



Australian Government  
Australian Institute of Criminology

# Trafficking of women for sexual purposes

Fiona David

Research and Public Policy Series

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## Foreword

As a relatively new crime type, information and knowledge about trafficking in persons is still emerging. The AIC first examined the issue in 1999 as part of the United Nations Global Programme against Trafficking in Persons. At that time, there was no agreed international definition of 'trafficking in persons', as the United Nations Trafficking Protocol was still in the early stages of development. Few countries had laws that addressed the issue. Debates centred on the key differences between people smuggling and trafficking, and controversies surrounding issues such as 'mail order brides' and migration for sex work. It was generally agreed that as a crime type, trafficking in persons was a difficult issue to research, as the practice itself is clandestine and victims remain hidden.

In the intervening period, much has changed. In 2008, more than 117 countries, including Australia, have ratified the United Nations Trafficking Protocol. These countries have agreed to a shared definition of trafficking in persons and a set of core obligations. In the Australian context, there is now a variety of criminal offences under federal law, ranging from debt bondage – which attracts a penalty of less than 12 months imprisonment – to slavery, punishable by 25 years in jail. The Australian Federal Police have undertaken more than 150 investigations related to trafficking in persons, and the federal government has provided support to 98 people on its Support for Victims of Trafficking program.

While there has been substantial change, some things remain the same. Key debates still coalesce around issues including the realities of transnational migration for work, the difficulties of defining (and proving) key concepts such as exploitation and sexual violence, and the challenges of giving due respect to the agency of individuals in situations where choice is heavily constrained.

While the pool of primary data that can be drawn on for research has grown, research on trafficking in persons still has challenges. The anti-trafficking response is relatively new, so the number of cases that have been identified and that are available for study is still fairly small. It can be difficult or even impossible to de-identify information or draw trends from such a small sample. Also, the bulk of the information available is drawn from cases that have come to the attention of the authorities. As with any crime type, it is likely that there are a number of structural or institutional biases that can impact on what is and what is not detected. As is the case with sexual assault or domestic violence, it is very likely that official statistics present only part of a larger, more complex picture. Finally, in a context where 'exploitation' is a key component of the crime type, individual and institutional political perspectives have a profound impact on selection, presentation and interpretation of information.

This report is not intended to give an overview of the trafficking situation in Australia. Rather, it is intended to give some insight into the issues, barriers or challenges that have arisen in

known trafficking cases to date, either in relation to victim detention, or the investigation and prosecution of offenders. The research sought to move beyond people's assumptions about what these barriers might be, and to draw on the learned experience of the small number of individuals who have worked directly with victims or offenders in the Australian context. This included victim support workers, investigators and prosecutors. All of the information in this report is drawn from interviews with these people.

The research did not include interviews with one particularly important group of people: victims of trafficking. This is an important gap in the research that will need to be carefully considered in future, so that legitimate concerns about individual privacy and security, and ethics in research, can be balanced against the real need to ensure that those who are most affected by this crime and the response – victims of trafficking – have an opportunity to contribute to the development of knowledge on this issue.

**Judy Putt**  
**General Manager, Research**  
**Australian Institute of Criminology**

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## Acronyms and abbreviations

<b>AFP</b>	Australian Federal Police
<b>AIC</b>	Australian Institute of Criminology
<b>BFV</b>	Bridging F Visa
<b>CDPP</b>	Commonwealth Director of Public Prosecutions
<b>Cth</b>	Commonwealth
<b>CJSV</b>	Criminal Justice Stay Visa
<b>DIAC</b>	Department of Immigration and Citizenship
<b>NSWDC</b>	New South Wales District Court
<b>NSWSC</b>	New South Wales Supreme Court
<b>OfW</b>	Office for Women (Cth)
<b>PJC</b>	Parliamentary Joint Committee
<b>SMOCT</b>	Senior Migration Compliance (Trafficking)
<b>SWOP</b>	Sex Workers Outreach Project in New South Wales
<b>TSETT</b>	Transnational Sexual Exploitation and Trafficking Teams (within the AFP)
<b>VCC</b>	County Court of Victoria
<b>VSCA</b>	Supreme Court of Victoria Court of Appeal

## Executive summary

### Research objectives and methodology

In 2007, the Office for Women commissioned the Australian Institute of Criminology to undertake research on the issue of 'trafficking of women for sexual purposes: barriers to victim detection, identification and reporting' and the successful prosecution of traffickers.

The research involved a literature review, a review of trial transcripts where these were available, and interviews with a number of individuals and organisations that have had firsthand experience of responding to trafficking in persons in Australia (a list of interviews is in Appendix A). Interviews sought to elicit information about the key issues, challenges or barriers that have arisen in known trafficking cases in Australia, along with 'lessons learnt' relating to victim identification, and the investigation and prosecution of offenders.

### Research findings

#### *The experience of detecting victims of trafficking*

The trafficking cases that have come to official attention have been detected partly as a result of government activity, and partly through individual women seeking help and assistance. A number of cases have been detected following Department of Immigration and Citizenship (DIAC) referrals to the Australian Federal police (AFP) following compliance activities in the sex industry. The state police services in several jurisdictions have also referred suspected cases. In a number of matters, victims of trafficking have actively sought help and assistance; for example, by calling 000, going to a local police station, contacting their embassy in Australia and asking the men they meet in brothels to help them.

The state policing response to trafficking of women for sexual purposes is situated differently in the various jurisdictions. In Queensland, detecting and responding to this crime type is part of the remit of the Prostitution Enforcement Taskforce in Queensland, whereas it is part of the sexual assault response in Victoria and New South Wales. Each of these jurisdictions had crime reports that had been investigated either in conjunction with, or by, the AFP. State police noted a number of factors that might impact on detection, including immigration status and fear of deportation, different approaches to policing the sex industry, capacity for proactive policing, and the small number of crime reports for this crime type, which impact on resources and training.

DIAC has been an important source of referrals to the AFP. Investigators noted the importance and strength of collaborative working relationships with DIAC. Immigration compliance officers receive training in detecting indicators of trafficking, and described

using various strategies to build trust and rapport with the women they encounter, as part of creating an environment where women may be willing to seek help. DIAC's awareness and response to trafficking has led to a number of suspected trafficking cases being detected and quickly brought to the attention of the AFP.

However, there are competing views on the broader impact of these activities. There is a view within the sex industry that it is being disproportionately targeted through DIAC compliance activities, reflecting a misguided view that trafficking only takes place in the sex industry. This is perceived as a backdoor reintroduction of policing into the sex industry, in a context where the state and territory governments have pursued policies that have sought to reduce or remove the role of police in regulating the sex industry through legalisation or decriminalisation. It was noted that compliance and law enforcement activities have been a focus of the anti-trafficking response, in a context where there has been comparatively little focus or funding for approaches such as peer education and outreach. Given the many barriers that may prevent women in marginal situations from seeking help, peer education and outreach were considered to be appropriate mechanisms that needed to be explored further.

Participants noted a range of reasons why women may not want to come forward: concern about debt and financial pressures to make remittances, fear of what traffickers might do to them or their families, lack of trust in officials due to experiences in their home countries, a fear of deportation, and a desire to just get on with life. Participants from across the spectrum noted they can understand why women would not want to participate in a criminal justice process: this involves having to answer intrusive questions, and being isolated from friends and potentially family, and criminal justice processes can extend over many years.

The fact situations involved in the trafficking cases that have been detected are not clear-cut. In particular, there is an unresolved tension between wanting to respect women's capacity to exercise choice, while also recognising that women may be operating in situations of constrained choice, which can be exploited. Among participants, there are very different understandings of concepts such as 'exploitation'. It was also noted that individuals will have different perceptions of a range of issues, including debt, family obligation and priority, depending on cultural background. Finally, several participants noted that different national groups have access to different categories of visas and therefore different entitlements to work in Australia. This was raised as an issue that may impact on detection but also vulnerability, if women sought the assistance of agents to migrate outside of lawful channels. The importance of keeping an open mind, not rushing to make judgements, and taking the individual's perspective into account were all considered important to capacity to detect victims of trafficking.

### *The experience of investigating trafficking offences*

The AFP investigators that were interviewed noted that the trafficking cases that have been detected do not match stereotypes about ‘high-end’ organised crime; also, cases have been detected in the legal and the illegal sex industries. Some felt that this distinction was irrelevant, from the perspective of investigating trafficking. The experience of the past four years suggests that trafficking investigations can be long, complex and resource-intensive. As the victim’s account is generally crucial to the success or failure of any prosecution, it is vital to ensure that these are sufficiently corroborated. Also, there are complexities associated with investigating transnational crime: investigators will likely need to use interpreters for all interactions with both victims and suspects, and to understand key evidence such as telephone interceptions; victims may want to return home, in which case they may or may not continue to be involved in an investigation; and investigations may need to be coordinated with other police services overseas.

AFP investigators noted that the victims of trafficking who have been identified have not been subjected to physical violence in the form of beatings. However, they have experienced high levels of abuse. This has implications for the conduct of investigations: it is not realistic to expect that victims will open up to complete strangers in the first interview; and an opportunity to build trust and rapport is vital, along with a capacity to delay and suspend interviews as needed. Several AFP investigators also noted that working directly with victims of personal crime is a relatively new development for the AFP. In contrast, the state and territory police work with victims of crime every day. The view was expressed that a background in state policing is an advantage for this reason. The AFP’s specialist training program, the Transnational Sexual Exploitation Investigations Program, covers issues including working with victims of crime, and is highly regarded. However, several participants expressed the view that training could be usefully expanded and localised, drawing on experience from the states and territories of working with victims of crime, and particularly victims who have experienced sexual assault.

Investigators and prosecutors emphasised the importance of high-quality, comprehensive victim support programs. In addition to humanitarian considerations, investigators noted a direct correlation between the quality of victim support and the quality of evidence; and the risk to investigations if victim support programs were not appropriately structured and resourced. The experience of the past four years has suggested a number of gaps in the existing victim support program, some of which have been overcome by recent reforms but some of which have not. Key issues would appear to include the need to increase the use of interpreters throughout the victim support program, a perceived variability in the quality and type of services that are offered to individual clients, opportunities for family reunification (including for children who are located offshore, and same sex partners), and access to

increased legal advice. The opportunity for both clients of the program and those who interact with clients to give feedback or raise concerns through an accessible and appropriate mechanism was also considered vital.

### *The experience of prosecuting trafficking cases*

There has been a number of trafficking prosecutions undertaken in Australia. As at 31 January 2008, the Commonwealth Department of Public Prosecutions had received briefs of evidence from the AFP concerning 29 defendants alleged to have committed trafficking offences (offences under Divisions 270 and 271 of the Criminal Code (Cth)). Charges against a number of defendants were dropped due to insufficient evidence. This follows hung juries in at least two cases. A number of defendants have been tried and convicted. However, very few cases have been finalised, as there are a number of appeals pending. Cases can extend over a long period of time; for example, the defendant Wei Tang was first arrested in 2003, and this matter is still before the courts in May 2008. With so few cases having gone through the full length of the court system, it is very difficult to draw out meaningful trends.

Nonetheless, prosecutors noted that 'prior inconsistent statements' have been a major challenge in prosecutions. The existence of a prior inconsistent statement is a legitimate ground on which to challenge the credibility (or believability) of witnesses. In all Australian trafficking cases to date, evidence from the alleged victims has been a crucial part of the prosecution case. If the alleged victim is not believable, for example, because their story has changed over time, this can cause the whole prosecution case to collapse if there is no other supporting evidence. This suggests the significance of creating optimal conditions for undertaking interviews as part of the investigation process, testing the alleged victim's statement as it will be later tested in court, timing around finalisation of statements and corroboration.

The credibility of witnesses has also been challenged on other grounds; for example, because witnesses have allegedly not paid tax, or they have participated in visa fraud. In at least one case, defence counsel sought to suggest the victim was not believable by invoking what can only be described as stereotypes about sex workers and Thai women in Australia. Witnesses (a term that includes but is not restricted to alleged victims) have been subjected to fairly harsh and invasive cross-examination in situations where they are sitting in open court in full view of the defendants, sometimes with their names available to be published in the press.

In several cases, prosecutors have successfully argued for name suppression orders, and closing the court on the basis of public policy. These protections were not automatic but had to be applied for, and decisions appealed, where necessary. The situation is less clear where participating as a witness can cause invasion of privacy (e.g. disclosing that you are either a

sex worker or a client of a sex worker). As federal law is silent on the issue of in-court protections for witnesses, these issues are currently decided by reference to the applicable state or territory law and the rules of the court. As a result, there is a lack of consistency about what protections are available for witnesses in trafficking prosecutions.

There are risks in the prosecution process that flow from making any form of assistance available to witnesses. In particular, defence counsel has argued that witnesses (including alleged victims) have been ‘bought’ by inducements such as immunity from prosecution and access to visas or entitlements under the federal victim support program. To minimise this risk at least in so far as it relates to women on the victim support program, the AFP has delayed seeking Witness Protection (Trafficking) Certificate from the Attorney-General until after the completion of criminal justice processes. This means that the credit of women on the program is less vulnerable to attack in court on the basis of ‘inducements’. However, the impact of this practice on the victim was noted. Certainty around migration status and capacity to reunite with family were noted as significant issues for women on the victim support program.

### Recommendations

As the anti-trafficking response is relatively new, information and experience is still emerging. A number of issues were identified in the research process that merit further consideration. The following is a summary of the recommendations detailed in the report:

- Reconceptualise the current visa framework to accommodate situations where women (who are not in stable or regular migration situations) want help to escape or recover from trafficking situations, but do not want to engage with the police or other criminal justice authorities.
- Clarify the time frames for moving women onto longer-term visas, as part of providing greater certainty for women on the victim support program. Under current arrangements, this would involve setting clear time frames for when the AFP should seek a Witness Protection (Trafficking) Certificate from the Attorney-General.
- Fund culturally appropriate outreach services for women, so that women can seek appropriate support and advice from a range of services beyond the parameters of the criminal justice system.
- Ensure the federally funded victim support program is comprehensive and of high quality. This may require consideration of the following:
  - creating the conditions that support effective performance management of the service provider

- developing a service standard to ensure clarity around what services can be offered and the level and quality of service provision that can be expected, greater certainty around how different interests will be balanced (for example, the relative priority of individual client needs as against criminal justice imperatives), and to formalise mechanisms for giving feedback or raising concerns arising from individual cases
- ensuring that information is collected from clients of the program about their perceptions of the program (for example, pre and post-exit surveys or interviews)
- increasing the involvement of the broader community sector in the victim support program.
- Capture the AFP's institutional learning through the development of protocols or standard operating procedures on relevant issues, including the conduct of interviews with suspected victims of trafficking. This will help to ensure that good practices developed by individuals through experience become standard practice throughout the organisation.
- Expand AFP training to include more focus on working directly with victims of crime, and particularly victims of crime that involve a strong sexual element. Make opportunities for continuing training available at the local level, including through drawing on relevant state and territory police training programs.
- Continue to build training opportunities for prosecutors, to ensure these are at least comparable to training available for other agencies, including the AFP and DIAC.
- Ensure laws are available to provide an appropriate level of protection to witnesses (including but not only complainants) who give evidence in trafficking prosecutions, bearing in mind considerations of safety but also legitimate concerns about privacy.
- Create more opportunities for operational (or front-line) officials to share their knowledge and experience, and to build relevant networks.
- Release more information about the anti-trafficking response; not only the policy framework, but also about how it operates in practice. Policy needs to be firmly grounded in evidence, so information should be shared for research and evaluation purposes.
- Build stronger cooperation between the government and non-government sectors to draw in a broader range of knowledge, skills, experience and capacity. This will likely require increased information sharing, clarity and mutual respect about roles, responsibilities and funding.
- Monitor the broader impact of the anti-trafficking response, including its impact beyond the target audience of both victims of trafficking and offenders.



