans have each been granted A\$250 000 to provide vital outreach for trafficking victims and conduct education and awareness initiatives on people trafficking. The funding was provided from confiscated criminal assets under the *Proceeds of Crime Act 2002*.

In October 2008, Minister Debus also announced funding of A\$250 000 to support the work of the NRPT. Part of this funding is being directed towards developing resources for judges, prosecutors and jurors in people trafficking matters.

Raising community awareness

The Australian Government has implemented a Communication Awareness Strategy to increase awareness about people trafficking within the sex industry. The Strategy aims to inform and educate sex workers and people who may come in contact with sex workers. It provides information on how to seek assistance or report people trafficking.

The Communication Awareness Strategy is a highly targeted campaign. Market research indicated that the primary target audiences were local and overseas-born sex workers, with a secondary audience including clients and service providers. To access these primary and secondary groups, a suite of discrete information materials has been produced in six languages: English, Chinese, Thai, Tagalog, Korean and Vietnamese. The materials were developed to be sensitive to the needs of potential trafficking victims and minimise the risk of further exploitation.

The Communication Awareness Strategy was initially allocated A\$0.4 million over four years in the 2003–04 Federal Budget, and an additional A\$80 000 per year for four years in the 2007–08 Federal Budget to continue the campaign.

The materials were first distributed in March 2007, and interest is ongoing. The Strategy has been well-received by target audiences and special instructional sessions have been held with sex industry representatives. The volume of materials distributed has exceeded expectations, with over 16 000 requests received for copies of the information suite (brochures, address books and information cards.) Overall, the materials in the English language were most requested (26 per cent), followed by Chinese (20 per cent) and Thai (19 per cent).

Key sex industry groups, such as the Scarlet Alliance, State-based outreach organisations and the Aids Council of New South Wales, have endorsed the communications products. In 2007, Scarlet Alliance invited the consultant responsible for the Communication Awareness Strategy to address its national conference. Ongoing consultations have occurred with NGOs to support the implementation of the initiatives and their communication to the various target audiences.

In addition to the materials, pro bono advertisements encouraging victims and concerned members of the community to call an AFP hotline have been running in the personal services sections of major metropolitan and suburban newspapers since January 2006. As at the end of December 2008, media support for these advertisements was worth approximately A\$418 134.

In 2003 DIAC worked with Project Respect to produce a pamphlet aimed at those who may have been trafficked, or may know a suspected trafficking victim. The pamphlet is available in English, Chinese, Thai, Indonesian, and Korean and was distributed by compliance officers to those working in the sex industry.

And, in 2007 and 2008, DIAC participated in a number of forums aimed at raising awareness about anti-trafficking issues. These included the NGO National Trafficking Forum, participating as a panel member in a forum held by the National Council of Jewish Women of Australia on trafficking issues, and as a panel member for the Human Trafficking Forum at the Law Institute of Victoria.

Building partnerships in our region and beyond

Australia has taken an active role in international efforts to combat people trafficking. For example, Australia cooperates bilaterally on people smuggling and trafficking issues under the framework of the *Lombok Treaty*. Similarly, the AHRC also shares information on people trafficking through its participation in the Asia Pacific Forum of National Human Rights Institutions.

The *Joint Statement on Cooperation in People Smuggling and Human Trafficking* issued during the ninth Australia-Indonesia Ministerial Forum in November 2008 reaffirmed political commitment to bilateral cooperation to combat people smuggling and human trafficking.

The Conference of Parties to the UNTOC

The Conference of Parties to the UNTOC is a body comprising State Parties to the Convention and observers. Established by the Convention itself, it is designed to improve the capacity of State Parties to combat the various forms of transnational organised crime, and to promote and review the implementation of the Convention and its Protocols.

Australia has been represented at all four Conferences of Parties. This representation has provided a valuable opportunity to contribute to international discussions about effective responses to people trafficking, and to highlight Australia's technical assistance and international legal cooperation activities in the region.

The Conference has established a number of working groups to advise and assist it in relation to certain aspects of its mandate. At its fourth session in October 2008, it decided to establish an open-ended interim working group to advise and assist the Conference in the implementation of its mandate with regard to the Trafficking Protocol. The first meeting of the working group was held in April 2009.

The next Conference of the Parties will be held in 2010.

Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime

Australia, with Indonesia, co-founded, and co-chairs the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process).

The Bali Process is a regional, multilateral process designed to boost bilateral and regional cooperative efforts against people smuggling and trafficking through technical workshops and increased cooperation between interested countries, United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM).

The Bali Process is an example of strong regional collaboration between Australia and Indonesia. It also contributes to more effective day-to-day cooperation between operational agencies in our region.

The primary work of the Bali Process to date has been in the form of workshops on law enforcement cooperation, information sharing and technical assistance.

Overall direction and coordination of the Bali Process has been provided through an officials' level Steering Group comprising Indonesia and Australia as the two co-chairs, New Zealand and Thailand as the coordinators and the UNHCR and the IOM as partner agencies. The IOM also administers the process.

Recently, the Bali Process has played a key role to encourage the criminalisation of people trafficking in many countries in the Asia Pacific region through workshops on topics including developing model legislation to prosecute trafficking.

In 2008, Australia and Indonesia co-hosted a Bali Process side event at the United Nations Global Initiative to Fight Human Trafficking Forum, the purpose of which was to raise awareness of trafficking issues in the region, and to explain the role of the Bali Process as a model for regional cooperation in the fight against human trafficking.

Australia hosted a Senior Officials Meeting (SOM) in Brisbane on 24–25 February 2009, ahead of a Ministerial meeting hosted by Indonesia in Bali on 14–15 April 2009. Taking place six years after the previous Ministerial Conference, the Bali Regional Ministerial

Conference was a valuable opportunity to re-focus regional attention on people smuggling and trafficking in persons and represents the reinvigoration of the Bali Process. Ministers agreed to convene an Ad Hoc Group mechanism to develop a regional response to current challenges in the region. This mechanism could potentially be used to discuss specific human trafficking challenges.

Trafficking activities as part of the Bali Process

Trafficking-related activities of the Bali Process have included, in addition to the side event on the role of the Bali Process in combating trafficking at the United Nations Global Initiative to Fight Human Trafficking Forum in February 2008, workshops on combating child sex tourism in 2005 and 2006, trafficking victim support workshops in 2005 and 2006, and cooperation on anti-trafficking legislation in Bali Process countries using model legislation developed between Australia and China. Since 2004, AusAID has provided \$110 000 per annum towards the costs of the Bali Process Secretariat, administered by the IOM.

Australia's Ambassador for People Smuggling Issues

Australia also has an Ambassador for People Smuggling Issues (currently held by Mr Michael Potts), who is responsible for high-level advocacy of Australia's interests in promoting effective and practical international cooperation to combat people smuggling and trafficking in persons, particularly in the Asia-Pacific region.

The Ambassador promotes a coordinated, whole-of-government approach on Australian policies and works closely with foreign governments and international organisations to implement measures that deliver practical benefits to regional operational agencies to combat people smuggling and trafficking in persons.

Development assistance

The drivers for people trafficking are many and complex. Addressing factors which make people vulnerable to trafficking is an important part of Australia's national and international strategies to prevent trafficking. These factors include poverty, under/unemployment, corruption, and social and political instability. There is the potential for these issues to become more acute as the full impact of the global financial downturn is felt in developing countries and in countries with economies in transition.

The trafficking of women, children and men for sexual or labour exploitation is a serious problem confronting many countries in South East Asia, particularly those in the Greater Mekong Sub-Region – Cambodia, southwest China, Lao PDR, Burma, Thailand and Vietnam.

The Australian Government is committed to the implementation of the Millennium Development Goals – agreed targets set by the world's nations to reduce poverty and achieve other development objectives by 2015.

In 2008–09 Australia will provide A\$3.7 billion worth of official development assistance. Australia's aid program focuses on the Asia Pacific region. The international community recognises Australia's leading role in the region, particularly in PNG and the Pacific. The geographic focus of Australia's aid program also makes sense given that two thirds of the world's poor, some 800 million people, reside in the Asia Pacific, yet receive less than one third of total aid flows.