## Background to this report

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In 2007, the Office for Women commissioned the Australian Institute of Criminology (AIC) to undertake research on the issue of trafficking of women for sexual purposes: barriers to victim detection, identification and reporting and the successful prosecution of traffickers.

The research was intended to identify key lessons learnt both from the international literature and also from the Australian experience to date, about some of the challenges and issues that might arise when identifying victims of trafficking, and investigating and prosecuting offenders.

## Methodology

As part of this research project, the AIC reviewed the key literature on the challenges involved in detecting, investigating and prosecuting trafficking offences. The findings were consolidated into two short papers (David 2007; David 2008).

The AIC also conducted interviews with representatives from a number of organisations that have been involved in the response to human trafficking in Australia (Appendix A). Interviews were sought with individuals who have firsthand experience of responding to trafficking in persons. This included those who have been directly involved in:

- providing support to victims of trafficking
- detecting trafficking cases
- investigating known cases
- prosecuting trafficking cases.

Interviews sought to elicit information about the key issues, challenges or barriers that have arisen in known trafficking cases to date, as they relate to victim identification, and the investigation and prosecution of offenders. Interviews also sought to understand 'lessons learnt' from this experience. The AIC also reviewed case transcripts, where these were available, for prosecutions undertaken in Australia, along with relevant supplementary literature. The findings from the field research component of this project are documented in this report.

## Issues in the research process

From a statistical perspective, the number of people who have been involved either as suspected victims of trafficking, as alleged offenders, or even as investigating officers and prosecutors is relatively small. This has several implications. First, it is difficult to draw

meaningful trends from such a small number of cases. Second, it can be difficult to de-identify both the source and the subject of information. This is particularly serious where the information relates to a matter that is either still under investigation or before the courts. Accordingly, some information received during the research has not been included.

While this research was conducted at one particular point in Australia's response to trafficking in persons – most interviews were conducted between April and October 2007 – it is important to note that responses in this area are growing and changing rapidly. For example, during the short life of this research project, the Australian Government announced a further \$26.3m in funding for initiatives to combat trafficking in persons, the Victorian Government became the first Australian jurisdiction to introduce a victim support program and the Commonwealth Director of Public Prosecutions (CDPP) sought leave to appeal a case (*R v Wei Tang* [2007] VSCA 134) involving interpretation of the federal slavery laws to the High Court.

Given the rapid pace of change, it was important in interviews to try to distinguish between issues that have arisen but been overcome through recent reforms (historical issues), and issues that have arisen and look likely to continue (current issues). However, this was not always possible as individuals had access to different levels and types of information, at different points in time. To ensure this report is as current as possible, information has been included about some developments that have taken place either during or after the research phase was completed.

Finally, this project had a specific focus on trafficking in women for the purposes of sexual exploitation. It is impossible to escape the politics involved in any discussion of this issue. The area of middle ground on the issue of trafficking for the purposes of sexual exploitation has grown considerably in recent years. This has been greatly assisted by the adoption of a shared definition of trafficking, through the United Nations Trafficking Protocol. However, several significant points of tension remain. For example, one person's 'rescue from exploitation' is another person's interrupted contract of employment, with ramifications for capacity to repay debt and support a family. Points of disagreement and debate are an important part of a free and open society. Meaningful debate can only be fostered by information sharing and making space for all voices to be heard. It is hoped that this report will make a small contribution to information sharing, by presenting information about key elements of the Australian anti-trafficking response to date, along with some of the different views that emerged in interviews.

## **Background to the Australian situation**

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As a criminal activity and a relatively new crime type, information and knowledge about the nature and extent of trafficking in persons to and within Australia is still emerging. There has been considerable debate over the past decade about the extent of trafficking in Australia, at least insofar as this involves trafficking of women for the purposes of sexual exploitation. For example, in 2003–04, the Parliamentary Joint Committee (PJC) on the Australian Crime Commission held an inquiry into trafficking in women for sexual servitude. The committee heard evidence that the Australian sex worker projects and organisations, represented by Scarlet Alliance, collectively had contact with fewer than ten women working in the sex industry in the past year who had been ‘deceptively recruited’. This included women who had not consented to working in the sex industry or to the conditions of their contracts. Scarlet Alliance also noted having contact with workers who have been ‘sold’ on to another ‘shop’ upon entering Australia, with a corresponding increase in their contract price against their will (Scarlet Alliance 2003: 9).

The PJC also heard evidence that Project Respect, a non-governmental organisation (NGO) with a specific focus on the issue of trafficking in women for the purposes of prostitution, estimated there are up to 1,000 women in Australia under contract at any one time. This estimate referred to women who were still paying off a ‘debt’ and did not include women who have finished their ‘debt’ but remained in Australia. The estimate was based on a range of sources, including estimates made by police who had worked on recent operations, an estimate made by a respected journalist, statistics from the Refugee Review Tribunal, immigration removal statistics, sex industry estimates, observations in brothels and other sources (Project Respect 2003: 3).

The PJC also heard evidence about the problems inherent in many attempts to quantify the trafficking problem. For example, Dr Anne Gallagher gave evidence that:

There is very little quality trend evidence available and almost no cross-referencing or external verification of data ... Rather than acknowledging or confronting these inadequacies, much contemporary trafficking research unquestionably accepts and promulgates unverified data (PJC 2004: 20).

Having noted these and other issues, the PJC noted that the extent of trafficking in women to Australia for the purposes of sexual servitude was difficult to establish (PJC 2004: 22). It considered that this uncertainty underscored the important role of the Australian Crime Commission (ACC) in relation to intelligence gathering and analysis in order to inform the Australian Government’s response. In December 2003, the ACC Board authorised a special intelligence operation to gather intelligence on ‘people trafficked for sexual exploitation’ (PJC 2005: 2). This resulted in dissemination of several intelligence products to government stakeholders (ACC 2006: 52).

During the course of the PJC’s inquiry, the Australian Government launched its Action Plan to Eradicate Trafficking in Persons. The action plan includes the statement that ‘[t]he number

of people trafficking into Australia is estimated to be well below 100' (Australian Government 2004: 2). The action plan also noted that the ACC, in consultation with other federal government agencies, was at that point in time in the process of gathering intelligence on the trafficking of women (Australian Government 2004: 2).

These debates and discussions took place in the very early days of the Australian Government's response to trafficking. The response has grown considerably since that time. As a result, some additional information is available that reflects the first few years of the Australian Government's response to trafficking.

In summary, most trafficking cases that have come to official attention in Australia have involved trafficking of women into Australia for the purposes of sexual exploitation. Women from South-East Asia, and in particular Thailand, feature heavily in official statistics. Key statistics from federal government agencies include the following:

- Between 1999 and 31 December 2007, the Department of Immigration and Citizenship (DIAC) referred 221 matters (relating to 208 people) about trafficking in persons to the Australian Federal Police (AFP). 196 of these referrals (relating to 174 persons) related specifically to the sex industry. As the threshold for referral is low, not all 'matters' referred result in an investigation but may instead feed into overall intelligence gathering processes.
- From January 2004 to 29 February 2008, the Transnational Sexual Exploitation and Trafficking Teams (TSETT) within the AFP had undertaken over 150 investigations and assessments of allegations of trafficking-related offences. The majority involved suspected victims of trafficking who are female and allegations of sexual servitude.
- From 20 May 2004 to 31 January 2008, 88 victims of trafficking (87 of whom were women) had been provided with assistance through the government's victim support program. This includes 62 Thai nationals.
- As at 30 January 2008, the CDPP had received 29 briefs of evidence from the AFP concerning trafficking offences involving 29 defendants. In relation to 28 of these defendants, the alleged victims were women who had allegedly been subjected to exploitation either in the sex industry (26 defendants) or in a domestic setting (two defendants).

These statistics should be interpreted with caution; while they present information about the level of government activity on trafficking in persons in Australia, they provide limited insight into the incidence of trafficking in Australia. Arguably, these statistics should not be interpreted as providing insight into the 'full picture' or nature of trafficking in persons in Australia. The United Nations definition of trafficking in persons covers men, women and children. It also covers trafficking for various types of exploitation, including:

... 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 (United Nations Trafficking Protocol, Article 3).

The specific (and limited) issue of trafficking in women for the purposes of sexual exploitation has attracted much popular attention, both nationally and internationally. While Australian anti-trafficking laws cover all forms of trafficking in persons, it is nonetheless reasonable to expect that popular perceptions will increase awareness, visibility and focus on particular forms of trafficking. As awareness about other forms of trafficking grows, it is very likely the statistics will reflect a broader cross-section of cases.

While available statistics need cautious interpretation, there is no doubt that trafficking of women for the purposes of sexual exploitation has occurred in Australia. As at 31 January 2008, seven defendants had been sentenced for offences related to slavery and conducting a business involving the sexual servitude of others in Australia (this includes the defendants 'DS', Sieders, Yotchomchin, Z Kovacs, M Kovacs, Tanuchit and McIvor).

# Overview of the Australian criminal justice response

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The following section summarises the major features of the criminal justice response to trafficking of persons in Australia.

### Policy framework

In June 2004, the Australian Government announced its Action Plan to Eradicate Trafficking in Persons (Australian Government 2004). The action plan detailed a range of new commitments, including significant reforms to laws, policies and practices. These are discussed below where they are relevant to the Australian criminal justice response to trafficking.

### Legal framework

In 1999, the offences of slavery and sexual servitude were introduced into the Criminal Code (Cth). This was followed by a series of legislative reforms, primarily in 2005, in preparation for Australia's ratification of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (United Nations Trafficking Protocol). Australia ratified the Protocol in 2005. This followed ratification of the United Nations Convention against Transnational Organized Crime in 2004.

The Criminal Code (Cth) includes a variety of offences such as:

- slavery (penalty of up to 25 years imprisonment)
- sexual servitude (up to 15 years)
- deceptive recruiting for sexual servitude (up to seven years)
- trafficking (up to 12 years)
- trafficking in children (up to 25 years)
- domestic trafficking in persons (up to 12 years)
- debt bondage (up to 12 months).

These crimes are considered to be aggravated offences, which attract higher penalties in certain circumstances, such as when children are involved. All the offence provisions noted above (except those relating to domestic trafficking) have 'extended geographical jurisdiction' – that is, the laws can cover situations where the crime has taken place partly in Australia and partly overseas or where the crime has been committed outside Australia but the offender is an Australian citizen, resident or company.

Australia has a variety of other laws that are relevant to trafficking in persons. For example, as a result of recent amendments to the *Migration Act 1958* (Cth), it is an offence for an employer, labour hire company, employment agency or other person to knowingly or recklessly allow a non-citizen without work rights to work, or to refer them for work. Where the worker is exploited through slavery, forced labour or sexual servitude, the maximum penalties are five years imprisonment, and/or fines of up to \$33,000 for people and \$165,000 for companies per worker.

Trafficking in persons is considered a predicate offence for money laundering. Specifically, it is an offence under Australian law to deal with money or property if these are proceeds of crime, or if these could become instruments of a crime, where the crime involved is a Commonwealth indictable offence (Criminal Code, Part 10.2). Most of the trafficking offences listed in the Criminal Code are indictable offences (except the offence of 'debt bondage', which attracts a penalty of less than 12 months imprisonment, unless there are circumstances of aggravation).

In addition to federal anti-trafficking laws, 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 offence provisions have been used in conjunction with federal offence provisions in at least two trafficking prosecutions in Australia: *Tran, Xu & Qi; and Dobie* ('Deception' lured sex worker, *The Courier Mail*, 9 May 2007). The prosecution of state and federal offences may not always proceed at the same time.

Several federal laws support the investigation of trafficking offences. For example, the trafficking offences in the Criminal Code are specifically designated as serious crimes in the *Telecommunications (Interception and Access) Act 1979* (Cth). Consequently designated law enforcement agencies, including the AFP, can seek permission to intercept relevant telephone calls and emails for the purposes of investigating trafficking offences. This information can be used as evidence in court. Information obtained through telephone interception has been important evidence in at least one Australian trafficking prosecution (*R v Sieders & Yotchomchin* [2007] NSWDC 101).

Similarly, the trafficking offences in the Criminal Code are supported by the *Proceeds of Crime Act 2002* (Cth). This Act establishes a regime designed to facilitate tracing, restraint and confiscation of the proceeds of crime against certain Commonwealth laws. The Act gives law enforcement various powers in relation to information gathering. For example, the AFP can, in certain circumstances, issue notices to financial institutions seeking information about account transactions. If the matter involves a 'serious offence' (which includes the offences of slavery, sexual servitude and deceptive recruiting for sexual servitude) or money laundering, a judge can issue a monitoring order to require a financial institution to provide information about transactions conducted during a certain period. Ultimately, the regime allows for a court to order the restraint and forfeiture of proceeds of certain crimes. In some

circumstances a conviction is required, but in other circumstances a court can require that proceeds be forfeited even without a conviction. All Australian jurisdictions have legislation regarding proceeds of crime.

As trafficking can have a transnational dimension, it is important that Australia's legal structure support international cooperation. Following ratification of the United Nations Trafficking Protocol, Australia's mutual assistance and extradition laws were amended so these regimes are open to any country that is party to the United Nations Convention Against Transnational Organized Crime and the United Nations Trafficking Protocol (see further, *Mutual Assistance in Criminal Matters Act 1987* (Cth), *Mutual Assistance (Transnational Organised Crime) Regulations 2004* (Cth), *Extradition Act 1988* (Cth) and *Extradition (Transnational Organised Crime) Regulations 2004* (Cth)). This is in addition to the many bilateral agreements Australia has in relation to mutual assistance and extradition.

## Law enforcement

As trafficking offences fall primarily under federal law, responsibility for investigating trafficking offences lies primarily with the AFP. In 2003, the AFP established the TSETT, a specialist unit responsible for investigating offences related to trafficking in persons, along with other offences related to child sex tourism and online sexual exploitation of children. TSETT comprises an Intelligence team located in Canberra, and Investigation teams located in Sydney and Melbourne.

TSETT investigators are required to undertake the AFP's specialist training program, the Transnational Sexual Exploitation Investigation Program. The program commenced in 2004 and is a three-week residential training program for investigators. The objectives of the program are 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 (information provided by the AFP).

The program focuses on several 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

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- displaying sensitivity to cultural issues when conducting interviews
- identifying and demonstrating behavioural interview techniques when dealing with adult victims of human trafficking (information provided by the AFP).

The program includes presentations from NGOs showing different perspectives on trafficking. In the past, this has included presentations from Project Respect, an NGO with a specific focus on trafficking issues; and the Scarlet Alliance, the peak body representing Australian sex worker organisations and projects. DIAC also contributes to the training.

The program was developed primarily 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 August 2007, 113 investigators had completed the course. This included 79 investigators from the AFP, 20 investigators from the state and territory police (all jurisdictions except Tasmania), one representative from DIAC, and 13 investigators from foreign police services (Table 1).

**Table 1: Participants in the AFP Transnational Sexual Exploitation Investigations Program, 2004 to 30 August 2007**

Agency	No. of participants
Australian Federal Police	79
NSW Police Force	3
Victoria Police	2
Queensland Police Service	1
South Australia Police	2
Western Australia Police	1
ACT Policing	8
Northern Territory Police	3
Department of Immigration and Citizenship	1
Royal Canadian Mounted Police	1
People's Republic of China Police	1
Indonesian National Police	1
New Zealand Police	1
Philippine National Police	2
Philippine National Bureau of Investigation	1
Royal Thai Police	3
Sri Lanka Police Service	1
Vietnam Police Department	2
<b>Total</b>	<b>113</b>

## State and territory law enforcement

In 2006, all Australian police services agreed on the Australian Policing Strategy to Combat Trafficking in Women for Sexual Servitude. This strategy seeks to provide a national framework within which all Australian police services can work on this issue. It recognises that while the AFP has the lead role in investigating trafficking offences, state and territory police also 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. Through the Strategy, the police services are working together to achieve a range of objectives, include 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 investigation of trafficking offences.

## Immigration

While DIAC does not have a law enforcement role in relation to trafficking in persons, it is responsible for ensuring compliance with immigration laws. As a result of immigration compliance activities, DIAC officers may encounter suspected victims of trafficking.

DIAC has compliance teams in all Australian capital cities that are tasked with monitoring immigration compliance. In Sydney and Melbourne, DIAC's compliance teams focus specifically on trafficking-related issues in the sex industry. According to DIAC, these teams were established following identification of numbers of suspected victims in this industry. The focus mirrors that of the AFP's TSETT units that are also located in these cities.

All compliance officers who undertake fieldwork are provided with training to identify possible indicators of trafficking during compliance activities. If such indicators are detected, all information is referred to the AFP. This is facilitated by a referral protocol between DIAC and the AFP, which clarifies roles, responsibilities and procedures in handling people trafficking matters. Specifically:

- DIAC will refer all indicators of people trafficking to the AFP, and not evaluate or investigate them.
- DIAC will contact the AFP within one hour where indicators of trafficking are detected.
- DIAC will consult with the AFP prior to undertaking any compliance operation involving a premises or person with suspected links to trafficking in persons.
- The AFP will advise DIAC within four to six hours of initial contact whether they will apply for a Bridging F Visa (BFV) for any person of interest (People Trafficking Referral Protocol).

DIAC also has an overseas compliance network, comprising some 31 overseas compliance officers and 22 Airport Liaison Officers in strategic regions. In late 2003, DIAC created the Senior Migration Officer Compliance (Trafficking) (SMOCT) position, located in Bangkok. This position focuses exclusively on trafficking in persons, with the stated purpose of preventing trafficking at its source. The SMOCT vets visa caseloads for fraud that may indicate trafficking in persons, and analyses trends in visa processing including applicants' travel patterns, use of migration agents and the nature of the claims that applicants lodge. In January 2008, two more offshore SMOCT positions were created in the Australian embassies in Manila and Beijing.

Since 2004, DIAC has provided general awareness training to staff on trafficking in persons. This training is delivered mainly to compliance officers and those going to work as part of the overseas network. Trafficking in persons is now a module on the compliance training program within the DIAC College of Immigration with guest speakers from the AFP and Scarlet Alliance.

## People Trafficking Visa Framework

DIAC administers the People Trafficking Visa Framework. Introduced in 2004, the framework consists of a series of steps, starting with the 30-day BFV and potentially ending with a permanent visa. Each step in the framework is described below.

If there are indications that a person is able to assist with an investigation or prosecution of people trafficking offences, the AFP will seek a BFV for the person. A BFV is valid for up to 30 days, during which time the AFP will assess whether a person is able to assist them with an investigation. People on the BFV have access to the federally funded victim support service but they do not have work rights. From commencement of the BFV on 1 January 2004 to 31 December 2007, 81 BFVs were issued relating to 78 people.

Where a person's BFV is about to expire and the visa holder is still required for the purposes of criminal justice, law enforcement agencies can seek a Criminal Justice Stay Certificate. The issue of a Criminal Justice Stay Certificate is a precursor to the grant of a Criminal Justice Stay Visa (CJSV). Suspected victims of trafficking who have been granted a CJSV have work rights. Between 1 January 2004 and 31 December 2007, 62 CJSVs were issued relating to 52 people.

Law enforcement agencies can seek a Witness Protection (Trafficking) Certificate where a person has made a significant contribution to, and cooperated closely with, prosecution of an alleged people trafficker; or there has been an investigation in circumstances where the CDPP has decided not to prosecute. Following the issue of a Witness Protection (Trafficking) Certificate, DIAC assesses whether, because of the assistance they provided, the person

would be in danger if they returned to their home country. If this, and health and character requirements are met, the person may be granted a Witness Protection Trafficking (Temporary) Visa for three years. Holders of these visas have work rights. As at 31 December 2007, 14 Witness Protection Trafficking (Temporary) Visas had been issued and several others were being progressed.

The holder of a Witness Protection (Trafficking) Temporary Visa can subsequently be granted a Witness Protection (Trafficking) Permanent Visa. Because an individual is required to be on a temporary visa for two years before a permanent visa will be considered, no permanent visas had been issued as at 31 December 2007.

To date, several suspected victims of trafficking have wanted to return to their home country. Some have agreed to return to Australia to participate in a criminal justice process. Accordingly, it is important that provision is made to allow those willing to participate in investigations and prosecutions to return to Australia. This is facilitated through the Criminal Justice Entry Visa. In the period 1 January 2004 to 31 December 2007, 15 such visas were issued to eight people.

Where there are compelling and compassionate circumstances, a person on a BFV may travel home for short periods and return to Australia to continue accessing the victim support program. All visas in the People Trafficking Visa Framework are available to 'immediate family members' who are in Australia.

## Prosecutions

As federal offences, trafficking prosecutions are the responsibility of the CDPP. The CDPP has an office in each capital city and sub-offices in Townsville and Cairns. The CDPP's head office in Canberra is responsible for national coordination and implementation of the legal, policy and practical issues affecting trafficking prosecutions. The CDPP does not have a specific unit tasked with trafficking prosecutions; however, there is an increasing number of prosecutors – particularly in New South Wales, Victoria and Queensland – with experience in prosecuting trafficking cases.

The CDPP has no investigative function, and matters are referred to the CDPP through the AFP and other investigative agencies. However, the CDPP will provide legal advice to the AFP and other investigative agencies at an early stage in an investigation, where appropriate upon request.

CDPP decisions about whether to proceed with a trafficking prosecution are guided by the Commonwealth's Prosecution Policy. In essence, the CDPP must be satisfied that:

- there is a prima facie (at first appearance) case in respect of sufficiency of evidence
- there is a reasonable prospect of conviction
- the prosecution is in the public interest.

The CDPP may ask the AFP to obtain additional evidence during the assessment phase. The CDPP is responsible for deciding which charge or charges should proceed on indictment, and for conducting all aspects of the prosecution.

## Victim support

The Australian Government Office for Women coordinates support for suspected victims of trafficking who are accessing the Support for Victims of People Trafficking Program. The program provides financial and other support to suspected victims of trafficking in Australia who are assisting with criminal investigations and prosecutions. The support provided assists with clients' living expenses and general wellbeing, and includes income support, access to accommodation, medical treatment, basic legal advice, counselling, training and social support.

The program is delivered through a contractor (currently BSIL Southern Edge Training). Clients are allocated an individual case manager through which they have access to a range of support measures available under the victim support program. The program is divided into three phases, reflecting the different phases of the visa system for suspected victims of trafficking. During the initial 30-day period, when suspected victims are on the BFV, clients of the program have access to:

- secure accommodation (approximately \$140 to \$160 per night)
- a living allowance (\$170 per fortnight)
- a food allowance (\$170 per fortnight)
- a one-off amount of \$310 to purchase essentials such as clothing and toiletries
- health care services including counselling
- legal services (a maximum of three appointments per client are available throughout the program).

Suspected victims of trafficking who are willing and able to assist with an investigation or prosecution have access to Phase Two of the program (this phase corresponds to the grant of a Criminal Justice Stay Visa). Support during Phase Two includes:

- special benefit (up to \$424.30 per fortnight), rent assistance (up to \$104 per fortnight) and a health care card administered by Centrelink (if they meet eligibility requirements)



- assistance with securing longer-term accommodation (provision for bond and two weeks rent in advance, refundable to the Commonwealth)
- a one-off amount of up to \$750 for purchasing essential furniture for long-term accommodation
- access to the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme
- access to legal services (a maximum of three appointments per client throughout both phases of support)
- access to employment and training if desired, and to social support (including English language training, budgeting skills, counselling) and vocational guidance where appropriate.

From 1 July 2007, a new Phase Three of the victim support program is available to suspected victims of trafficking who have left Australia but who return as witnesses. They are provided with secure accommodation, living allowance and food allowance (OfW n.d).

From 20 May 2004 to 31 January 2008, the service had provided support to 88 clients. The majority of clients were Thai women (62); far smaller numbers of clients were from other countries in Asia and Europe.

In October 2006, the Victorian Government announced funding for a state-based support program for victims of trafficking. The program is designed to assist victims of trafficking who need support but are not eligible for the Commonwealth program. This might include, for example, victims of trafficking who do not want to talk to the police, or victims of trafficking who may have talked to the police but have been unable to assist a current investigation. The program includes emergency accommodation and support services.

Managed and implemented by Project Respect, the Victorian project commenced in October 2006 but has been operational since March 2007. The accommodation offered is temporary until permanent accommodation can be found, the aim being to provide shelter to women during times of crisis. Other support offered to women includes English language classes, other educational opportunities, and several social and art-based activities.

Project Respect works in partnership with other organisations to ensure that a full range of legal, medical and social supports is available. Partner organisations include the Refugee and Immigration Legal Centre, the Asylum Seeker Resource Centre, the Red Cross and the Victorian Centres Against Sexual Assault. Project Respect is also looking into setting up protocols with hospitals to manage a two-way referral system (Project Respect 2007).

## Context, including regulation of the commercial sex industry in Australia

While recognising that trafficking does not equate to prostitution, the reality is that the majority of trafficking investigations have focused on trafficking in the context of the commercial sex industry. Accordingly, it is relevant to consider both the context and regulation of the commercial sex industry in Australia.

Under the Australian system, regulation of the sex industry is a matter for the states and territories. There has been a growing trend over the past 20 years towards legalisation or decriminalisation of the sex industry. This trend reflects several factors, including changing moral attitudes to sex work, recognition of the need to provide sex workers with access to services such as health services and information about safe-sex practices, and growing support for harm minimisation approaches to the regulation of prostitution.

Throughout the 1980s and early 1990s, several royal commissions focused attention on the opportunities for police corruption that were concurrent with criminalising the sex industry. For example, in 1997 the Wood Royal Commission into the New South Wales Police Service found evidence that there was a 'clear nexus between police corruption and the operation of brothels' (Wood 1997: 13). This finding led the New South Wales Government to reform prostitution laws, and policing practices, during the term of the royal commission. Commissioner Wood noted in his final report of that commission:

In permitting well-run brothels to operate, a potential opportunity for corrupt conduct on the part of police was closed off (Wood 1997: 13).

As a result of this and other royal commissions, vice units in several police services were disbanded.

Currently, the sex industry is *legalised* in six Australian jurisdictions (Victoria, Queensland, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory). That is, people and/or operators can legally provide commercial sexual services, provided they operate within the regime of registration and/or licensing. Under this system, there is typically a planning approval role for local councils, and there may also be a body established to monitor the grant of licenses. In most cases, this is an administrative body rather than the police.

The sex industry is *decriminalised* in New South Wales. That is, it is no longer a crime, under certain circumstances, to provide or operate premises that provide commercial sexual services. Local councils may have a role in planning approvals for brothels. The sex industry is still *illegal* in South Australia, although the laws are rarely enforced.

It is important to note that migrants can work lawfully in the sex industry in certain circumstances. In those jurisdictions where it is possible to provide commercial sexual services legally, any person (including a foreign national) over the age of 18 can lawfully work in the sex industry, provided they hold a visa that permits them to work and they comply with their visa conditions.

According to Scarlet Alliance, sex workers with a 'migrant background' constitute a significant proportion of the total number of people working in the Australian sex industry. For example, in the year to June 2005, the Sex Workers Outreach Project (SWOP) in New South Wales provided nearly 1,000 occasions of service to non-English speaking background sex workers, and visited around 150 workplaces that predominantly employ workers with such backgrounds. SWOP estimates that up to 25 percent of massage parlour sex workers in some areas of New South Wales are of non-English speaking background. These women may be second-generation Australians, permanent residents, migrants or temporary visitors (McMahon 2006).

While exact figures are not known, representatives from Australian sex worker associations note that most migrant or non-English speaking background sex workers are not victims of trafficking. In 2007, a representative from Scarlet Alliance estimated that its member organisations had contact with around five women in the previous year who were seeking information on escaping situations that might be described as involving trafficking (Maria McMahon, interview, 2007).

A well-developed network of NGOs provides health education and support services to workers and operators in the sex industry throughout Australia. These services are generally premised on the assumption that provision of commercial sexual services is a form of work that should be managed, bearing in mind occupational health and safety considerations (see further, <http://www.scarletalliance.org.au>). Services range from providing advice and outreach on safe sex practices to providing information about rights and responsibilities, including operating within the law, occupational health, and safety and taxation. Some of these NGOs have, or have had, programs that focused on providing outreach and support to migrant and/or non-English speaking background sex workers. For example, in New South Wales SWOP has a project focused specifically on supporting non-English speaking background sex workers. This project focuses on developing culturally appropriate resources in several community languages on issues including health, wellbeing, legal issues and client education on sexually transmitted infections. Project staff is from non-English speaking backgrounds, which reflect the dominant cultural and language groups found within the Sydney sex industry, namely Thai, South Korean and Chinese.