The Australian aid program is sensitive to gender concerns. Specific gender equality interventions are funded together with more indirect measures such as training, community development, health and nutrition, income generation, conflict prevention and peace-building. The aid program also includes activities to address violence against women and children, including trafficking.

In addition to Australia's overseas aid program, the Australian Government provides ongoing financial support to the IOM, an intergovernmental organisation committed to the principle that humane and orderly migration benefits migrants and society.

Building specific regional capability

Australian assistance aims to improve the capabilities of organisations and persons to combat human trafficking and support trafficking victims, especially women. This includes improved sub-regional and national communication and cooperation, particularly through legal, administrative, policy and advocacy measures.

The Asia Regional Trafficking in Persons (ARTIP) Project is a five-year, A\$21 million activity funded by AusAID, which commenced in August 2006.

The ARTIP Project builds upon an earlier regional aid initiative, the \$11 million Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) Project. This project, which commenced in 2003 and concluded in August 2006, sought to facilitate a more effective and coordinated approach to the crime of trafficking both within and between countries. ARCPPT worked with the national criminal justice agencies of Cambodia, Lao PDR, Burma and Thailand and also undertook some activities in Indonesia, Vietnam, China and the Philippines. It cooperated closely with ASEAN and key regional forums on trafficking including Coordinated Mekong Ministerial Initiative against Trafficking.

Like its predecessor, the ARTIP Project is focused on strengthening the criminal justice response to trafficking.

It contributes to the prevention of people trafficking in the region through promoting a more effective and coordinated approach to people trafficking by criminal justice systems in the region. Partner countries include Thailand, Lao PDR, Cambodia, Burma, Indonesia and Vietnam, with the Philippines expected to join the project in 2009 (subject to the agreement of the Government of the Philippines). The ARTIP Project also works closely with ASEAN and engages with all ASEAN countries at a regional level.

The three core components of the ARTIP Project are to:

- strengthen specialist and general law enforcement responses to trafficking
- strengthen judicial and prosecutorial responses to trafficking, and
- improve policy, legal, research and outreach capability in the region.

Prevention, return and reintegration of victims

Supporting the repatriation and successful reintegration of trafficking victims is complex.

Significant effort is required to encourage victims to access available services and to ensure governments, NGOs and other relevant bodies have sufficient capacity to provide appropriate services for successful reintegration.

AusAID has recently funded two return and reintegration activities in the Asia region: the Return and Reintegration of Trafficked Women and Children Project Phase II and the Regional Pilot Project for Returning Victims of Trafficking from Australia to Thailand (the 'Thai Returnees Project'). Both activities are delivered through the IOM.

The IOM Return and Reintegration of Trafficked Women & Children Project Phase II is a four year project to which AusAID contributed A\$665 000. It aimed to develop sustainable support mechanisms and structures for the identification, return, recovery and reintegration of victims of trafficking, within government and NGO agencies in and between selected countries of the Mekong region (Thailand, Cambodia, Vietnam, Burma and Lao PDR). The project commenced in 2004, with the Australian-funded component completed in September 2008. Phase I of the project (2000-2004) was fully funded by Australia (\$4.7 million).

The Australian-funded component of the Phase II project assisted in strengthening the capacity of government agencies and NGOs in Lao PDR and Burma to provide recovery, return and integration assistance for trafficked women and children. The project also strengthened the capacity of sending and receiving countries to cooperate nationally and across borders on issues related to the return and integration of victims of trafficking.

The Thai Returnees Project commenced in 2006 as a pilot project for Thai victims of trafficking identified in Australia returning to Thailand, with AusAID funding of US\$330 000. Recognising that Thailand has gained considerable experience in assisting Thai trafficking victims over the past decade and has worked steadily to improve its domestic response to trafficking, the project includes a number of activities to encourage victims to seek reintegration assistance, including: strengthening information dissemination and peer support networks, improving case management by Thai Government and NGO partners and providing small-scale support for reintegration. The project will be completed in 2009.

In addition, AusAID supports a number of NGO projects that aim to prevent trafficking and assist victims. These include the World Vision 'Assistance, Support and Protection for Migrant and Trafficked Women and Children' project in Burma-Thai border areas (2005–2011) and 'Mekong Delta Regional Trafficking Strategy 2' (2008–2011) which

focuses on child trafficking; UNICEF's 'Children in Need of Special Protection' (2005–2009) in the Philippines, that includes protection of children from trafficking; and Union Aid Abroad APHEDA 'Trafficking Prevention & Support for Returned Trafficked Women' in Vietnam (2007–2009). A number of projects also target child sex tourism and promote child protection.

AFP officers posted to Bangkok work closely with the Thai Department of Social Development and Welfare (DSDW) to provide support to trafficking victims returning to Thailand. This cooperation ranges from the referral of intelligence of suspected victims through to the management of victims providing evidence as witnesses in Australian and Thai trials. The DSDW assists the AFP in locating potential victims who have returned to Thailand prior to the AFP being aware of their circumstances.

The AFP Bangkok Office and DSDW actively manage a number of victims-witnesses who are assisting the AFP with trafficking prosecutions in Australia, with some of these witnesses and victims also assisting Royal Thai Police in Thai based prosecutions. Over recent years, the AFP and DSDW have provided support to over 20 victims/witnesses who have assisted the AFP and Royal Thai Police with people trafficking investigations.

The AFP liaison officers in Bangkok have played an important role to ensure provision of support and assistance to suspected victims of trafficking returning to Thailand. This involves close cooperation between the AFP liaison officers and the Thai Department of Social Welfare and Development. In many cases, the suspected victim of trafficking has not wanted their family to know about their experiences in Australia so their situation has had to be carefully managed. Victims' security is also a critical issue; traffickers have recruited the victim, so they know exactly where she and her family live. The number of women receiving support in this way has varied; in 2005, eight suspected victims of trafficking were being supported in Thailand, and in 2007, 18 were being supported.²⁸

DSDW also plays a major role in facilitating victim support packages for people trafficking victims returning to Thailand, including the provision of financial and educational support to a number of victims/witnesses in AFP investigations. DSDW officers regularly travel with Thai victims-witnesses to Australia and provide vital support and welfare to the victims/witnesses in court matters.

Preventing people trafficking to Australia

As part of Australia's preventative work, DIAC created a Senior Migration Officer Compliance (Trafficking) or SMOCT position in Bangkok in late 2003. In the 2007-08 Budget, the Government announced funding for two additional SMOCT positions. These additional SMOCTs are located in Beijing and Manila and became operational in late January 2008. The positions provide regional coverage.

28 F David, *Trafficking of Women for Sexual Purposes*, Australian Institute of Criminology, 2008, p 44.

The SMOCT positions are part of DIAC's overseas compliance network, comprising some 28 specialist overseas compliance officers and 18 Airport Liaison Officer positions located in key strategic regions overseas.

The SMOCTs focus on people trafficking issues and aim to prevent people trafficking at its source. They also provide an enhanced focus on trafficking for labour exploitation. The SMOCTs vet visa caseloads for fraud that may lead to trafficking and analyse trends in visa processing, including:

- applicants' travel patterns
- use of migration agents, and
- the nature of the claims lodged in applications.

Since early 2008, the SMOCT positions have vetted around 1 000 cases.

The SMOCT positions developed procedural guidelines and delivered training to locally engaged and Australia-based staff at the Embassy. The training focuses on the identification of people trafficking indicators in caseloads, Australia's whole-of-government strategy in combating people trafficking, as well as providing an outline of the SMOCT position.

The SMOCT position in Bangkok has worked closely with the AFP and assisted in identifying trafficking links with Australia, which has resulted in people being charged with trafficking-related offences. Regular meetings with the AFP at each post are arranged to discuss referrals, liaison and updates on onshore investigations being conducted in Australia.

Along with other government agencies at the Australian Embassy, the SMOCTs liaise with local government and non-government agencies to identify ways to prevent trafficking. For example, the Beijing SMOCT has met with representatives from organisations such as UNICEF, ILO, the Asia Foundation and the host country's government agencies.

Early in 2008, the SMOCT in Manila met with the Philippines' Department of Justice to discuss the Philippine's Action Plan for Combating Human Trafficking. Meetings were also conducted with the Bureau of Immigration, Philippines Overseas Employment Agency, the National Bureau of Investigation and the Asia Foundation. In August 2008, the SMOCT attended a roundtable discussion/workshop between Australia and Malaysia regarding the implementation of trafficking in persons legislation and strategies from an immigration and law enforcement perspective. SMOCT positions also meet with immigration counterparts from other countries to discuss people trafficking matters. Around Australia, DIAC has 18 National Intelligence Officers deployed in State and Territory offices to collect, analyse and report on people smuggling, trafficking and irregular migration. The officers are placed at key ports (air and sea) and work closely with other Australian government agencies on a regular basis.

There are over 30 specialist compliance officers attached to key posts overseas to identify, respond to and counter immigration fraud and malpractice. Compliance officers also work closely with local police and immigration officials to combat people smuggling, trafficking and illegal migration.

DIAC also undertakes capacity building initiatives in the Asia-Pacific region. An example is the document examination training, training in the use and maintenance of document examination laboratory equipment, and the sponsoring of the enrolment of six document examiners from the Philippines, Indonesia and the People's Republic of China in the Diploma of Forensic Document Examination at the Canberra Institute of Technology.

Building law enforcement capacity in our region

The AFP is involved in a wide range of cooperative activities with other countries aimed at reducing the scope for people traffickers to operate.

This has included:

- training courses for senior police
- training in the investigation of sexual offences for law enforcement bodies
- gender awareness training, and
- training in the Code of Conduct for Law Enforcement Officials, ratified by the OHCHR.

The AFP has also developed a specialist investigations training package, dealing with legislation, investigative methodologies, trafficking trends, intelligence targeting and victim liaison.

The AFP participates in many cooperative activities with overseas jurisdictions that aim to reduce opportunities for people traffickers to operate in the region.

Working with partners, the AFP has conducted regional training courses in the investigation of sexual offences for law enforcement bodies, delivered gender-awareness training and conducted training in the Code of Conduct for law enforcement officials.

In September 2007, the AFP conducted a three week International Management of Serious Crime course (IMOSC) in Indonesia with a theme of Human Trafficking. Participants from 13 Asia-Pacific countries attended the course.

The course was designed to enhance skills to more effectively lead and manage serious crime investigations and promote practical working relationships between participants from international police services and law enforcement organisations.

Improving data

Obtaining robust statistical information on trafficked persons and related matters remains a major challenge.

The nature and extent of trafficking in persons globally is unclear.

Country data are often not available, reliable, or comparable due to methodological variations and weaknesses.

There are wide discrepancies between estimates and the number of known cases. Data is often collected for specific programs and/or institutions, and focuses on the needs of individual agencies. Some NGOs may record suspected victims on first contact, regardless of whether they later meet the specified criteria for receiving assistance, while others record only those who do. Estimates may also be developed for the purpose criminal justice systems, and individual authorities use their own definitions and classifications.

There have been several large scale efforts to estimate and document human trafficking across the world – including the annual Trafficking in Persons Report produced by the US Department of State, and studies produced by the ILO, IOM, UNICEF and UNODC. The estimates found in these reports vary over time and across regions, because in part of differences in focus and methodology.

Without accurate estimates of the scope of human trafficking to use as baselines in project locations, it is very difficult to determine where interventions are most needed or where interventions would have the greatest impact.

For this reason, Australia cooperates fully with the efforts of organisations such as the United Nations Office of Drugs and Crime to improve international data on trafficking in persons. Australia provided extensive information to the UNODC's most recent report, *Global Report on Trafficking in Persons* (February 2009). This report found that over 21 400 victims of trafficking were identified in 2006 among the 111 countries reporting victim data for that year. Two thirds of the identified victims were women, 12 per cent were men, 13 per cent girls and nine per cent boys. (This figure is likely influenced by respondent countries laws and policing priorities which often focus on child victims and victims of sexual exploitation.)²⁹

The Australian Government has made a strong commitment to improving the evidence base about trafficking in Australia and in our region.

The Australian Crime Commission's Special Intelligence Operation into People Trafficking for Sexual Exploitation, which ended in 2006, provided valuable context to policy decisions and law enforcement responses at that time. Through the ACC's work, government and law enforcement agencies have developed a base-line understanding of the conditions that trafficked women experience, the lack of control these women have over their conditions, the major source countries for people trafficking, and the level of involvement by organised crime.

The ACC continues to have a watching brief on people trafficking as part of the ACC's threat assessment process.

In addition, the Government has funded the AIC to analyse trends in trafficking in persons in Australia and in our region.

The overarching objective of the research program is to contribute to the effectiveness of the Australian and international response to trafficking in persons. The Trafficking in Persons Research Program is comprised of four key components:

²⁹ *Global Report on Trafficking in Persons* UNODC, 2009 p 11.

- a quantitative data monitoring project
- identifying and monitoring emerging trends in the Asia-Pacific region
- targeted research projects on priority issues, and
- activities to improve communications, collaborations and networking between the AIC and key stakeholders.

In the first year of the Program, activities focused on identifying data sources within Australia and establishing an on going data monitoring program; consulting with key stakeholders in the Asia-Pacific region to identify emerging issues; and targeted projects were commenced on trafficking for adoption, responding to victims and organ trafficking.

The AIC is currently undertaking research on the issue of trafficking for labour exploitation in contexts other than the commercial sex industry. This has resulted in two Transnational Crime Briefings on 'Labour trafficking: key concepts and issues' and 'Labour trafficking: recent cases', both available on the AIC website.

During consultations in several Pacific and South-East Asian countries, eighty-two face-to-face interviews were conducted with approximately 140 stakeholders, including prosecutors, law enforcement officers and policy officers. In addition, in 2008, three research forums were held on trafficking in persons – a regional forum in Samoa, a regional forum in Hong Kong and an Australian forum held in Canberra. All three involved participants from academia, key policy and operational areas and practitioners, including representatives from the non-government sector.

To date three AIC Trends and Issues papers addressing issues relating to data, law enforcement and prosecution have been released, along with a Research and Public Policy Report examining responses to the trafficking of women for sexual purposes. A report canvassing the work of the first 18 months of the program is in development and will be published later this year.³⁰

The AIC is an active participant in international research networks. In January 2008, the AIC attended a forum, chaired by IOM and UNODC, on developing new approaches to the study of human trafficking.³¹ One outcome of this forum was the development of a report on the current status of research on human trafficking. This report includes a paper by AIC on South-East Asia and will be published in 2009 by IOM and United Nations Global Initiative to Fight Human Trafficking (UN.GIFT). The AIC has participated in other international forums including a UNODC conference on organised crime and UN.GIFT meetings.

30 J Joudo Larsen, J Lindley & J Putt, *First Report of the Trafficking in Persons Research Program July 2007–December 2008*, Australian Institute of Criminology (forthcoming).

31 A forum paper, 'Knowledge Gaps and Priority Areas for Research in South East Asia', is available at http://www.aic.gov.au/conferences/other/david_fiona/2008-01-UN.html



Our focus for the year ahead

The Australian Government is working to ensure that Australia's anti-trafficking strategy, including support for victims, remains relevant and responsive to emerging trends and issues.

There has been an ongoing focus over the life of the strategy on enhancing services for victims of trafficking.

Individualised case management remains the most appropriate way to provide assistance to victims.

However, given we now have the experience of supporting over 130 victims on the program since it commenced in January 2004, the IDC is considering whether there is a need to develop standard procedures for particularly vulnerable victims of trafficking, including children and people with a mental impairment.

To date there have been relatively few victims of trafficking identified in Australia outside the commercial sex industry. However, in recognition of international trends in trafficking for labour exploitation, over the next year the IDC will have an increased focus on issues related to trafficking for labour exploitation, including enhanced engagement with peak employer and industry organisations and unions.

The Minister for Home Affairs has announced his intention to introduce several measures to support and empower victims of crime. This package will include a Charter of Victims' Rights, protections for vulnerable and disadvantaged witnesses, and provision for the use of victim impact statements in sentencing federal offenders.

The proposed Charter of Victims' Rights is based on the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The witness protections will extend existing protections available under Part IAD of the *Crimes Act 1914*, beyond child witnesses of sexual offences to other classes of vulnerable witnesses. The provisions for victim impact statements are based on the recommendations of the Australian Law Reform Commission Report 103 *Same Crime, Same Time: Sentencing of Federal Offenders*.