In Victoria, Project Respect conducts outreach services to women working in the sex industry, particularly where there is a high concentration of women from non-English

## Trafficking of women for sexual purposes

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speaking backgrounds. This includes provision of kits containing information in relevant languages about sexual health, domestic violence, legal aid, housing aid, immigration, gambling, the police and childcare. Project Respect's philosophy differs from many of the NGOs discussed above; its activities are informed by the views that while women are working in the sex industry, they have a right to safety, respect, financial security and support, while also considering that prostitution results from and strengthens structural forms of gender inequality (<http://www.projectrespect.org.au>).

## About the interview process

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The purpose of this research project was to identify barriers that have arisen in relation to detecting victims of trafficking, and investigating and prosecuting traffickers. To inform this research, interviews were conducted with various people around Australia who have had firsthand experience in detecting trafficking cases, or in conducting trafficking investigations and prosecutions. This included:

- representatives from NGOs that work with workers and operators in the sex industry, and those who work more specifically on the issue of trafficking
- representatives from Commonwealth Government agencies with an operational role in detecting, investigating and prosecuting trafficking cases (DIAC, AFP, OfW, CDPP)
- caseworkers from the Commonwealth-funded victim support program
- state police in those jurisdictions where trafficking situations were known to have been detected (Victoria, New South Wales and Queensland).

Approximately 28 interviews and two focus group discussions were conducted with 49 people from at least 15 organisations. A list of interviews conducted is in Appendix A. More informal discussions were also held with several people. For example, some preliminary discussions were held over the telephone, or the subject of an interview informally introduced the researchers to other people working in the organisation. These informal discussions are not reflected in the list of interviews.

While interviews were conducted with reference to a question guide, most tended to be free-flowing discussions rather than tightly controlled question-and-answer sessions. As a result, some of the discussions were broad-ranging, and several participants volunteered information about issues that have arisen in the response to trafficking that may not strictly be considered as barriers to identifying victims, or to investigating and prosecuting traffickers. This information is included in the report where it is relevant to the issues of victim detection, investigations and prosecutions.

Most of the information contained in this report is drawn from these interviews. Where information is drawn from supplementary sources, this is specified.

## **Experience of detecting victims of trafficking**

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## Background

Within Australia, there are a number of agencies and people that might *potentially* encounter situations that involve trafficking in women for the purposes of sexual servitude. They include:

- state and territory police, responding to intelligence and crime reports
- the AFP, responding to intelligence and crime reports
- DIAC, through their immigration compliance activities both within Australia and overseas
- NGOs working directly with workers or operators in the commercial sex industry
- health or crisis services working directly with women
- clients of sex workers
- agencies involved in monitoring and regulating the sex industry, such as local councils and industry regulators
- members of the community who become acquainted with a victim's situation or circumstances
- embassy officials.

## Sources of AFP referrals and information leading to detection

Statistics on the manner in which trafficking cases have come to the AFP's attention are not available. However, from interviews and a review of prosecution transcripts, it appears that the majority of AFP trafficking investigations have been initiated by a referral from DIAC. Most of these referrals have resulted from DIAC's onshore compliance activity, particularly in relation to detecting illegal workers in the commercial sex industry (for DIAC's purposes, an illegal worker is a person who works in Australia without immigration authority, or who does not comply with the work conditions attached to their visa).

Other known sources of referrals include:

- In at least one case, the suspected victim of trafficking called 000; the *Xu* case in New South Wales is one example of this (*Commonwealth DPP v Xu* [2005] NSWSC 191).
- In at least two cases, suspected victims of trafficking have sought help from their embassy in Australia.
- In at least one case, the suspected victims of trafficking sought help from the front desk of the local police station.



- In at least two cases, suspected victims of trafficking sought help from brothel clients. In *Sieders & Yotchomchin*, the victim sought help from a client, who then reported the matter to DIAC's Immigration Dob-in Line. In the *Xu* case, the alleged victim reported having sought help from several clients; none appeared to have reported the matter to the authorities. However, one ex-client provided the victim with practical assistance, in the form of a place to stay, once she was on her own in the Australian community.
- In at least one case, the suspicion of state police was aroused as a result of proactive investigative activities of the illegal sex industry.
- In at least one case, an AFP investigation was commenced following DIAC compliance activities undertaken outside Australia.

### The role of state and territory police

Over the past few years, state and territory police have become increasingly involved in the response to trafficking in women for the purposes of sexual exploitation. All police services have undertaken intelligence assessments of the trafficking situation in their jurisdictions. Representatives from each police service report their recent activities through the Ministerial Council for Police and Emergency Management. (Reporting was previously undertaken through the precursor bodies, the Australasian Police Minister's Council and the Australasian Crime Commissioners' Forum.) All Australian police services have signed a protocol, the practical effect of which is that state and territory police will provide a first response to trafficking if detected, before handing the matter to the AFP. Police officers from each jurisdiction (except Tasmania) have undertaken the AFP's specialist trafficking investigations course.

While it was not possible to interview representatives from every jurisdiction's police service, interviews were held with a small number of representatives from investigative units in those jurisdictions that have had reported cases of trafficking in women for the purposes of sexual exploitation, namely New South Wales, Victoria and Queensland.

The situation for police in terms of detecting or responding to trafficking in the context of the sex industry is different in each jurisdiction. In Queensland, police still proactively oversee the sex industry. Following the Fitzgerald Commission into Police Corruption 1987–89, the Licensing Branch of Queensland Police was disbanded and the Prostitution Enforcement Task Force was created. Several checks and balances are in place to ensure the integrity of the taskforce, including regular rotation of staff. The taskforce's role includes probity, through checking of license applications; and compliance, including detecting illegal operators. The Queensland police officers interviewed noted that this role places them in quite a different situation to other state police services, which no longer police the commercial sex industry.

As at June 2007, Queensland Police had a role in detecting at least one case of suspected trafficking in persons, as a result of proactively targeting the illegal sex industry.

The situation is very different in both Victoria and New South Wales. In those jurisdictions, the state police do not have a specific regulatory role that brings them into contact with the sex industry, except where a crime is reported, such as might occur in any other private home or industry. The response to trafficking for the purposes of sexual servitude is coordinated through the sexual assault units in those jurisdictions. In Victoria, this involves the Sex Crimes Theme Desk, which is responsible for, among other things, making assessments about trafficking for the purposes of sexual servitude. In New South Wales, the response to trafficking for the purposes of sexual servitude is coordinated through the Child Protection and Sex Crimes Squad. The activities of these units are carried out within the context of the highly developed state policing responses to sexual assault.

In May 2007, Victoria Police reported having received nine reports since 2002 of crimes involving slavery or sexual servitude; all were referred to the AFP. The NSW Police Force reported having received a small number of crime reports that involved situations that could be described as trafficking; several were referred to the AFP or dealt with jointly with the AFP. These cases involved a range of fact situations – the facts as claimed by the victim: what they say happened to them ('I was recruited, they lied to me, etc. '); or the broader set of surrounding circumstances, including how it came to police attention ('they went to the police to get help, etc. ') – including:

- An adult woman was brought to Australia, following an arranged marriage in her home country. It was alleged that once in Australia, the woman's husband forced her to work in a brothel. The victim, who could not speak English, continued to work in the brothel in response to physical threats her husband made against her, and her fear that she would be deported to her home country where she would face Islamic law. The woman's husband, in fact, took her back to her home country, where she sought assistance from the Australian Embassy. Her return to Australia was facilitated, and charges were laid against her husband.
- Three Indonesian women presented to police at the Surry Hills police station, claiming they were being held against their will and forced to provide sexual services. This became the *Kwok* case and involved the laying of charges under both NSW and Commonwealth law.
- A Thai woman called 000 from a brothel. NSW police provided the first response. This became the *Xu* case and involved charges under both NSW and Commonwealth law.

The Victorian police officers interviewed expressed the view that there are several issues that affect victim detection. In particular, immigration status is a major issue impacting on the willingness of victims of trafficking to come forward or to be detected. The police expressed

concern about the impact of linking visas for victims to participation in a criminal justice process. They noted that the Victorian Government is funding a victim support program that will take a victim-centred approach.

Victorian police officers interviewed also noted that regulation of the sex industry in Victoria is dispersed across several agencies, each of which looks after a discrete issue. The absence of a 'one-stop shop' makes it difficult for police to get a complete picture of issues that might involve the sex industry. The vice unit was disbanded in 1999. Today, Victorian police are trying to build up their intelligence on issues including the illegal aspects of the Victorian sex industry. Victorian police officers also noted the challenges in responding proactively to crime. They indicated this is an issue across all crime types, not only trafficking. However, this lack of capacity may have a particular impact on a crime type such as trafficking, where proactive policing methods may be the most effective. Victorian police noted the need for training for front-line officers in how to detect trafficking. They noted this is unlikely to be part of the current Victoria Police training agenda for general duties officers, as the data (nine crime reports) does not support allocation of resources to this area. Specific training is delivered to specialist areas within Victoria Police on investigating trafficking offences.

The NSW police officers interviewed noted that their service has recently formulated a standard operating procedure to respond to incidents that may involve people being held in sexual servitude. The procedure requires the first responding police unit to remove victims from harm, preserve evidence at the crime scene, and identify witnesses and suspects. Matters thought to involve trafficking of victims from other jurisdictions are referred to the AFP. The NSW Police Force has, for several years, included in the training of its detectives sessions on trafficking in persons for the purposes of sexual exploitation. While noting the seriousness of trafficking as a crime type, interviewees noted that the number of reported trafficking cases is low, particularly when considered against the incidence of other serious crimes against the person, such as sexual assault.

## DIAC's role in detecting trafficking

DIAC has been an important source of referrals for the AFP. From 1 July 1999 to 31 December 2007, DIAC had formally referred 221 matters to the AFP (a 'matter' could be a piece of information, such as a location or a specific individual). This included 196 referrals relating specifically to the sex industry, involving 174 suspected trafficked persons. As the threshold for referral is very low, not all matters referred to the AFP will result in investigations. However, information received that does not result in an investigation feeds into the overall intelligence-gathering process.

In the onshore context, DIAC compliance officers conduct field operations to locate foreign nationals who have breached their visa conditions, or who have overstayed their visas and are unlawfully in Australia. These field operations include execution of search warrants (also described as 'immigration raids' by a number of participants). The issue of warrants is regulated by law. Under the *Migration Act 1958*, DIAC officers can only obtain a search warrant to enter premises when they have reasonable cause to believe there is an unlawful non-citizen or a person breaching their visa conditions. If DIAC officers do not have a search warrant, officers can only enter premises with permission from the occupants.

The DIAC compliance officers (onshore) that were interviewed noted using several strategies to help detect trafficking in the context of field operations. DIAC compliance officers will ask non-citizens various questions to try to elicit information that may indicate whether a person has been trafficked. If indicators of trafficking are detected, DIAC will refer the matter to the AFP under the agreed referral protocol. If trafficking is indicated or suspected, DIAC will refer the matter to the AFP regardless of the person's immigration status.

Each DIAC officer interviewed noted that building trust is the key to an effective interview. Women need to feel safe before they will talk. DIAC officers reported trying to create conditions of privacy and safety, where women might feel more comfortable or able to report trafficking or seek help. For example, in a raid situation, DIAC compliance officers will interview each person separately, away from other workers and the brothel owner. DIAC tries to match the gender of the interviewing officer with the gender of the interviewee. Also, some DIAC officers have relevant language skills, and DIAC also uses interpreters.

Nonetheless, there are a lot of challenges involved in trying to create a situation of trust in these circumstances. DIAC compliance officers must first establish the immigration status of the people they are interviewing. Having established this, the DIAC officer then has to seek further information that might indicate trafficking, and explain the protections available under Australian law. DIAC officers noted that this involves taking off their 'compliance hat' and putting on another 'hat'. DIAC officers noted that many people do not trust immigration officials. Accordingly, it can be difficult for people to believe that DIAC officers can be trusted or that they will provide assistance.

DIAC officers interviewed also noted the limits of their role, which primarily relates to compliance with immigration laws. While DIAC officers will look for indicators of trafficking, they are not investigators of this crime type. If a person has a valid visa and appears to be complying with the terms of that visa, or if they are Australian, DIAC officers have limited capacity to take further action even if they suspect a trafficking offence may be taking place. In these circumstances, DIAC can invite (but cannot compel) the person suspected of being a victim of trafficking to leave the premises with them. DIAC will also refer the matter to the AFP under the agreed referral protocol.

## Competing views on the impact of compliance activities

While DIAC compliance activities have been an important source of referrals to the AFP, the various stakeholders hold competing views about the broader impact of these activities. In particular, there is a perception within the sex industry that it is being disproportionately targeted through DIAC compliance activities, reflecting a misguided view that trafficking only takes place in the sex industry. Some also hold the view that while DIAC compliance activities may have resulted in assistance being given to a small number of victims of trafficking, these activities have had a negative impact on a much larger number of women.

The different perspectives on the impact of compliance activities can be illustrated by an example. Representatives from SWOP (NSW), individual DIAC compliance officers and AFP investigators noted that some operators appear to have moved from a brothel system to an escort system, where there is no central place of work to raid. On one view, operators are getting 'smarter' to avoid detection. On another view, changing business models is a legitimate response to continuing disruption to business and perceived harassment.

From either view, the result is the same. SWOP noted that the trend towards closing brothels and moving to escort-based work has particular implications for all workers in the sex industry, and not just victims of trafficking. In particular, a move to escort work removes women from the relative safety of a brothel, and means they are likely to be providing services or working alone. This practice distances workers not only from outreach workers but also makes them harder for DIAC and the AFP to access.

SWOP also reported other impacts that appear to have resulted from increased compliance activities in the sex industry. In particular, some operators have tended to further isolate their workers, again removing them from the reach of outreach workers, DIAC and the AFP. There also appears to have been a significant increase in the fee charged for a contract to work in Australia. This means sex workers operating under a contract must provide more services, over a longer period, before they can start earning an income for themselves. This effectively increases the length of time that these women remain unpaid, and are potentially vulnerable to abuse and exploitation.

As DIAC compliance operations may involve a joint operation with the AFP, in many senses, the views expressed about the impact of DIAC compliance activities are perhaps comments about the broader law enforcement response to trafficking in persons. However, interviews also suggested the limitations of DIACs role in relation to detecting trafficking. As noted by compliance officers, their role relates primarily to compliance with the Migration Act. Immigration raids are primarily designed to detect and detain illegal workers. It is vital that during raids, immigration officers are alert to indicators of trafficking, so they can pass information on to the police and offer suspected victims of trafficking support and

assistance. However, it is also important to be realistic about the limits of these situations. Despite the best efforts of compliance officers, raids are likely to be frightening situations and immigration officials may be perceived as a threat rather than a source of help. As a result, victims of trafficking may not self-identify or seek help in this context.

Several NGO participants commented that compliance and law enforcement activities have been a focus of the anti-trafficking response, in a context where there has been comparatively less focus and resources available for approaches such as peer education and outreach. Given the many cultural and social barriers that may prevent women in marginal situations from seeking help, the view was expressed that women need to be able to seek information, advice and support in situations that are both culturally appropriate and non-threatening. A level of frustration was also expressed that services already working with women in the sex industry were not being resourced as part of the anti-trafficking response. It was felt that these services had the right experience and networks to educate workers and operators in the industry about relevant issues, and were also well placed to detect exploitative situations.

## Willingness to cooperate with police

Information is not available about the proportion of suspected victims of trafficking who were, for example, immediately cooperative with police, who initially refused to cooperate but later went on to cooperate with police, or who refused to cooperate with police at all. However, every participant who was interviewed noted many reasons for an individual not wanting to cooperate with the authorities and/or not wanting to self-identify as a victim of trafficking. Reasons included:

- lack of trust in the police in their home country, resulting in lack of trust in police in Australia
- fear of what might happen to them or their family
- confusion and distress
- concern about getting into trouble
- the pressure or the need to keep working, earning money and remitting money home
- concern about immigration status and fear of deportation
- shame
- concern about their debt.

Against this backdrop, several participants noted the importance of recognising and respecting a woman's right and ability to make decisions for herself, even in situations

of limited choice, and taking account of the many structural factors that might quite reasonably affect a woman's decision-making process. For example:

- Several participants, including participants from criminal justice agencies, noted that they understand why a victim of trafficking would not want to get involved with a trafficking investigation or prosecution. In particular, women may just want to get on with their lives and put the whole thing behind them. They may have already moved on by the time they come into contact with police. Also, being involved in a criminal justice process means being in limbo for a long time, having to deal with difficult and intrusive questions, and then having to go through difficult court process that can stretch over years.
- A representative from SWOP (NSW) noted that some women might want and need help to get out of an exploitative situation. However, they may also want and need to keep working. In this scenario, the option of being placed onto a visa for up to 30 days that does not include work rights will not meet their needs.
- Representatives from several NGOs, and from at least one state police service, noted that women may be victims of trafficking, but they nonetheless may not want to get involved with police or other officials. They emphasised the importance of ensuring that a range of options are open to women, beyond the option of being streamed into the criminal justice visa regime with consequent access to victim support; or being screened out, which has the result of no entitlements to victim support through the Commonwealth program.

### Fact situations are complex

Many participants noted the inherent complexities of detecting trafficking when many situations involve 'shades of grey' rather than situations that are 'black and white'. While the criminal law operates on the assumption that there is a clear line between right and wrong, in reality, situations are messy, complex and there can be multiple perspectives on a single set of circumstances. Participants noted several competing considerations that affect how a situation is viewed, namely:

- gender, where the need to respect individual agency or autonomy can compete with considerations of apparent or real vulnerability, particularly in situations where there are extreme power imbalances
- exploitation, in situations where perceptions of exploitation vary greatly according to personal circumstance, economic disparity, cultural background and individual beliefs
- culture, in situations where a person's obligation to provide for their family may override other considerations, or respect for older people may impact on behaviour, even where there is an abuse of trust or power

## Trafficking of women for sexual purposes

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- migration, where different national groups have different access to visas, and therefore different entitlements to work in Australia. This was considered potentially relevant to detection and also to vulnerability, if women sought the assistance of agents to migrate, with attendant consequences for debt.

Many participants – including AFP investigators, immigration compliance officers and NGOs – all noted the importance of keeping an open mind, not rushing to make judgements and taking the victim's perspective into account. Participants also emphasised the importance of having a depth of insight into cultural considerations. Some participants referred to the need for those involved to have a high degree of empathy and cultural competence.



## Experience of investigations

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This section details some of the issues that were raised by investigators in interviews, about their experiences of investigating trafficking in persons in Australia.

### **Cases have not matched stereotypes about 'high-end' organised crime**

AFP investigators noted that while the groups involved in trafficking in persons to Australia clearly have a level of organisation, they are not at the 'high end' of major organised crime. Those involved have tended to include small business owners with business or family links to those involved in the other parts of the trafficking process, such as recruitment or document fraud. In particular, the groups involved in human trafficking do not appear to have the same high levels of organisation and sophistication as drug traffickers.

### **Cases have been detected in legal and illegal brothels**

AFP investigators noted that cases have been detected in both legal and illegal brothels. Several AFP investigators considered that this distinction had little relevance from the perspective of investigating trafficking.

### **Trafficking investigations are complex and resource-intensive**

The experience of the past four years of the AFP's TSETT suggests that trafficking investigations can be long, complex and resource-intensive. For example, one of TSETT's larger trafficking operations has involved concurrent investigations in multiple locations throughout Australia, with support from the AFP's overseas liaison network. The Melbourne TSETT unit reports that between July 2005 and February 2006, they dedicated 2,976 hours of police time to this operation. This is in addition to the time applied by the other teams involved. The operation included identifying key evidence from 27,000 telephone intercepts, many of which were in a foreign language.

There appear to be a number of reasons why trafficking investigations have tended to be long and complex. Trafficking takes place behind closed doors, so there are usually few witnesses. To avoid the classic situation of 'her word against his', investigators have

invested a lot of time and resources into locating evidence that will corroborate the victim's account. In investigations to date, this has included:

- locating former clients of the brothels where suspected victims of trafficking have been held
- locating other women who have worked at the brothel who can corroborate the suspected victim's account
- locating immigration records and customs footage
- checking financial records
- checking mobile telephone records
- using telephone interceptions.

Also, all trafficking investigations have, to date, focused on trafficking as a transnational crime, and have therefore involved a strong element of transnational cooperation and coordination. For example, investigations have involved AFP officers travelling to the victim's country of origin to take statements or to pursue leads. Several investigations have involved direct police-to-police cooperation, such as in *Sieders & Yotchomchin*, where the AFP acted in cooperation with the Royal Thai Police to simultaneously execute warrants of arrest in Australia and Thailand. Such cooperation adds time, cost and complexity to investigations.

To date, all suspected trafficking victims identified by the AFP have been foreign nationals. Several of the alleged offenders spoke English only as a second language. As a result, translators are required throughout the investigation, including for key evidence. While translation is crucial, the time and costs involved can be high.

During several investigations, suspected victims of trafficking have agreed to provide a statement but have wanted to first return home. The AFP has facilitated this by either travelling to the victim's home country to take a statement or helping the victim return to Australia to give a statement. Such flexibility helps ensure the victim's rights and needs are respected, and helps ensure the victim is willing and able to cooperate. However, such strategies also add time, complexity and risk to an investigation.

## Impact of the crime on victims and resulting impact on investigations

In most Australian cases to date, the suspected victims of trafficking have not experienced a high level of physical violence, in the form of beatings or other physical assaults. However, as one AFP investigator noted:

Even though these victims have not experienced high levels of physical violence, they have experienced high levels of abuse. You can see they fear being locked in, they are still very scared, and they have a high level of anxiety and trauma associated with sexual assault.

This has several implications for the conduct of investigations. AFP investigators noted the importance of taking time to build trust and rapport with victims, whose stories may be personal and painful. Accordingly, it is not realistic to expect a victim to tell their story to complete strangers in the first session. Investigators noted the importance of not rushing interviews and having enough time. This includes time to conduct the interview, time to suspend the interview if needed and time to allow a victim to take a break if the interview gets too much. AFP investigators also noted the importance of building trust and rapport between the victim and the interpreter. Several investigators noted the importance of choosing an interpreter carefully and, ideally, of retaining the same interpreter throughout the investigation.

Like sexual assault matters, trafficking cases can involve situations of 'her word against his'. Accordingly, AFP investigators noted the importance of taking comprehensive statements. A comprehensive statement gives the AFP the best opportunity to corroborate as many aspects of the victim's account as possible and minimises the need to conduct a further interview. However, obtaining a comprehensive statement through an interpreter can take a long time. For example, in one investigation, officers interviewed the victim for around four hours each day for three weeks. Such a lengthy process clearly has implications for the victim; a fact noted by victim support workers interviewed. Victim support workers noted that from the victim's perspective, investigative interviews are a 'long and arduous process'.

## Importance of victim support

AFP investigators note that suspected victims of trafficking are in a unique position. Like other victims of crime, they may be deeply affected by their experience; but, unlike other victims of crime, they may also have a tenuous migration status in a foreign country, where they may speak little of the language and know only the people who have exploited them. In addition, they may lose the few friends they have in Australia if they agree to participate in an investigation. As a result, suspected victims of trafficking can be highly vulnerable and isolated.

In the early days of Australia's response to trafficking, there was no victim support package. Consequently, individual AFP investigators assumed much of the welfare role for victims of trafficking. To their credit, these officers embraced the role and did what they could with

limited resources. However, every AFP investigator who was interviewed noted the importance of separating the investigative role from the welfare role. This separation was considered important for the victim's welfare. As several AFP investigators noted, they are not trained counsellors or social workers. Also, the separation allows them more time to concentrate on their core role – that of conducting the investigation.

From an investigations perspective, the introduction of the victim support package was a positive step; however, individual cases have highlighted some gaps in the package. For example:

- Until recently, the package did not cover suspected victims of trafficking who agree to give a statement but who first want to return home. Accordingly, AFP investigators needed to proactively seek out other avenues of support. In several cases, AFP investigators organised for Thai social workers to travel from Thailand with the victim to support them through the process of giving a statement. The CDPP funded these actions and DIAC facilitated the necessary visas.
- The package does not cover family members of suspected victims of trafficking who may be required in Australia to give evidence.
- The visa framework that accompanies the package is available to 'immediate family members' but this does not accommodate situations where the victim of trafficking is in a same-sex relationship.
- The visa framework is available to immediate family members *in Australia*. However, sometimes the children of suspected victims of trafficking are not in Australia but have remained in the victim's home country.

AFP investigators emphasised that in their experience, it is vital that victim support be both comprehensive and high quality. This view reflects both the need to ensure the victim's welfare and the impact victim support can have on the investigation. As one AFP investigator commented:

The quality of victim support has a direct impact on the quality of evidence.

Another AFP investigator said:

With support for victims of crime, you shouldn't go for the cheapest option.  
If you lose the victim you lose the case. It's an incredible investment.

Investigators expressed concern about various aspects of the existing victim support program. In particular, they had concerns that the quality of the service provided was variable, and that there are gaps in coverage. Specific issues included:

- In their experience, the level, type and quality of support provided to individual victims of trafficking appeared to be highly variable, and dependent on the individual caseworker.

- There is uncertainty around exactly what services the caseworkers are required to provide. One investigator suggested that introduction of a minimum service standard would help address this issue.
- The contractor does not appear to make sufficient use of translators. Investigators were unclear how caseworkers could explain complicated concepts, such as compliance with Centrelink or Australian Taxation Office requirements, given their clients' often poor command of English. Investigators noted that victims would often 'save up' their queries until their next interview with the AFP, so they could take the opportunity to ask questions through the AFP-provided interpreter. Individual prosecutors also raised this situation.
- Some caseworkers appeared to rely entirely on public transport. The investigators felt this limited the capacity of some caseworkers to get to the police station in a timely manner (for example, when a suspected victim of trafficking has been identified late at night) or to move victims in a secure and appropriate way (for example, when the victim has given evidence in court and needs transportation home).
- There appears to be insufficient focus on provision of psychological or psychiatric support, either through counselling, use of registered psychologists or, if required, provision of psychiatrists. Investigators commented that many victims with whom they have worked are incredibly damaged, and need either psychological or psychiatric care.
- The victim's entitlement to legal advice is limited to three hours of advice. Investigators noted that a victim's migration status could be very complicated. For example, in several cases, employers have lodged false protection visa applications, often in multiple false names. In some cases, the victims have signed the forms. These issues are unlikely to be resolved in three hours. Also, victims may have legal needs that flow from their involvement in the criminal justice process. For example, when one victim was informed she should seek legal advice as her bank account had been subpoenaed, she did not know what to do.

With regard to these issues, the current service provider noted a number of practical and budgetary considerations:

- Under the Support for Victims of People Trafficking Program, the same level of support is available to all clients. However, individual clients will have different needs and requirements around case support. The level of support provided is determined on a case-by-case basis, dependent on the client's needs.
- There is a defined set of protocols regarding services that will be offered to clients (Programme Guidelines). All caseworkers receive training in applying these guidelines. Exceptions are referred to the funding body, the Office for Women. The service provider has to comply with budget allocations for each client and the program overall.

- The service provider does make use of translators. However, it is unable to provide unlimited translation services due to budget allocations (up to three hours, or \$300, of interpreter services are available to clients on the program). The service provider recommends that Centrelink interpreters are used for Centrelink-based enquiries and meetings, as they are familiar with relevant terminology and concepts.
- All caseworkers employed by the service have a car available to be used for all aspects of their work on the program. A petrol allowance is also paid for all kilometres travelled by caseworkers. Sometimes the service provider will recommend that caseworkers use a taxi (e.g. for a pick-up late at night) and this cost will be reimbursed. According to the service provider, public transport is used only when the caseworker is showing the client how to use the local public transport network. This is part of the socialisation process of the program.
- Some case managers are psychologists, and some clients are seeing psychiatrists. All clients are offered the use of counsellors. Some clients refuse to see a counsellor and this choice has to be respected. Some clients rely heavily on the case manager for psychological support and prefer this, even if the caseworker recommends counselling. For this reason, it is important that caseworkers have relevant skills, experience and qualifications.
- The service provider has a budget of three hours of legal advice. This reflects the parameters of the program established by the government.

## The challenges of understanding culture, coercion and control

Few of the cases discovered in Australia fit the traditional stereotype of 'slavery'. For example, the suspected victims of trafficking who have come to the attention of the AFP have not been kidnapped from their home villages, held at gunpoint or chained to beds. The fact situations that have arisen over the past four or so years are far more complex than this. In many cases, the suspected victims of trafficking have known they are coming to Australia to work in the sex industry; 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. However, in all cases, 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.

AFP investigators note that the behaviour of many suspected victims of trafficking might be inexplicable to the average Australian. In particular, it might appear they are particularly compliant given their situation. For example:

- In one case, the suspected victim of trafficking alleged that she was forced to provide sexual services in several Sydney brothels against her will. She said the brothel owner drove her to and from the place where she was required to sleep. She indicated that during this time, she was held against her will because the car doors were locked. Once they arrived at the brothel, the brothel owner would take her by the hand and lead her to the brothel. When asked why she did not try to break away, the suspected victim of trafficking indicated that she could not do this because the brothel owner was an older woman, and she did not want to hurt her.
- In another case, the suspected victim of trafficking was asked why she had not left the brothel, as the door was not locked. The suspected victim of trafficking indicated that she had never tried to open the door.

AFP investigators emphasise the importance of trying to understand the situation from the perspective of the person involved. In many cases, this has required investigators trying to understand a situation through a different cultural lens. For example, investigators might need to understand situations from the perspective of someone who had come to Australia from a poor rural village, in desperate poverty, where their family has been involved in their recruitment. Investigators also need to try to understand different ways of thinking about issues such as debt, family obligation and respect for elders.