The Commonwealth is also working with the States and Territories through the Standing Committee of Attorneys-General to examine ways of improving the coordination and standard of support services available to victims. A working group has been established to facilitate this, and it is expected to report to Ministers in 2009.

The Attorney-General's Department is working with legal education and training bodies, such as the National Judicial College, for assistance in developing resources to assist judges, prosecutors and jurors involved in trafficking cases.

In 2009, the Department will also consider options for revising the Communication Awareness Strategy to ensure that it remains relevant to emerging trends, including trafficking for labour exploitation outside the sex industry.

The Attorney-General's Department is considering possible reforms to implement Australia's obligation to criminalise the practice of servile marriage in addition to the existing Commonwealth slavery and sexual servitude offences in Division 270 of the Criminal Code. Servile marriage generally refers to situations in which a person is considered a 'chattel' that can be sold, transferred or inherited into marriage.

The Department is also considering a specific offence in relation to forced marriage. Forced marriage, as distinct from arranged marriage, generally refers to situations in which at least one spouse does not fully and freely consent.

Appendices

Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth)

Division 270—Slavery, sexual servitude and deceptive recruiting

270.1 Definition of *slavery*

For the purposes of this Division, **slavery** is 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.

270.2 Slavery is unlawful

Slavery remains unlawful and its abolition is maintained, despite the repeal by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* of Imperial Acts relating to slavery.

270.3 Slavery offences

- (1) A person who, whether within or outside Australia, intentionally:
- (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or
 - (b) engages in slave trading; or
 - (c) enters into any commercial transaction involving a slave; or
 - (d) exercises control or direction over, or provides finance for:
 - (i) any act of slave trading; or
 - (ii) any commercial transaction involving a slave;
- is guilty of an offence.

Penalty: Imprisonment for 25 years.

- (2) A person who:
- (a) whether within or outside Australia:
 - (i) enters into any commercial transaction involving a slave; or
 - (ii) exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or
 - (iii) exercises control or direction over, or provides finance for, any act of slave trading; and
 - (b) is reckless as to whether the transaction or act involves a slave, slavery or slave trading;
- is guilty of an offence.

Penalty: Imprisonment for 17 years.

- (3) In this section:
- slave trading** includes:
- (a) the capture, transport or disposal of a person with the intention of reducing the person to slavery; or
 - (b) the purchase or sale of a slave.
- (4) A person who engages in any conduct with the intention of securing the release of a person from slavery is not guilty of an offence against this section.
- (5) The defendant bears a legal burden of proving the matter mentioned in subsection (4).

270.4 Definition of *sexual servitude*

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

270.5 Jurisdictional requirement

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against section 270.6 or 270.7.

270.6 Sexual servitude offences

- (1) A person:
- (a) whose conduct causes another person to enter into or remain in sexual servitude; and
 - (b) who intends to cause, or is reckless as to causing, that sexual servitude; is guilty of an offence.
- Penalty:
- (c) in the case of an aggravated offence (see section 270.8)—imprisonment for 20 years; or
 - (d) in any other case—imprisonment for 15 years.

- (2) A person:
- (a) who conducts any business that involves the sexual servitude of other persons; and
 - (b) who knows about, or is reckless as to, that sexual servitude; is guilty of an offence.

Penalty:

- (c) in the case of an aggravated offence (see section 270.8)—imprisonment for 20 years; or
 - (d) in any other case—imprisonment for 15 years.
- (3) In this section:

conducting a business includes:

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

270.7 Deceptive recruiting for sexual services

- (1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about:
- (a) the fact that the engagement will involve the provision of sexual services; or
 - (aa) the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex); or
 - (b) the extent to which the person will be free to leave the place or area where the person provides sexual services; or
 - (c) the extent to which the person will be free to cease providing sexual services; or
 - (d) the extent to which the person will be free to leave his or her place of residence; or
 - (da) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or
 - (e) the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person's travel or identity documents;
- is guilty of an offence.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or
 - (b) in any other case—imprisonment for 7 years.
- (1A) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person has been deceived about any matter referred to in a paragraph of that subsection, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:

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

(1B) Subsection (1A) does not:

- (a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
- (b) limit the manner in which evidence may be adduced or the admissibility of evidence.

(2) In this section:

deceive has the same meaning as in Division 271.

sexual service means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

270.8 Aggravated offences

- (1) For the purposes of this Division, an offence against section 270.6 or 270.7 is an **aggravated offence** if the offence was committed against a person who is under 18.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege that the offence was committed against a person under that age.
- (3) In order to prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.

270.9 Alternative verdict if aggravated offence not proven

If, on a trial for an aggravated offence against section 270.6 or 270.7, the jury is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that he or she is guilty of an offence against that section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

270.12 Other laws not excluded

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

270.13 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

270.14 External Territories

In this Division:

Australia, when used in a geographical sense, includes the external Territories.

Division 271 – Trafficking in persons and debt bondage

Subdivision A – Definitions

271.1 Definitions

In this Division:

confiscate, in relation to a person's travel or identity document, means to take possession of the document, whether permanently or otherwise, to the exclusion of the person, or to destroy the document.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

deceive means mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

threat means:

- (a) a threat of force; or
- (b) a threat to cause a person's removal from Australia; or
- (c) a threat of any other detrimental action;

unless there are reasonable grounds for the threat of that action.

Subdivision B – Offences relating to trafficking in persons

271.2 Offence of trafficking in persons

- (1) A person (the **first person**) commits an offence of trafficking in persons if:
 - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that entry or proposed entry or in respect of that receipt.

Penalty: Imprisonment for 12 years.

- (1A) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that exit or proposed exit.

Penalty: Imprisonment for 12 years.

- (1B) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 12 years.

- (1C) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) in organising or facilitating that exit or proposed exit, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 12 years.

- (2) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) the first person deceives the other person about the fact that the other person's entry or proposed entry, the other person's receipt or any arrangements for the other person's stay in Australia, will involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2A) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) the first person deceives the other person about the fact that the other person's exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Australia or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2B) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
 - (b) there is an arrangement for the other person to provide sexual services in Australia; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (2C) A person (the **first person**) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the exit or proposed exit of another person from Australia; and
 - (b) there is an arrangement for the other person to provide sexual services outside Australia; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (3) Absolute liability applies to paragraphs (1)(c) and (1A)(c).

271.3 Aggravated offence of trafficking in persons

- (1) A person (the **first person**) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the **victim**) and any of the following applies:

- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or another:
 - (i) if the offence of trafficking in persons is an offence against subsection 271.2(1), (1B), (2) or (2B)—after entry into Australia; and
 - (ii) if the offence of trafficking in persons is an offence against subsection 271.2(1A), (1C), (2A) or (2C)—after exit from Australia;
- (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
- (c) the first person, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
 - (ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.2, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

271.4 Offence of trafficking in children

- (1) A person (the **first person**) commits an offence of trafficking in children if:
 - (a) the first person organises or facilitates the entry or proposed entry into Australia, or the receipt in Australia, of another person; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that entry or proposed entry, or that receipt, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty: Imprisonment for 25 years.

- (2) A person (the **first person**) commits an offence of trafficking in children if:
 - (a) the first person organises or facilitates the exit or proposed exit from Australia of another person; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that exit or proposed exit, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or

- (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty: Imprisonment for 25 years.

- (3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

271.5 Offence of domestic trafficking in persons

- (1) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that transportation or proposed transportation.

Penalty: Imprisonment for 12 years.

- (2) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Australia to another place in Australia; and
 - (b) in organising or facilitating that transportation or proposed transportation, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that transportation.

Penalty: Imprisonment for 12 years.

- (2A) A person (the **first person**) commits an offence of domestic trafficking in persons if:
 - (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty: Imprisonment for 12 years.

- (2B) A person (the **first person**) commits an offence of domestic trafficking in persons if:
- (a) the first person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) there is an arrangement for the other person to provide sexual services; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty: Imprisonment for 12 years.

- (3) Absolute liability applies to paragraph (1)(c).

271.6 Aggravated offence of domestic trafficking in persons

- (1) A person (the **first person**) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the **victim**) and any of the following applies:
- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;
 - (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
 - (c) the first person, in committing the offence:
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
 - (ii) is reckless as to that danger.

Penalty: Imprisonment for 20 years.

- (2) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.5, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

271.7 Offence of domestic trafficking in children

- (1) A person commits an offence of domestic trafficking in children if:
- (a) the first-mentioned person organises or facilitates the transportation of another person from one place in Australia to another place in Australia; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that transportation, the first-mentioned person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty: Imprisonment for 25 years.

- (2) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

Subdivision C—Offences relating to debt bondage

271.8 Offence of debt bondage

- (1) A person commits an offence of debt bondage if:
- (a) the person engages in conduct that causes another person to enter into debt bondage; and
 - (b) the person intends to cause the other person to enter into debt Bondage.

Penalty: Imprisonment for 12 months.

- (2) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person (the **first person**) has caused another person (the **second person**) to enter into debt bondage, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:
- (a) the economic relationship between the first person and the second person;
 - (b) the terms of any written or oral contract or agreement between the second person and another person (whether or not the first person);
 - (c) the personal circumstances of the second person, including but not limited to:
 - (i) whether the second person is entitled to be in Australia under the *Migration Act 1958*; and

- (ii) the second person's ability to speak, write and understand English or the language in which the deception or inducement occurred; and
 - (iii) the extent of the second person's social and physical dependence on the first person.
- (3) Subsection (2) does not:
- (a) prevent the leading of any other evidence in proceedings for an offence against subsection (1); or
 - (b) limit the manner in which evidence may be adduced or the admissibility of evidence.

271.9 Offence of aggravated debt bondage

- (1) A person commits an offence of aggravated debt bondage if the person commits an offence of debt bondage in relation to another person (the **victim**) and the victim is under 18.
- Penalty: Imprisonment for 2 years.
- (2) In order to prove an offence of aggravated debt bondage, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.
- (3) If, on a trial for an offence against this section, the court, or if the trial is before a jury, the jury, is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 271.8, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

Subdivision D—General provisions relating to offences under this Division

271.10 Jurisdictional requirement for offences other than offences related to domestic trafficking in persons

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against section 271.2, 271.3, 271.4, 271.8 or 271.9.

271.11 Jurisdictional requirement for offences related to domestic trafficking in persons

A person commits an offence against section 271.5, 271.6 or 271.7 only if one or more of the following paragraphs applies:

- (a) the conduct constituting the offence occurs to any extent outside Australia;
- (b) the conduct constituting the offence involves transportation across State borders, either for reward or in connection with a commercial arrangement;

- (c) the conduct constituting the offence occurs within a Territory or involves transportation to or from a Territory;
- (d) the conduct constituting the offence is engaged in by, or on behalf of, a constitutional corporation, or in circumstances where the victims of the trafficking conduct were intended to be employed by a constitutional corporation;
- (e) some of the conduct constituting the offence is engaged in by communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(v) of the Constitution;
- (f) the victim of the conduct constituting the offence is an alien for the purposes of paragraph 51(xix) of the Constitution.

271.12 Other laws not excluded

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

271.13 Double jeopardy

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

Schedule 1 of the *Migration Amendment (Employer Sanctions) Act 2007 (Cth)*

Schedule 1 – Employer sanctions

Migration Act 1958

1 At the end of Division 12 of Part 2

Add:

Subdivision C—Offences in relation to persons who allow non-citizens to work, or refer non-citizens for work, in certain circumstances

245AA Overview

- (1) This Subdivision creates offences to deal with the following situations:
 - (a) where a person allows an unlawful non-citizen to work, or refers an unlawful non-citizen for work;
 - (b) where a person allows a non-citizen to work, or refers a non-citizen for work, in breach of the non-citizen's visa conditions.
- (2) The offences make use of a number of terms that are defined in the following sections:
 - (a) section 14 (defines **unlawful non-citizen**);
 - (b) section 245AG (defines **work** and **allows** to work);
 - (c) section 245AH (defines **exploited**);
 - (d) section 245AI (defines other terms).
- (3) To avoid doubt, section 245AF sets out some circumstances in which this Subdivision does not apply.
- (4) Section 235 also contains offences relating to work by an unlawful non-citizen and a non-citizen in breach of a visa condition.

245AB Allowing an unlawful non-citizen to work

- (1) A person commits an offence if:
 - (a) the person allows, or continues to allow, a person (the **worker**) to work; and
 - (b) the worker is an unlawful non-citizen; and
 - (c) the person knows that, or is reckless as to whether, the worker is an unlawful non-citizen.
- (2) An offence against subsection (1) is an **aggravated offence** if the worker is being exploited and the person knows of, or is reckless as to, that circumstance.

- (3) An offence against this section is punishable on conviction by whichever of the following applies:
- (a) in the case of an aggravated offence—imprisonment for 5 years;
 - (b) in any other case—imprisonment for 2 years.

245AC Allowing a non-citizen to work in breach of a visa condition

- (1) A person commits an offence if:
- (a) the person allows, or continues to allow, a person (the **worker**) to work; and
 - (b) the worker is a non-citizen and the person knows of, or is reckless as to, that circumstance; and
 - (c) the worker holds a visa that is subject to a condition restricting the work that the worker may do in Australia, and the person knows of, or is reckless as to, that circumstance; and
 - (d) the worker is in breach of the condition and the person knows of, or is reckless as to, that circumstance.
- (2) An offence against subsection (1) is an **aggravated offence** if the worker is being exploited and the person knows of, or is reckless as to, that circumstance.
- (3) An offence against this section is punishable on conviction by whichever of the following applies:
- (a) in the case of an aggravated offence—imprisonment for 5 years;
 - (b) in any other case—imprisonment for 2 years.

245AD Referring an unlawful non-citizen for work

- (1) A person commits an offence if:
- (a) the person operates a service, whether for reward or otherwise, referring one person to another for work; and
 - (b) the person refers a person (the **prospective worker**) to another for work; and
 - (c) at the time of the referral, the prospective worker is an unlawful non-citizen and the person knows of, or is reckless as to, that circumstance.
- (2) An offence against subsection (1) is an **aggravated offence** if:
- (a) the prospective worker will be exploited in doing the work in relation to which he or she is referred, or in doing any other work for the person to whom he or she is referred; and
 - (b) the person operating the referral service knows of, or is reckless as to, that circumstance.
- (3) An offence against this section is punishable on conviction by whichever of the following applies:
- (a) in the case of an aggravated offence—imprisonment for 5 years;
 - (b) in any other case—imprisonment for 2 years.

245AE Referring a non-citizen for work in breach of a visa condition

- (1) A person commits an offence if:
 - (a) the person operates a service, whether for reward or otherwise, referring one person to another for work; and
 - (b) the person refers a person (the *prospective worker*) to another for work; and
 - (c) at the time of the referral;
 - (i) the prospective worker is a non-citizen and the person knows of, or is reckless as to, that circumstance; and
 - (ii) the prospective worker holds a visa that is subject to a condition restricting the work that the prospective worker may do in Australia, and the person knows of, or is reckless as to, that circumstance; and
 - (iii) the prospective worker will, in doing the work in relation to which he or she was referred, be in breach of the condition and the person knows of, or is reckless as to, that circumstance.
- (2) An offence against subsection (1) is an *aggravated offence* if:
 - (a) the prospective worker will be exploited in doing the work in relation to which he or she is referred, or in doing any other work for the person to whom he or she is referred; and
 - (b) the person operating the referral service knows of, or is reckless as to, that circumstance.
- (3) An offence against this section is punishable on conviction by whichever of the following applies:
 - (a) in the case of an aggravated offence—imprisonment for 5 years;
 - (b) in any other case—imprisonment for 2 years.

245AF Circumstances in which this Subdivision does not apply

To avoid doubt, this Subdivision does not apply where:

- (a) a detainee in immigration detention voluntarily engages in an activity of a kind approved in writing by the Secretary for the purposes of this paragraph; or
- (b) a prisoner in a prison or remand centre of the Commonwealth, a State or a Territory engages in an activity as a prisoner; or
- (c) a person engages in an activity in compliance with:
 - (i) a sentence passed, or an order made, under subsection 20AB(1) of the *Crimes Act 1914* (community service orders etc.); or
 - (ii) a community service order, a work order, a sentence of periodic detention, an attendance centre order, a sentence of weekend detention, an attendance order, or a similar sentence or order, passed or made under the law of a State or Territory.