## Multiple statements

In some early investigations, the AFP took a signed statement from the suspected victim of trafficking during the initial interview, in circumstances that were less than ideal (for example, in an immigration detention centre). When gaps or inconsistencies were later identified in the victim's statement, investigators reinterviewed the victims. This resulted in statements being amended, or in new statements being taken. While this approach led investigators closer to the truth of the situation, it also had profound implications for the prosecution. In some cases, by the time the matter got to court, victims had signed up to five or six statements. The existence of these 'prior inconsistent statements' was used as the basis upon which to attack the victim's credibility. It is difficult to convince a court that a victim is telling the truth, when they may have signed five or six different (sometimes conflicting) statements.

There is no legal requirement to finalise a statement at the earliest possible opportunity. Accordingly, several strategies appear to have been used in later investigations to minimise the need to take multiple signed statements. Key strategies seem to include:

- allowing enough time to develop trust and rapport between the investigator and the victim of trafficking before finalising statements



- taking very detailed, comprehensive statements, thereby minimising the need to reinterview to ‘fill in the gaps’
- testing the content of the statement, as it will be tested later in court, through the AFP’s own investigations. This can help identify any gaps or inconsistencies at an early stage before the statement is finalised. These gaps or inconsistencies can then be discussed with the victim through the interview process.

While there is no requirement to finalise the statement at the first opportunity, investigators noted there may be operational pressures to move quickly. For example, it is generally not possible to arrest and charge a suspect without a signed statement from the victim.

## Importance of everyone working together for the same objective

The slavery and sexual servitude offences were first introduced into the Criminal Code (Cth) in 1999. From this time, the AFP became responsible for investigating these offences. However, the broader whole-of-government response to trafficking in persons was not developed until much later.

Many lessons were learnt in the early investigations; some reflect the newness of the crime type, and the fact that these investigations really were the first of their kind in Australia. However, some of these lessons also reflect the reality that investigators need support and assistance from a range of agencies, if they are to effectively investigate trafficking cases. Over time, individuals and agencies were able to identify gaps or shortcomings in the response and to bring these to the attention of policymakers. This information then became part of developing and improving the Australian Government’s anti-trafficking response.

For example, one of the early lessons was the importance of a close working relationship between the AFP and DIAC. If victims of trafficking were to be identified and assisted, it was vital that DIAC brought suspected trafficked victims to the attention of the AFP. If this did not happen, there was a risk that victims would be detained and removed from the country. This would be unacceptable from a humanitarian perspective. It would also seriously undermine AFP efforts to detect and investigate trafficking offences. Accordingly, the AFP and DIAC developed a referral protocol. Under the referral protocol, DIAC refers any suspected trafficking matters to the AFP within a very short time frame (the protocol refers to one hour). This has resulted in identification of trafficking victims, as well as development of intelligence on suspected trafficking cases. Today, there appears to be a high level of cooperation and information sharing between the AFP and DIAC.

Further, it became apparent from some of the early cases that state and territory police might be the first responders to trafficking situations. Accordingly, they needed to have a basic awareness and understanding of trafficking, and be aware of the new federal laws. Without this awareness, they would not know to bring suspected trafficking cases to the AFP's attention. It was also important that there were referral pathways, so that the state and territory police would know how to refer a suspected trafficking matter to the AFP. Accordingly, in 2006, with the involvement of all Australian police services, a national policing strategy was developed (Australian Policing Strategy to Combat Trafficking in Women for Sexual Servitude 2006–2008, Australasian Police Ministers Council. Strategy prepared by the Australasian Crime Commissioners Forum, September 2006). The strategy clarified roles and responsibilities, and put the issue of basic awareness training for state and territory police on the national agenda.

### Importance of specialist training

AFP investigators noted the value and importance of the AFP's specialist training program, the Transnational Sexual Exploitation Investigations Program. The program appears to be well regarded by AFP investigators and investigators in the state and territory police, several of whom commented positively on the course.

Several AFP investigators suggested that the TSETT training program could be usefully supplemented with other training activities. In particular, they noted the importance of ensuring that all TSETT investigators have highly developed skills and experience to work effectively with victims of crime, and particularly crimes that have a strong sexual element. They noted that the AFP's role has traditionally focused on 'victimless crimes'. In contrast, state and territory police work with victims of crime every day. Several investigators noted the value of having a background in state or territory policing for this reason. AFP investigators noted that state and territory police services have highly developed responses in this area, including advanced training packages on working effectively with victims of sexual assault, which could usefully be drawn upon in the trafficking context.

The importance of locally sourced training was also noted. For example, the Melbourne TSETT unit has sourced training on sexual assault investigations from Victoria Police. This decision reflects a strong overlap between the skills needed to effectively investigate sexual assault and those needed to effectively investigate trafficking for the purposes of sexual exploitation. However, it also reflects the reality that TSETT investigators need to be linked with local networks, including community groups and service providers. For example, in Victoria the TSETT unit has sought to link with various local services, including the Victorian Centres Against Sexual Assault.

## Importance of established contact points and relationships

The experience of the past few years demonstrates the importance of strong collaborative working relationships, such as that between the TSETT units and the areas of DIAC that work directly on trafficking. The AFP Liaison Officer and the DIAC Senior Migration Officer Compliance (Trafficking) are co-located in the Australian Embassy in Bangkok. They work together on a daily basis and have weekly coordination meetings. The TSETT units in Melbourne and Sydney work closely with the DIAC Sex Industry Compliance teams in those locations. Within DIAC, there is strong cooperation between the broader onshore and offshore networks.

While there is strong cooperation between the agencies, teams and people that work together regularly, some investigators noted that difficulties can arise if trafficking cases are identified outside the major cities, or if parts of the larger government bureaucracy (outside the specialist teams) have to become involved. Investigators also noted the importance of being able to quickly identify focal points in all the agencies involved in the anti-trafficking response. For example, situations have arisen where people have changed jobs and not nominated a new contact point. Given the short time frames within which some decisions need to be made, it is vital that investigators do not waste time trying to locate a new contact point.

## Importance of transnational networks

AFP investigations have focused primarily on trafficking in persons as a transnational crime. This has had an impact on the conduct of investigations. The AFP has identified suspected victims of trafficking that originated from a range of countries. While the greatest number of suspected victims has originated from Thailand, suspected victims of trafficking have also been identified from regions as far away as Eastern Europe.

In the Australian context, cooperation with foreign law enforcement agencies is largely facilitated through the AFP's network of overseas liaison officers. The AFP has 83 liaison officers in 36 posts, located in over 27 countries. Investigators noted the important role of the AFP liaison network in supporting investigations in Australia. This has included:

- working closely with police in other countries to coordinate joint investigations
- working closely with welfare agencies in other countries to ensure victim support is provided to suspected victims of trafficking who are returning home
- undertaking capacity-building activities with foreign law enforcement agencies, which ultimately help equip these agencies to better respond to trafficking
- gathering intelligence and sharing information.

While international cooperation (such as police to police cooperation) can run smoothly with excellent results, it can also be difficult and frustrating. Poor cooperation can hamper 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. Victim's 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 changed over time; in 2005, eight suspected victims of trafficking were being supported in this way in Thailand and in 2007, 18 were being supported.

## Relationship between AFP and DIAC, including outside of Australia

AFP investigators noted the value of drawing on DIAC's powers to facilitate investigations, both in Australia and overseas. In Thailand, there is a DIAC officer whose role is directed at preventing trafficking. Since the position was established in late 2003, it has supported Australian investigations by providing key information on individual cases, and has identified suspected trafficking cases that have then been referred to the AFP for investigation. In several cases, this has resulted in the laying of charges in Australia.

## Case study of an effective investigation: Operation Turquoise

### Overview

Many of the strategies identified as vital to support an effective investigation were put into practice in the investigation that led to the conviction of Johan Sieders and Somsri Yotchomchin. This investigation had several features:

- The AFP worked collaboratively and closely with DIAC to initially identify the victim and to regularise the visa status of several key witnesses.
- The AFP demonstrated flexibility in the timing of interviewing the victim. After the victim was initially identified, she wanted to return home. She indicated that she was willing to come back to Australia to give a statement. Rather than trying to rush through a signed statement before the victim left Australia, investigators made arrangements for her to return to Australia. This was facilitated by DIAC.

- Individual investigators worked hard to build trust and rapport with the victim. For example, even though translators were used throughout, the individual investigators involved took the initiative to learn some basic Thai language.
- Investigators sourced and used 'soft' interview facilities.
- The AFP liaison officer in Bangkok sourced culturally appropriate victim support services through the Thai Department of Social Welfare and Development.
- The investigators took comprehensive statements, which they tested through their own investigations. Gaps and inconsistencies were resolved at an early stage.
- The investigators worked closely with the ACC to take advantage of the opportunities offered by the conduct of coercive interviews through the ACC special reference. This involved working with a multidisciplinary team, including a lawyer and a psychologist.
- The investigators worked closely with the Royal Thai Police, including conducting simultaneous search and arrest warrants.

### About the investigation

This matter came to light when a man made an anonymous telephone call to the DIAC Immigration Dob-in Line. He said he had just been with a sex worker in a Sydney brothel who had pleaded for him to help her get out. DIAC undertook a compliance visit and conducted interviews the next day. However, the victim was not located in that search. The anonymous client rang DIAC again. He indicated that the victim had contacted him and said she had moved to another Sydney brothel and again asked for his help. DIAC undertook a compliance visit to the second brothel, where the victim was located.

In an interview with DIAC, the victim made claims straight away that she was being held there against her will. DIAC removed her from the premises, on the basis that she was an unlawful non-citizen. The officers involved took her to their office and telephoned the AFP.

Following an initial 'assessment' interview, the AFP made it clear they would support her application for a BFV. However, the victim indicated that while she was willing to make a statement, she wanted to go home to Thailand first.

The victim returned to Australia several weeks later to give a statement. In the intervening period, the AFP liaison officer in Bangkok had organised for the victim to be accompanied back to Australia with a Thai social worker from the Department of Social Welfare and Development. The CDPP covered the costs and DIAC facilitated the visa arrangements.

Once back in Australia, the victim was interviewed by two AFP investigators. The interview was conducted with the assistance of an interpreter; and the same interpreter was used throughout. The interview was held in the self-contained unit where the victim was staying.

It took investigators a long time to obtain a complete statement; the interview was conducted over three weeks, for around four hours each day. The interview was long because investigators felt it important to record details of each day the victim was preparing to come to and when she was in Australia (the victim in this case had been in Australia for about one month before DIAC officers located her).

The statements included details about her background and her recruitment in Thailand. The victim said she met a man in a bar who introduced her to another woman, who set up everything. She said a Thai man escorted her to Australia and the brothel owner collected her at the airport. When the statement was completed the victim returned to Thailand.

The AFP continued the investigation after the victim returned to Thailand. This included following several leads, including information obtained from the SIM card the victim had used while in Australia. During this time, investigators worked closely with the ACC. As a result, the AFP identified several other key people, including the victim's cousin who was also working in Australia.

From the AFP's interviews with the cousin, it became apparent that aspects of the victim's initial statement were false. The victim had not been recruited in a bar in Thailand; her cousin had put her in touch with the recruiters. The cousin was an illegal non-citizen in Australia. DIAC issued her with a BFV while the AFP assessed her value as a witness. The cousin turned out to be a crucial witness and was granted a Criminal Justice Visa.

After getting this information from the cousin, AFP investigators obtained a second statement from the victim. This took two weeks. Investigators asked the victim why she had not told the truth in her first statement. The victim said it was because her cousin did not have a visa and she did not want to get her cousin into trouble. The investigators accepted that even though the victim had lied to them, her reasons were plausible and understandable. So they continued with the investigation.

As it transpired, the cousin was a key informant. She helped the AFP locate other unlawful non-citizen sex workers who knew what had happened to the victim. Given the illegal status of these people, when there was likely to be a potential meeting, the AFP worked closely with DIAC who ensured someone was on standby to issue a BFV. The cousin brought forward four unlawful non-citizen sex workers, each of whom was put onto a BFV and became important witnesses in the prosecution.

Investigators were able to corroborate the victim's account in several ways. This included evidence from other sex workers who had seen how the victim was treated, evidence from the client who initially contacted the DIAC Immigration Dob-in Line, evidence from mobile telephone tower records confirming the victim's movements, and records from intercepted telephone conversations. Key evidence from Thailand that was required for court was sourced through official mutual assistance channels.

While the AFP was investigating in Australia, a parallel investigation was underway in Thailand. The AFP coordinated the issue of warrants with the Royal Thai Police. When the AFP arrested Johan Sieders and Somsri Yotchomchin, the police in Thailand arrested several other people alleged to have been involved in recruiting and financing the victim's travel to Australia.

The defendants were initially charged with sexual servitude, slavery and a NSW charge of detaining for advantage. Following consultation with the CDPP, the charges were changed to operating a business involving the sexual servitude of others. The defendants were convicted and sentenced in 2006 (*R v Sieders & Yotchomchin* [2006] NSWDC 184). In 2007, the defendants lodged an appeal against their convictions and sentence. As at 29 February 2008, the appeal had not been heard.

## Experience of prosecutions

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## Overview of prosecutions to date

As at 31 January 2008, the CDPP had received briefs of evidence from the AFP concerning 29 defendants alleged to have committed trafficking offences (under Divisions 270 and 271 of the Criminal Code (Cth)). Of these:

- matters involving 15 defendants are still before the courts (that is, at the committal, trial, sentencing or appeal stage). This includes eight defendants in Victoria, four in New South Wales and three in Queensland
- the CDPP discontinued the prosecution of trafficking offences against 11 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 (Xu, Tran & Qi). In relation to the remaining four defendants: trafficking charges were dropped against one person but another charge was pursued; and charges were dropped against the remaining three on the basis that there was insufficient evidence to support a prosecution
- matters involving three defendants have been finalised. This includes:
  - Paul Pick (co-accused with Wei Tang), who was acquitted on eight charges related to slavery following a jury trial in Victoria. The jury was unable to reach a verdict in relation to two other slavery charges. The CDPP discontinued proceedings against the defendant after determining there was insufficient evidence to prosecute the remaining two counts of slavery
  - Yogalingham Rasalingam, who was acquitted of one count of trafficking a person under section 271.2(1B) of the Code following a jury trial in New South Wales. He was convicted of one count of dishonestly influencing a Commonwealth public official contrary to s 135.1(7) of the Code
  - ‘DS’ (*R v DS* [2005] VSCA 99), who pleaded guilty to three counts of possessing a slave, and two counts of engaging in slave trading, under section 270.3 of the Criminal Code.

As at 31 January 2008, seven defendants had been convicted for offences under Divisions 270 and/or 271 of the Criminal Code, in relation to four matters. The status of these cases is as follows:

- In 2006, Joseph Sieders and Somsri Yotchomchin were convicted of ‘conducting a business involving the sexual servitude of another’, following a jury trial in New South Wales. Sieders was sentenced to a maximum of four years imprisonment and Yotchomchin was sentenced to a maximum of five years. The defendants have appealed their conviction and sentence. As at 31 January 2008, the appeal had not been heard.