245AG Meaning of *work* and *allows to work*

(1) In this Subdivision:

work means any work, whether for reward or otherwise.

- (2) In this Subdivision, a person ***allows*** a person to work if, and only if:
- (a) the first person employs the second person under a contract of service; or
 - (b) the first person engages the second person, other than in a domestic context, under a contract for services; or
 - (c) the first person bails or licenses a chattel to the second person or another person with the intention that the second person will use the chattel to perform a transportation service; or
 - (d) the first person leases or licenses premises, or a space within premises, to the second person or another person with the intention that the second person will use the premises or space to perform sexual services.

(3) In paragraph (2)(d):

premises means:

- (a) an area of land or any other place, whether or not it is enclosed or built on; or
- (b) a building or other structure; or
- (c) a vehicle or vessel.

245AH Meaning of *exploited*

For the purposes of this Subdivision, a person is being ***exploited*** if the person is in a condition of forced labour, sexual servitude or slavery in Australia.

245AI Meaning of other terms

In this Subdivision:

forced labour has the same meaning as in section 73.2 of the *Criminal Code*.

sexual service means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

sexual servitude has the meaning given by section 270.4 of the *Criminal Code*.

slavery has the meaning given by section 270.1 of the *Criminal Code*.

245AJ Geographical jurisdiction

Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against sections 245AB, 245AC, 245AD and 245AE.

245AK On a trial for an aggravated offence

- (1) If, on a trial for an offence against section 245AB or 245AC, the prosecution intends to prove an aggravated offence, the charge must allege that the worker has been exploited.
- (2) If, on a trial for an offence against section 245AD or 245AE, the prosecution intends to prove an aggravated offence, the charge must allege either that:
 - (a) the prospective worker has been or will be exploited in doing the work in relation to which he or she was referred; or
 - (b) the prospective worker has been or will be exploited in doing other work for the person to whom he or she was referred.
- (3) If, on a trial for an aggravated offence against section 245AB, 245AC, 245AD or 245AE, the trier of fact is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that he or she is guilty of an offence against that section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

2 Application

The amendment made by item 1 of this Schedule applies if:

- (a) in a case where a person is referred for work in circumstances where an offence would be created by the amendment—the referral is made on or after the commencement of this Schedule; or
- (b) in any other case—a person begins, on or after the commencement of this Schedule, to be allowed to do work in circumstances where an offence would be created by the amendment.

Appendix 2: Prosecutions

Wei Tang

The defendant was charged with five counts of intentionally possessing a slave and five counts of intentionally exercising over a slave a power attaching to the right of ownership, namely the power to use, contrary to paragraph 270.3(1)(a) of the Criminal Code. The charges were in relation to five Thai women who had worked at a brothel in metropolitan Melbourne owned by the defendant.

While in Thailand each complainant entered into an agreement to come to Australia to work in the sex industry. The 'contract' required them to incur a debt of between A\$35 000 and A\$45 000 which they would pay off by servicing clients of the brothel. Upon their arrival in Australia, the complainants' passports were confiscated and kept at the brothel. According to the complainants, they were required to work at the brothel six days a week. Of the A\$110 earned in respect of each client, A\$50 was deducted from the debt. The remainder of the proceeds went to the brothel. The complainants were given the option of working on their 'free' day and of retaining the A\$50 per client that would otherwise be used to reduce their debt for that day. The complainants had restrictions placed on their freedom of movement whilst they were repaying their debts.

When the proceedings first commenced, Tang had two co-accused. One of those co-accused pleaded guilty to three counts of intentionally possessing a slave contrary to section 270.3(1)(a) of the Criminal Code and two counts of engaging in slave trading contrary to section 270.3(1)(b) of the Code. This co-accused was originally sentenced to nine years' imprisonment with a non-parole period of three years. Following an appeal against sentence, the co-accused was sentenced to a total effective sentence of six years' imprisonment with a non-parole period of two years and six months. The reduction in sentence was a result of the co-accused's co-operation with authorities. That co-accused gave evidence at the trial for the Crown.

Tang and her second co-accused, Paul Pick, were first tried in April 2005. The jury in that trial was unable to reach a unanimous verdict in respect of any count in relation to Tang, and two of the counts in respect of Pick. The jury acquitted Pick of eight other charges. The CDPP filed a Notice of Discontinuance in respect of the two remaining counts against Pick on 9 June 2006.

As a result of Tang's first trial resulting in a hung jury, Tang was retried in April 2006. Her second trial resulted in a conviction on all charges. She was sentenced by the Victorian County Court for 10 years' imprisonment with a non-parole period of six years. Tang appealed to the Victorian Court of Appeal. The Court of Appeal found that the evidence was capable of sustaining a conviction, but quashed Tang's convictions, set aside the sentence and ordered a re-trial on a finding that the trial judge had misdirected the jury on the fault elements of the offence. The CDPP was granted special leave to appeal to the High Court of Australia against the decision of the Court of Appeal. The defendant sought special leave to

cross-appeal against the order for a new trial, arguing that the court should have ordered an acquittal. Her cross-appeal included a constitutional challenge against the validity of the anti-slavery laws in the Criminal Code (this challenge was later withdrawn). The Australian Human Rights Commission was also granted leave to appear as intervener and made submissions about the meaning of slavery.

In August 2008, by a 6-1 majority, the High Court overturned the order of the Victorian Court of Appeal for a new trial, effectively reinstating Tang's slavery convictions. The High Court remitted her appeal on sentence to the Court of Appeal for consideration. In respect of the constitutional issue, the High Court held that Parliament had the power to make laws with respect to external affairs, in this case, by section 270 giving effect to Australia's obligations under the Slavery Convention. The Court of Appeal heard Tang's appeal against sentence on 5 February 2009 and the decision has been reserved.

This case is significant as it provides the first consideration by the High Court of the application of the general principles of criminal responsibility under Chapter 2 of the Criminal Code to the slavery offences under section 270.3(1).

Sieders and Yotchomchin

On 21 July 2006, Somsri Yotchomchin and Johan Sieders were each found guilty of one count of conducting a business, namely a brothel, which involved the sexual servitude of other persons contrary to section 270.6(2) of the Criminal Code. These were the first convictions in Australia for sexual servitude offences.

Four women were recruited in Thailand to come to Australia and work in the sex industry. The women agreed to come to Australia, and a complex process ensued whereby the recruiter obtained a tourist visa on the women's behalf for travel to Australia.

For this service, a debt was imposed that was to be paid off upon the women's arrival to Australia. The women travelled to Australia accompanied by an escort. Each of the women provided sexual services at brothels owned by the defendants. The women did not receive any payment for their services, and were told that their earnings would go directly towards paying off their 'debt'. Each woman was told that she owed a debt of about A\$45 000.

The Crown case was that the conditions in which the women were kept in Australia amounted to 'servitude' under section 270.6(2) of the Criminal Code. Yotchomchin and Sieders pleaded not guilty to the charges, and the trial commenced on 27 June 2006. The jury returned verdicts of guilty on 21 July 2006. On 8 December 2006, Sieders was sentenced to four years' imprisonment and Yotchomchin was sentenced to five years for conducting a brothel that involved the sexual servitude of other persons. Sieders and Yotchomchin lodged an appeal, which was heard in May 2008. The appeals were dismissed on 13 August 2008.

Rasalingham

This case represents the first labour exploitation matter prosecuted in Australia.

The defendant was an Australian citizen who owned and operated four Indian restaurants in the Blue Mountains. The victim was introduced to the defendant in India. It was alleged that during this meeting the defendant offered the victim employment in his restaurants in Australia. The employment arrangement involved the victim working 365 days a year, without payment for the first year, but during this time the defendant would provide money to the victim's family each time he returned to India.

The defendant directed the victim to a particular travel agent in India who made all the travel arrangements including obtaining a visa. It was alleged that the victim did not sign an application for a visa nor any other documentation in relation to his intended travel. He was, however, asked by the travel agent to sign his name seven times on a blank piece of paper. This piece of paper was found later during a search warrant executed at one of the defendant's restaurants in the Blue Mountains, with 3 signatures on it and part of the page cut out, along with documents relating to a falsified visa application and work contract. The Department of Immigration and Citizenship found that a visa application and work contract had been submitted to them on behalf of the victim.

The victim arrived in Australia on 1 June 2006 and the defendant took possession of his passport, ticket and other documents. The victim was required to work long hours at the restaurants owned by the defendant and was not allowed any days off. He did not receive any payment for his work and there was no evidence to suggest any payments were made to his family in India.

By the time the victim was located, he had been working for the defendant for approximately one month. The defendant was charged with one offence of organising or facilitating the entry or receipt of a person into Australia being reckless as to whether that person would be exploited after entry into Australia contrary to section 271.2(1B) of the Criminal Code and one offence of submitting to DIAC a document with the intention of dishonestly influencing a Commonwealth public official in the exercise of the official's duties as public official contrary to section 135.1(7) of the Criminal Code.

Following a trial in the District Court of NSW, the defendant was found guilty of dishonestly influencing a Commonwealth public official. There were issues at trial in relation to whether the circumstances involved exploitation as defined by the Code. The jury found the defendant not guilty of the people trafficking offence. The defendant was sentenced to 4 months' imprisonment to be released forthwith upon entering a recognisance in the sum of A\$5 000 to be of good behaviour for 12 months.

Mclvor and Tanuchit

This case resulted in the first convictions for slavery in New South Wales. The defendant, Mclvor, owned and co-managed with his wife, Tanuchit, a brothel known as 'Marilyn's' in Fairfield, NSW. All five victims were recruited in Thailand to work in Australia between July 2004 and June 2006. Four of the five victims knew that they would be providing sexual services and one of the victims was given the false impression that she was coming to work as a masseuse.

When the victims arrived at Marilyn's, the defendants enforced an artificial 'debt contract' to repay an amount between A\$35 000 and A\$45 000 by servicing clients at the brothel. The evidence at trial revealed that the defendants forced all victims to work seven days a week, on average for 16 hours a day. Normally for each sexual service performed, the worker would be paid a portion of the full amount and the remainder went to the 'house'. However, for the victims, they were paid cash on only one day of the week and the amount earned on the remainder of the week went to clearing their 'debt'.

During the victims' period of slavery the defendants forced the victims to work and sleep in locked premises. The victims were not allowed to leave the brothel without being in the company of the defendants or a trusted associate. The defendants confiscated the victims' passports on their arrival and for a period of one to two months restricted their access to telephones by confiscating their mobile telephones and locking brothel telephones with a PIN code. The defendants forced the victims to work during their menstruation and during severe illnesses and infections.

These offences were discovered by the AFP when one of the victims, (the victim who thought she was to work as a masseuse), covertly obtained the telephone number of the Thai Consul General and requested assistance. Following a jury trial the defendants were each convicted of 5 counts of possessing a slave contrary to section 270.3(1)(a) of the Criminal Code and 5 counts of exercising over a slave powers attaching to the right of ownership, namely the power to use, contrary to section 270.3(1)(a) of the Criminal Code.

On 15 November 2007, both were found guilty of 10 out of 12 Criminal Code people trafficking offences. Sentences were handed down on 29 August 2008. Mclvor was sentenced to 12 years' maximum imprisonment with a non-parole period of 7.5 years and Tanuchit was sentenced to 11 years' maximum imprisonment with a non-parole period of seven years. Both defendants lodged notices of intention to appeal against both conviction and sentence. Mclvor applied for an application to extend the deadline to lodge an appeal and was granted an extension to 12 June 2009.

Kovacs and Kovacs

The defendants allegedly formed a plan to travel to the Philippines and organise for a woman from the Philippines to be married to an Australian citizen of Hungarian background. The woman was then to apply for a visa and come to Australia where she would be made to work for the defendants in both their takeaway shop at Weipa and in their residence as a child minder and housekeeper until the debts were repaid for the travel to Australia. There was a suggestion that this would take 5 years. The marriage was a sham and evidence was called at the trial from the woman and the person she married who had already pleaded guilty to breaches of the *Migration Act 1958* arising from the sham marriage.

When the victim arrived in Australia she was met by Zoltan Kovacs and driven to Weipa where she was allegedly put to work in the shop working 12-hour days for five and a half days per week. When she would return to the residence of the defendants (where she lived) she was allegedly required to care for three small children and do household duties. She was allegedly paid little for her duties and there was some evidence that a small amount of money had been sent to her family on her behalf. She tried to escape on one occasion and ran away to the residence of a person that she worked with, but Melita Kovacs took her home, taking her passport from her. The victim spoke very little English and was isolated culturally. Eventually when both of the defendants were away, she spoke to the daughter of Zoltan Kovacs from a former marriage who loaned her some money that allowed her to escape from Weipa to Cairns.

A jury found both defendants guilty of arranging a marriage for the purpose of assisting someone to get a Stay Visa contrary to section 240(1) of the Migration Act; intentionally possessing a slave contrary to section 270.3(1)(a) of the Criminal Code; and intentionally exercising over a slave a power attaching to the right of ownership, namely the power to use, contrary to section 270.3(1)(a) of the Criminal Code.

Zoltan Kovacs was sentenced to 8 years imprisonment with a non-parole period of 3 years and 9 months for slavery and arranging a contrived marriage. Melita Kovacs was sentenced to 4 years imprisonment with a non-parole period of 18 months.

Zoltan Kovacs was also convicted of raping the victim twice. For these State offences, he was sentenced to 8 years imprisonment on 2 October 2006. The defendant appealed against his State convictions and they were overturned by the Court of Appeal on 27 April 2007. A re-trial was ordered. Zoltan Kovacs was also convicted of indecent assault and also rape on two occasions in relation to another complainant and on 23 February 2007 was sentenced to seven years' imprisonment with a parole eligibility date of 3 October 2012. His appeal on those convictions was dismissed.

On 21 December 2007 both defendants filed appeals against conviction and sentence in the Court of Appeal. On 23 December 2008 the Court of Appeal of the Supreme Court in Brisbane handed down a decision which set aside the slavery offences for both defendants and ordered retrials. The Court of Appeal held that there were two errors of law because (1)

evidence which should have been regarded as inadmissible was admitted and (2) the trial judge gave inadequate directions under Queensland legislation in relation to one witness who gave evidence from behind a screen. Due to these errors of law the Court of Appeal held that it could not be satisfied that a miscarriage of justice did not occur. The convictions for arranging a sham marriage were upheld.

Dobie

Dobie was a hairdresser on the Gold Coast. He had personal debts that he owed to loan sharks. He recruited and organised four women from Thailand to come to Australia to work for him as prostitutes. He promised them easy money and good working conditions (choice of work hours, choice of work, time off) and paid for their air fares and visas. He involved his friends in assisting the entry of the women by providing false information to DIAC and the Australian Embassy in Thailand in support of the visa applications. He successfully recruited two women to work for him. He accommodated the women, sent a small amount of money to their families in Thailand, and gave them A\$20 per day for food and toiletries. They were not free to choose when to work and who to service. They were intimidated and pressured to work as much as they could. One complainant was made to have group sex when she did not want to.

Dobie was charged with two counts of people trafficking (deceptive recruitment) (s271.2(2B) Criminal Code), one count of dealing in the proceeds of crime (s400.6(1) Criminal Code), and four counts of presenting a false document to immigration officials (s234(1)(a) Migration Act 1958). Dobie eventually pleaded guilty to all charges. On 23 December 2008, Dobie was sentenced to a total of five years for offences relating to people trafficking, immigration fraud and dealing in proceeds of crime, with a non-parole period of 22 months. On 5 January 2009, Dobie lodged an application for leave to appeal against his sentence and this application will be heard on 7 July 2009.

Sally Xu, Ngoc Tran and Jamie Qi

This case arose out of the experiences of a woman called Ms K. Ms K was a young Thai woman who allegedly made a triple-0 telephone call to the New South Wales Police on the evening of 5 January 2003. In short, the Crown alleged that the New South Wales police 'rescued' Ms K from the brothel where she had been held against her will.