- In 2004, 'DS' pleaded guilty to three counts of possessing a slave, and two counts of engaging in slave trading. DS was initially sentenced to a maximum nine years imprisonment, which was reduced to six years on appeal.
- Kanakporn Tanuchit and Trevor Mclvor were each convicted in 2007 of five counts of possessing a slave and five counts of using a slave (20 counts in total) following a jury trial in New South Wales. As at 31 January 2008, the defendants had not been sentenced.
- Zoltan and Melita Kovacs were each convicted in 2007 of one count of possessing a slave and one count of using a slave (four counts in total) following a jury trial in Queensland. They were sentenced to a maximum of eight and four years imprisonment respectively, for slavery. The defendants have lodged an appeal against the conviction and sentence. As at 31 January 2008, the appeal had not been heard.

In addition, Ms Wei Tang was convicted of slavery offences following a jury trial in Victoria. Her conviction was quashed on appeal and a retrial ordered (*R v Wei Tang* [2007] VSCA 134 and 144). The appeal raises several legal issues and the CDPP has appealed to the High Court on those issues. The appeal was heard in May 2008 (*The Queen v Tang* [2008] HCATrans 180 and 181).

## Issues that have arisen in Australian prosecutions to date

### Small number of cases

Australian laws regarding trafficking in persons are relatively new. To date, few cases have run the full course of the legal system or resulted in prosecution. For example, the trial of Ms Wei Tang was one of the first prosecutions under Australian anti-trafficking laws. Ms Tang was first arrested in May 2003. Following an initial trial, a retrial, a successful appeal by the defendant, and a further appeal by the CDPP, this case was still before the courts in 2008. Prosecutors noted that it is difficult to draw out trends, both in terms of issues that might commonly arise in trafficking prosecutions or in terms of responses that might help address these issues, when there have been so few cases, and so few have run their course.

### Prior inconsistent statements

Prosecutors report that prior inconsistent statements have been a major challenge in the majority of Australian prosecutions. The existence of prior inconsistent statements is a legitimate ground on which to challenge the credibility (or believability) of a witness. In all the

Australian trafficking cases, the alleged victims have been crucial witnesses. If an alleged victim is not believable, for example, because their story has changed over time, this can cause the whole prosecution case to collapse when there is no other supporting evidence.

For example, in the trial of *Xu*, one of the defence lawyers noted that the alleged victim had signed a statement in her first interview with police, which was taken at Villawood Detention Centre. This was followed by a subsequent interview, and as many as five or six further signed statements (transcript of *R v Tran, Xu & Qi*, 6 April 2005). The clear implication from the defence counsel was that the victim had changed her story many times, so her evidence could not be trusted.

In several cases, the prosecutor for the Crown has sought to diffuse the power of any prior inconsistent statements by allowing the alleged victim to explain the reasons for the inconsistency in their own words. This can be compelling, and give the court an added insight into the reality of the alleged victim's situation. For example, in the *Xu* trial, defence counsel drew attention to the alleged victim having apparently confused the names of several of the co-accused, in her initial interview with police. On this basis, the defence counsel accused the alleged victim of having fabricated her story (transcript of *R v Tran, Xu & Qi*, 7 April 2005). However, the prosecutor for the Crown elicited further evidence from the victim during re-examination. She explained the inconsistency as follows:

When I was at the Villawood Detention Centre, I was totally exhausted and confused, and the time lapse between the event and time when I was in that detention centre has been a long lapse. I remember the events happening but I may have made some mistakes in the chronological order. Usually, it's common for people to forget details as time passes, especially at that time I was particularly exhausted and confused (transcript of *R v Tran, Xu & Qi*, 8 April 2005).

## Disclosure

Failure to fully disclose all materials relevant to the prosecution was a major issue in one case (*Kwok*). In criminal proceedings, the defence and prosecution have to 'disclose' (or identify) to the other party and to the court all documents that might have a bearing on the case. This includes a wide range of documents, and not only those documents that will be specifically referred to in court. In particular, both sides have to disclose any documents that might help or harm either their case or the other party's case.

Part way through the *Kwok* trial, it became apparent that some relevant DIAC and AFP documentation had not been disclosed. As a result, much court time was occupied by production of documents that should have been produced during the disclosure process before the trial started. This included documents about payments made to witnesses.

The trial judge, Justice Keleman, noted that these payments could either be considered as appropriate to facilitate the prosecution, or as providing a powerful inducement to give false evidence. On day 68 of the hearing, the trial judge said the case had become untenable and the trial was aborted.

### Victims may not have ‘clean hands’

In several Australian prosecutions, the credibility of alleged victims of trafficking has been attacked on the basis that they themselves do not have ‘clean hands’. For example, in the *Xu* case, defence counsel focused on the fact that the alleged victim had applied for and signed a Tourist Visa application, despite knowing she would be working when she got to Australia. In *Sieders & Yotchomchin*, defence counsel focused on the fact that one of the key witnesses had not paid tax on earnings she had made while working in the sex industry (transcript of *R v Johan Sieders & Somsri Yotchomchin*, 29 June 2006).

### Reliance on stereotypical views

In at least one case, defence counsel has tried to undermine an alleged victim’s credibility, or introduce doubt into the mind of the jury, by relying on what are arguably stereotypical views about migrants, sex workers and women. For example, in the *Xu* case, defence counsel suggested the alleged victim had fabricated her story so that she would not be deported from Australia; and that she had collected telephone numbers from her clients in the hope they would marry her so she could remain in Australia (transcript of *R v Tran, Xu & Qi*, 8 April 2005). The prosecutor sought to counter the impact of this line of questioning by leading evidence from the victim during re-examination about to the fact that she had chosen to return to Thailand, even though she had been made aware that she could probably access a visa to remain in Australia. Different defence tactics were engaged in the *Sieders & Yotchomchin* trial, where defence sought to present the victims as canny business women who had knowingly entered into commercial arrangement, at the conclusion of which they would be free to continue to work in the sex industry and earn money for themselves (*R v Sieders & Yotchomchin* [2006] NSWDC 184).

### Importance of corroboration

Australian prosecutors have highlighted the importance of corroborating the victim’s account as much as possible. While corroboration might come from a range of sources, prosecutors note that any ‘objective’ evidence is particularly valuable. Such evidence has included:

- transcripts of intercepted telephone calls between the defendants
- records of money transfers

- documentation such as diaries and payment books
- photographs of premises
- records from mobile telephone towers confirming an individual's movements.

### **Protections for witnesses differ across jurisdictions and may not be automatic**

Over the past 20 years, research studies have drawn attention to the fact that giving evidence in court can itself be a traumatic and frightening experience, and that victims and other witnesses need better protection in court. This is particularly the case where the crime involves a sexual element. Relevant issues include the potential for unrepresented defendants to personally cross-examine witnesses (including the victim), the trauma or intimidation that can occur when witnesses have to sit opposite the offender in court, and harsh or inappropriate cross-examination tactics. Today, various protections are available under state and territory laws, including for victims who give evidence in sexual assault matters.

There are no comparable protections available under Federal law. As a result, in trafficking cases, prosecutors have sought to rely on state laws (where these can be applied to federal offences) and the common law. Because of legislative differences, there is potential for considerable disparity across jurisdictions in the protections available for witnesses. For example, protections that might be available in New South Wales may not be available in Victoria. Also, protections that might be available automatically in one jurisdiction might have to be applied for in another. To add further complication, different courts have different rules and facilities for witnesses.

The risk involved in relying on common law arguments about the need for witness protection measures were seen in *Kwok*. In that case, the prosecutor for the Crown applied for a non-publication order for the names and identities of all the complainants in that case. The District Court of New South Wales agreed to make a non-publication order for one of the complainants on the basis that she had a similar status to an informant. However, the District Court refused to make similar orders for the other complainants. This issue was appealed to the New South Wales Court of Criminal Appeal. The court held that the District Court did have the power to make the non-publication order on the basis that the order was necessary for the administration of justice. That is, without non-publication orders, victims would be discouraged from reporting or giving evidence about sexual servitude matters, due to the risk of shame and stigmatisation (*R v Kwok* [2005] NSWCCA 245).

Witnesses may also need protection where disclosure of their identity would place them in danger. This situation has arisen in Australia, where a defendant in one case has acted as a witness for the Crown in relation to several other prosecutions. In the 'DS' case, prosecutors

successfully argued that the defendant's name should be suppressed on public policy grounds (transcript of *The Queen v DS*, County Court Criminal Jurisdiction, Melbourne, 22 December 2004).

### Cases do not match community stereotypes of 'slavery' and 'sex slavery'

Prosecutors noted that it is challenging to convince a court or a jury that a situation involves 'slavery' or 'sexual servitude' when the situations do not match community stereotypes of what these situations should 'look like'. In particular, while some Australian cases have involved the alleged victim being literally locked inside a room, or physically restrained, this has not always been the case. In several cases, the alleged victim has also had an apparent degree of freedom. For example, they may have had access to a mobile telephone. In most cases, restraint has involved less visible factors, such as debt, fear of violence, psychological coercion and control.

For example, in *Sieders & Yotchomchin*, the defendants were charged and convicted for conducting a business involving the sexual servitude of others, namely four Thai women who were subject to debt contracts of around \$45,000 each. The Crown case was that the women were not free to cease providing sexual services because they feared harm against themselves and their families in Thailand, and feared deportation. The defence claimed the situation was nothing more than a commercial arrangement between the defendants and the alleged victims, who would be free to start earning money for themselves once they had paid their debts. However, the court rejected this argument. In the judgment of Bennett SC DCJ, there were several flaws with this argument. Principally, it did not take account of the fact that the women were at any point liable to deportation, and could only discharge their debt if they remained hidden (*R v Johan Sieders & Somsri Yotchomchin* [2006] NSWDC 184).

In *Wei Tang* (*The Queen v Wei Tang* [2006] VCC 637), Justice McInerney accepted that there was no evidence that the alleged victims in that case had been held under lock and key. However, Justice McInerney found that due to a combination of circumstances, each alleged victim, while not locked in the premises, was 'effectively restrained by the insidious nature of their contract'. Justice McInerney suggested that to comprehend their circumstances, it was relevant to ask the rhetorical question:

How could they run away when they had no money, they had no passport or ticket, they entered on an illegally obtained visa, albeit legal on its face, they had limited English language, they had no friends, they were told to avoid Immigration, they had come to Australia consensually to earn income and were aware of the need to work particularly hard in order to pay off a debt of approximately \$45,000 before they were able to earn income for themselves?

Ms Tang successfully appealed the court's decision. The Supreme Court of Victoria Court of Appeal found that the judge's directions to the jury on the issue of intention or knowledge were not adequate to allow them to decide. Ms Tang's conviction was quashed and her sentence set aside. The High Court granted the CDPP special leave to appeal this decision, and hearings were held in May 2008. One of the key issues in this case is the meaning of 'slavery' in the Criminal Code (*The Queen v Tang* [2008] HCATrans 180 and 181).

Prosecutors note that it can be helpful to go 'back to basics' in court by referring to the definitions of trafficking found in the United Nations Trafficking Protocol. The protocol is clear that 'consent' is nullified when the trafficking situation has involved deception, coercion or other means. Prosecutors note that it can be helpful to draw out the inherent unfairness in situations, for example, by focusing on the illusory nature of the enormous debt that can be arbitrarily increased, and the inherent power imbalances in situations. This can be drawn out through examination of witnesses, which means the information is presented to the court in the victim's own words.

### Time frames

Prosecutors noted that in several Australian cases, a significant amount of time had passed between the initial arrest and the court date. For example, a prosecutor from Victoria described a case where the defendant had been arrested in 2004 and, as at July 2007, a court date had not been set. The delay was due to a backlog in the court system in that jurisdiction. The prosecutor noted that in Victoria, time standards apply to sexual assault matters but that these time standards do not cover trafficking cases. A prosecutor from New South Wales noted that time standards apply in all criminal cases in that jurisdiction. Prosecutors noted that this is just one example of the way that differences between jurisdictional laws can play out in federal trafficking prosecutions.

Cases can also extend over a long time as a result of the appeal process. For example, Ms Wei Tang was arrested on 31 May 2003. At the time of writing, the hearing into the matter had concluded and a judgment was pending. The High Court's consideration of the case may result in judicial guidance on several of the slavery provisions in the Criminal Code. While noting that court backlogs and long lead times caused by appeal processes are not specific to trafficking prosecutions, prosecutors did note that extended delays may have an impact on the willingness of a victim to participate as a witness. For example, it is natural that victims will want to get on with their lives. The more time passes, the greater the risk this will occur. Extended delays may also affect people's memory. In court, witnesses are required to provide great detail about the events in question; however, it is naturally difficult to recall events that took place several years ago.

### **Risk of linking visas, victim support and participation as a witness**

Prosecutors noted that victim support measures, including visa regimes for victims as witnesses are vital. However, they also noted the need to manage these issues carefully as part of the investigation and prosecution process. In several Australian cases, defence counsel has sought to undermine witness testimony by drawing attention to the witness having immunity from prosecution, access to a visa or entitlements under the victim support program.

To minimise the risk that a victim might be seen to have been 'bought' as a witness by the inducement of a longer-term visa, the practice has developed whereby the AFP will delay seeking a Witness Protection (Trafficking) Certificate from the Attorney-General until after completion of the criminal justice proceedings. This effectively delays consideration of whether to move the victim onto a longer-term visa until after court processes are resolved, thereby minimising the risk that a defence counsel could successfully argue that a victim has been bought by the inducement of a long-term visa. However, the impact of this approach on victims of trafficking was also noted. Victim support workers note that lack of certainty about migration status is a source of concern for their clients. Without a permanent visa, their clients are remaining in Australia, without access to their children or families, all of which increases stress and isolation. As criminal justice processes can stretch out over several years, victims of trafficking may be in limbo about their migration status for several years. DIAC noted there is nothing in the Migration Regulations to prevent consideration of the grant of visas at an earlier stage.

### **Court familiarisation and court support**

Prosecutors noted the importance of court familiarisation and in-court support for suspected victims of trafficking who are giving evidence (an issue that was also raised by AFP investigators). While emphasising that victim support workers should not seek to answer legal questions, prosecutors emphasised the importance of victim support workers having capacity to communicate with their clients (including where the victim's first language is not English), a sound knowledge of Australian legal and court processes and a clear understanding of what their role as an in-court supporter should be.

### **Translation**

In Victoria, there appears to be a lack of Thai language translators with sufficient qualifications for translating court processes. This has impacted on the conduct of court cases, including scheduling of court dates around the availability of translators. The small number of translators can also have an impact where multiple translators are required. For



example, both the defendant and the victim may need access to a translator to talk to legal counsel in the breaks during court processes. It would not be appropriate to use the same translator for both purposes. The same issue has not arisen in New South Wales, where there appears to be enough translators to facilitate court processes.