The Crown case was that Ms K, who had been a law student in Bangkok, had been deceptively recruited from Thailand on the basis that she would be working in a restaurant in Australia. The Crown alleged that Ms K's fare to Australia was paid and a visa organised, and she was accompanied by a female 'minder' from Bangkok to Sydney. Her passport was then confiscated and she was kept initially in a boarding house in Surry Hills before being taken to a brothel. There was evidence to corroborate Ms K's account that she was forced to crawl through a hole in the wall to sleep in accommodation adjacent to the brothel. Ms K also gave evidence that she was threatened with what she thought was a baseball

bat, and forced to have sex with multiple men during her time at the brothel. The Crown case was that from 27 December 2002 until 5 January 2003, Ms K was kept locked up at a house whilst being transported to be used as a prostitute in three brothels operated by one of the defendants.

At trial, the defence ran a proactive case in which they portrayed Ms K as a willing sex worker who had been involved in the sex trade overseas before coming to Australia, and who only expressed disquiet at the brothels in Sydney as a result of not making enough money. The effect of the defence case was that it was nonsensical to have an unwilling sex worker or one who was complaining to various customers about her plight, as it would be bad for business.

The jury was unable to reach a verdict on any of the ten counts before them (except one, regarding which they acquitted the defendant). Ms K has since returned to Thailand, and has indicated that she will not be available to give evidence at a re-trial because she found the experience of giving evidence too traumatic. Without Ms K's evidence, the Crown was not able to proceed to a retrial, and no evidence has been offered in relation to the remaining nine charges.

Jenny Ong, Danny Kwok, Raymond Tan and Hoseah Yoe

The Crown case in this matter was that the defendants conspired with each other (and other people) to bring women from South East Asia to Australia to work in brothels in conditions which amounted to conditions of servitude or slavery.

The Crown case was that although there was some question about the extent of the women's awareness as to whether they would be working in the sex industry, each woman was only made aware of the true nature of the proposed conditions of her 'employment' after she arrived in Australia. When the AFP provided the initial brief of evidence it contained statements of three Indonesian women who escaped from a home unit located in Auburn, Sydney. However, as the prosecution progressed a number of other victims were detected by the AFP. Those women provided statements indicating that they had been trafficked from either Thailand or Indonesia.

The defendants were committed for trial and indicted on a joint charge of conspiring to cause persons to enter into sexual servitude under sections 11.5 and 270.6(1) of the Criminal Code. The trial of that charge commenced on 14 June 2005. The jury were subsequently discharged due to issues relating to disclosure. The decision was later made not to proceed with a retrial for evidentiary reasons.

Appendix 3: National Roundtable on People Trafficking

THE NATIONAL ROUNDTABLE ON PEOPLE TRAFFICKING

Hosted by the Commonwealth Minister for Home Affairs


Monday, 23 June 2008

The Realm Hotel, National Circuit

Barton, Canberra

STATEMENT OF OUTCOMES

1. At its first meeting on 23 June 2008, the National Roundtable on People Trafficking (NRPT) identified the following issues as priorities for further consideration:
 - The framework used by DIAC in assessing visa applications,
 - Training for legal practitioners (judges, prosecutors, counsel for defence) and jurors on trafficking issues, including the distinction between ‘trafficking’ and labour exploitation,
 - How trauma affects trafficking victims’ ability to make decisions about support and to participate in the investigation and prosecution of people trafficking offences,
 - Recognition of adult traumatised victims of trafficking as “vulnerable witnesses”, with access to associated protections,
 - Clearly differentiating in policy and law enforcement responses between migrant workers and trafficked persons,
 - Recognition of cross-cultural issues affecting victims of trafficking including: identification of victims; communicating effectively with victims, especially about their rights; and effective support for victims,
 - Developing culturally appropriate information for victims of trafficking in their own languages, through appropriate consultation,
 - Increased funding for welfare services in communities that work with victims of trafficking,
 - Protection of the personal information of victims of trafficking, including that their consent is sought and obtained before each use of personal information or material, and
 - Application of people trafficking visa and victim support regimes to civil penalties, particularly in the workplace relations regime.

- 
2. The NRPT has agreed to the attached Terms of Reference for the Roundtable and these are now to be submitted to Ministers for approval.
 3. The NRPT has agreed to establish a small working group to consider the development of guidelines for community and welfare groups working with trafficking victims in consultation with law enforcement to ensure a commitment to consistent and complimentary practices in support of victims. HREOC will chair the working group and seek to include the Workplace Ombudsman and the ACTU in those consultations.
 4. Roundtable participants from the non-government sector support the attached statement and seek urgent Government consideration of this statement.
 5. The NRPT has agreed to the following in relation to labour trafficking:
 - Consideration of the need to develop specific education and training packages for State and Territory government authorities that might be a first point of contact for victims of trafficking,
 - Development of best practice models for identifying and responding to possible victims of labour trafficking, including investigating the effectiveness of responses based on education about rights, rather than victims,
 - Relevant members of the Roundtable will provide details of existing training packages and public awareness materials to assist in identifying ongoing needs, and
 - Consider opportunities for in school training and awareness-raising on labour trafficking which does not stigmatise all migrant labour.

The outcomes from the NRPT will be sent to the Prime Minister.

THE NATIONAL ROUNDTABLE ON PEOPLE TRAFFICKING
Hosted by the Commonwealth Minister for Home Affairs
Monday, 23 June 2008
The Realm Hotel, National Circuit
Barton, Canberra

TERMS OF REFERENCE

PURPOSE

The purpose of the National Roundtable on People Trafficking (NRPT) is to strengthen Australia's response to people trafficking through a partnership between the Commonwealth Government and NGOs. The NRPT will seek to prevent trafficking, protect victims and prosecute offenders.

The NRPT will achieve this by:

- (a) Establishing a flexible network of stakeholders, from all sectors, that are committed to combating people trafficking
- (b) Facilitating collaboration, information sharing and open discussion between government and non government sectors on current and emerging people trafficking issues in the Australian context, including possible changes to Australia's Strategy to ensure it remains responsive to Australia's unique position and experience in the region
- (c) Establishing a community consultative mechanism to enable the Government to develop and test relevant policies and ensure that the non government sector is a key part of the policy development process, and
- (d) Facilitate an understanding of Australia's regional and international efforts to combat trafficking especially through established bilateral and multilateral forums and regional aid initiatives.

GOVERNANCE

The NRPT will be convened by the Minister for Home Affairs in partnership with other participating Ministers.

In order to facilitate discussion, it is proposed that the NRPT will be conducted under the Chatham House Rule, which provides: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed."

MEMBERSHIP

The NRPT will comprise a flexible network of stakeholders who actively contribute to the fight against people trafficking or play an important role in developing Australia's anti-people trafficking strategy. This includes:

- (a) Representatives from relevant trafficking-specific non-governmental organisations, service providers, victims of crime organisations, and employer and union representatives, including:
 - (i) Australian Catholic Religious Against Trafficking in Humans
 - (ii) Australian Chamber of Commerce and Industry
 - (iii) Australian Medical Association
 - (iv) Anti-Slavery Project
 - (v) Australian Women Lawyers Association
 - (vi) Australian Workers Union
 - (vii) Australian Human Rights Commission
 - (viii) Law Council of Australia
 - (ix) National Association of Community Legal Centres
 - (x) National Association of Services Against Sexual Violence
 - (xi) Project Respect
 - (xii) Salvation Army
 - (xiii) Scarlet Alliance
 - (xiv) Sisters of Saint Joseph, and
 - (xv) Victim Support Australia
- (b) Representatives from the Commonwealth Government including members of the Anti-People Trafficking Interdepartmental Committee.

Membership of the network will be reviewed regularly to ensure responsiveness to current issues and emerging trends.

METHOD OF OPERATION

- (a) The NRPT will meet once a year. Additional meetings may be arranged if required.
- (b) The NRPT will be chaired by the Attorney-General's Department, which will also act as the Secretariat
- (c) An agenda for each NRPT will be prepared by the Attorney-General's Department and distributed to members
- (d) A summary record will be distributed by the Attorney-General's Department to all members within four weeks of each meeting, but prior to any subsequent meeting, and
- (e) The Attorney-General's Department will establish an email list of members, which can be accessed by members of the Roundtable to consult on issues as they emerge between meetings.