# Experience of providing victim support in the criminal justice process

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## Background

For the purposes of this research, interviews were not conducted with the victims of trafficking who have participated in investigations and prosecutions. This is an important issue that should be considered for future research.

For the purposes of this study, a focus group discussion was conducted with several case managers from BSIL Southern Edge Training (the current provider of the Support for Victims of People Trafficking Programme) who have worked directly with the women who have participated in trafficking investigations and prosecutions. This involved four case managers from Sydney, Melbourne and Brisbane, the program manager and a representative from the Office for Women. While information from these discussions is not a substitute for the views of victims, it nonetheless provides insight into some of the issues that have arisen over the past three years of the federal victim support program.

## Balancing the dual role of advocate and case manager

The experience of the first few years of the federal victim support program suggests there are many challenges in providing victim support in the context of an ongoing criminal justice process. The program manager noted that her organisation has had a dual role: that of ensuring the safety and protection of women on the program, and of supporting their role as witnesses in the criminal justice process. She noted that separating the role of advocate from that of case manager has been one of the most challenging issues.

## Length and timing of interviews

Case managers noted that the extended police interview process is 'long and arduous' for victims. Also, while investigators may want to move quickly into interviews, several practical issues may need to be resolved before the victim can begin to feel comfortable and safe. For example, in several cases, suspected victims of trafficking have been picked up in raids with nothing but the clothes they were wearing in the brothel. In this situation, case managers need to ensure the victim has appropriate clothing to wear before an interview can proceed. In all cases, victims are frightened, confused and uncertain about their situation. Case managers feel they need time with victims to help clarify their situation before interviews commence. They feel this may assist with the quality of information given in initial interviews. Case managers noted that AFP investigators have now adopted the approach of delaying initial interviews for up to a week. This gives case managers time to address the practical issues, and victims some time to come to terms with their situation.

## Impact on clients of delaying decisions about visas

Case managers noted the practice of delaying discussions or decisions about long-term visas until after resolution of court processes. Victim support workers believed this negatively affected their clients, who remained in a continual state of uncertainty about their immigration status for up to several years. Victim support workers noted that this uncertainty was particularly strong in the early days of the program, before anyone had gone through the trafficking visa system and onto a Witness Protection (Trafficking) Visa. After the grant of the first Witness Protection (Trafficking) Visas, clients were able to see that it might actually be possible to secure a longer-term visa with more stability. Victim support workers noted that persisting levels of uncertainty affected their client's capacity to feel a sense of control over their lives.

Case managers noted that many of their clients had children and family back home (an issue also noted by several AFP investigators and individual prosecutors). While women remain on the Criminal Justice Stay Visa, they may only bring their children to Australia for a visit. This issue has implications for clients and possibly the welfare of their children, as many court cases last for years. Case managers recounted several stories of their clients becoming upset when they found out, for example, that money they were sending home was being misappropriated and not used for their children's benefit, or where there was a significant family event.

## Financial pressures on clients

Case managers noted the financial pressures on their clients. Some clients are working and have money; however, others are receiving only Centrelink payments while trying to send money home to their families. In addition, application for certain visas involves payment of fees. One case manager commented that women are uncertain about whether they will actually be able to remain in Australia, so they save every cent they can. SWOP (NSW) also raised the issue of the financial pressures on suspected victims of trafficking.

## The experiences of their clients as witnesses in court

Case managers commented that the act of participating in a prosecution is very important to their clients but also confusing and frightening. One case manager noted that clients can change noticeably after they have given evidence in court:

Whether there has been a conviction or not, they appear stronger and appear to regain confidence and pride after telling their story. They can hold their heads up, smile for the first time and realise they didn't do anything wrong.

All case managers interviewed noted that their clients have found it difficult to be witnesses in court. The hardest thing for a woman is to sit in court and tell her story in front of the alleged offender.

Another key issue is general confusion and intimidation around court processes. Case managers noted that when court dates are approaching, the clients are assisted with court familiarisation, either by the AFP or CDPP. Nonetheless, case managers noted that women can be intimidated to such a degree that they will be afraid to ask where the toilet is or where they can feed their baby. The CDPP and AFP investigators also noted the issue of court familiarisation and in-court support.

Case managers recounted several examples of their clients becoming upset because they thought they had 'done something wrong' while in court. For example, in one case, the client took her calendar into the witness box, as she had made several markings on it that helped remind her of what had happened. She was very confused and upset when the defence counsel strongly objected to this. In another example, the client was upset and confused when a barrister threw a pen, following her revelation that she thought she knew one of the members of the jury. The client had no knowledge of the Australian legal system and had no idea that she should have mentioned this earlier in the proceedings. To some extent, these incidences reflect the rough and tumble that is involved in being a witness in an adversarial system, rather than an issue specific to the trafficking context. However, these incidences also speak to the need for familiarisation with court processes, court support for witnesses and debriefing.

Case managers noted that timing of court cases can become a major problem for their clients, as cases are scheduled, cancelled and rescheduled. Clients' employers become suspicious or lose patience when their employee constantly takes time off work. In addition, once the court case actually starts, clients are required to make themselves available to the court for sometimes weeks at a time.

## Recommendations from the research

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The Australian anti-trafficking response is relatively new. The response is still developing and knowledge and experience is still being accumulated. Nonetheless, this research identified several issues that merit further consideration. These issues are discussed in this section.

## **Reconceptualise or expand coverage of the visa framework to accommodate situations where victims of trafficking need help but do not want to talk to the police**

There is no doubt that the People Trafficking Visa Framework has led to an increase in detections of victims of trafficking by law enforcement. AFP investigators interviewed were able to give several examples of cases where they literally would not have been able to convince key witnesses to talk to them, had it not been for the availability of the BFV to regularise their status. However, while the visa framework has assisted some victims to come forward, it is not available to all victims of trafficking. Under the existing system, women can only be offered a visa under the visa framework if they are both willing and able to assist an investigation. Women who want help – but do not want to talk to the police – are outside the coverage of the visa framework. Women who are willing but unable to help the police (for example, because their cases are historical and key evidence has been lost) are also outside the coverage of the framework.

Experience in the sexual assault context confirms that many women want support and assistance but do not want to be pressured to talk to the police. It is likely that similar considerations apply to trafficking that involves sexual exploitation. Under the present system, women may be able to access a level of assistance from no-questions-asked services, such as sex worker support organisations or inner-city health clinics. However, these services are not resourced to respond to the needs of victims of trafficking. Also, if women do come forward and are unable to assist an investigation, they may face deportation even if they are victims of trafficking unless they are able to access another visa category. This may constitute a significant disincentive for women seeking help.

Consideration should be given to how best to address this issue. It may be necessary to make visas available to victims of trafficking that need assistance but do not want to participate in a criminal justice process. It may also be necessary to completely disconnect the issue of visas from the criminal justice process. This would be consistent with other existing categories of visas, where decisions reflect humanitarian concerns, rather than a link to participation in a criminal justice process.

For example, the family violence provisions in Australia's migration program currently allow people who are escaping domestic violence to continue with their applications for permanent

residence, even after the breakdown of the relationship. There is no requirement that such applicants participate in an investigation or prosecution of their former partner. The provisions were introduced in response to community concern that some spouses or partners may feel compelled to remain in abusive relationships rather than end the relationship and be forced to leave Australia. It is arguable that similar considerations apply in the trafficking context, where victims of trafficking may find themselves in situations of increasing vulnerability, because they fear seeking help and risking deportation.

At the time of writing, DIAC was conducting a review of the people trafficking visa regime. During October 2007–January 2008, DIAC met with key government and non-government stakeholders to discuss the effectiveness of the current arrangements. As at 29 February 2008, the government was considering the outcomes of the consultation.

### **Clarify time frames for moving women onto longer-term visa categories**

Defence counsel has and probably will continue to argue that the People Trafficking Visa Framework creates an incentive for victims to fabricate their stories. However, this is not a sufficient reason to delay decisions about moving victims of trafficking onto longer-term visa options, including Witness Protection (Trafficking) Visas. If decisions about visas are delayed until court processes are resolved, women face the prospect of being on a Criminal Justice Stay Visa (that can be cancelled at any time) for at least two years and possibly up to four or five years. The impact of this practice on clients of the program should be considered. One of the aims of the government's anti-trafficking response is victim support and rehabilitation. This needs to include creating a level of certainty for victims of trafficking about their migration status.

Consideration should be given to bringing forward, or at least setting clear time frames, for when the AFP should seek a Witness Protection (Trafficking) Certificate from the Attorney-General (as the first step toward the grant of a longer-term visa). There is a risk that this will be used by defence counsel to argue witnesses have been 'bought'. However, the weight of this risk should not be borne entirely by the victim. Ultimately, it is the role of investigators to seek sufficient evidence to corroborate the victim's account and the role of prosecutors to convince the court that the victim's account is credible, irrespective of their visa status.



## **Fund culturally appropriate outreach services for women**

The experience of the past four years confirms that some victims of trafficking will actively seek help. Accordingly, it is important that women have as many opportunities as possible to access information about support and services. Such information needs to be available in relevant languages, and presented in a way that takes account of cultural considerations. To date, most information has been provided in written form. While this is one strategy, consideration could be given to funding outreach services provided by workers with relevant language skills and cultural competence. There are already several outreach services for the sex industry operating around Australia. However, few have sufficient resources to engage workers to focus specifically on culturally and linguistically diverse groups. As many participants noted, without language and cultural competence, it is difficult to build trust and rapport. To be effective, outreach services need to be able to provide women with a range of options for responding to their situation, including that of seeking help without necessarily involving the police.

## **Ensure federally funded victim support measures are high quality and comprehensive**

It is vital to ensure victim support services are both high quality and comprehensive. In addition to the humanitarian needs of the victims, AFP investigators saw this as vital to their ability to conduct an effective investigation. The CDPP also considers that high-quality victim support services are crucial to a successful prosecution.

## **Creating the conditions for effective performance management**

The Office for Women is responsible for monitoring the level and quality of federally funded victim support services. The contract for the victim support service was recently put out to tender. Accordingly, it is important that the new contract address performance monitoring considerations. Key considerations would seem to include ensuring the Office for Women has access to:

- a clear and objective assessment of the service needs of clients of the program
- a clear service standard, against which performance can be measured
- relevant, reliable, regular information from the contractor, and also from clients of the program and those that regularly interact with victims of trafficking.

### **Developing a service standard for victim support**

It appears that key agencies, including the AFP and CDPP, need more information about exactly what services they can expect from the victim support provider. There also seems to be a need for a system or mechanism to help address possible points of tensions between a victim support provider and other agencies with competing considerations. Finally, individual clients need to have access to information in their own language about what services they can expect, about their rights and responsibilities, and about mechanisms for raising issues, complaints or providing feedback about individual services.

To help meet these objectives, it may be helpful to consider developing a service standard. Service standards are used in many contexts and typically include information about:

- what services the service provider is required to provide
- the level and quality of service that can be expected
- how case management needs will be balanced against the needs of law enforcement
- processes for raising issues or complaints about individual cases
- processes for raising broader issues, giving feedback or raising concerns about the overall service.

Ideally, a service standard would be developed with input from the various agencies that work most directly with suspected victims of trafficking, such as the AFP and CDPP. A service standard for the victim support service could form the basis of different products, including information sheets for the clients, but also information for the AFP, CDPP and other agencies and people involved in working directly with victims.

Also, mechanisms may need to be created to allow OfW to collect more information from clients about their experiences on the program. For example, this could take the form of periodic surveys or discussions with clients, including when they have exited the program, about their perceptions of the relevance and quality of the service, along with any ideas for improving the service.

### **Increasing involvement of other relevant community service providers**

AFP investigators and several NGOs noted the benefits of the victim support provider networking broadly with existing community service providers. The individual needs of victims of trafficking are likely to be highly variable and complex. It is not realistic for one service to try to meet all needs of all clients (a fact noted in the set up of the program, which involves a case management approach). By building strong links into the community, the victim support service will be better able to 'fill in the gaps' left by mainstream services.

Victims of trafficking have, to date, been drawn from some of the more marginal groups in society, including illegal workers, female migrants and sex workers. It is not realistic to expect that this client group will always receive appropriate, sensitive and high-quality care from just any service provider. Stigmatisation, stereotyping and lack of information have an impact on the quality and appropriateness of service delivery. This suggests that services should, where possible, be drawn from existing services that have a depth of relevant specialisation and expertise. In this context, this might include services that have experience working with sex workers, clients from particular cultural and linguistic groups, victims of sexual assault, and migrants with complex legal needs. It is likely that increased engagement with existing service providers would effectively extend the services that can be offered under the program while ensuring services are appropriate to clients' needs.

## Capture institutional learning in standard operating procedures

Over the past few years, individual AFP investigators have developed considerable experience and expertise, including how to work effectively with victims of trafficking. It is important that key lessons learnt are documented, so this can be passed on to newer investigators and to investigators in other parts of the country where there is no TSETT unit.

While relevant practices have developed, the AFP does not have a protocol or set of standard operating procedures that cover interviews or other interactions with victims of trafficking. In contrast, most state and territory police services have a range of key documents that guide the conduct of interactions with victims of crime, particularly with victims of sexual assault.

For example, Victoria Police has the detailed *Code of practice for the investigation of sexual assault*. The aims of the code are to:

- provide a coordinated approach to the handling sexual assault cases by police, Centres Against Sexual Assault and other victim assistance programs
- increase the confidence of sexual assault victims and the public in the police management of sexual assault cases and minimise trauma experienced by sexual assault victims during the investigation and court process
- increase the apprehension of offenders
- maximise successful prosecutions (Victoria Police 2005: 4).

The code covers issues such as caring for the victim and working with diverse communities, and provides detailed guidelines for first response and conduct of interviews. The code also includes a resource guide for police, including information about local services and facilities.

Standard operating procedures are important because they:

- help standardise practice
- can reflect institutional learning, thereby ensuring that 'good practice' becomes the standard practice throughout the organisation
- can form the basis of training activities
- are an objective measure for assessing performance.

### **Expand AFP training on working with victims of crime**

Several AFP investigators noted that working directly with victims of crime is a relatively new development for the AFP. The AFP has traditionally worked on what might be considered victimless crimes, such as drug importation or crimes against the Commonwealth. Investigators noted that cultural competence and training in working effectively with victims of crime – and particularly victims who have experienced crimes that have a strong sexual element – were crucial. While these matters are part of the existing TSETT training program, there was also a view that such training could be expanded and localised.

### **Continue to build training opportunities for prosecutors**

Since the introduction of the government's anti-trafficking measures, there has been considerable focus on training for law enforcement and immigration compliance officials. For example, the AFP's Transnational Sexual Exploitation Investigations Program has been operational since 2004. Since that time, the three-week residential training course has been provided to more than 100 law enforcement officials. Until relatively recently, specialist training programs on trafficking in persons have not been available for prosecutors.

The CDPP has identified this issue, and is actively seeking to address training. For example, in June 2007, the CDPP held an information-sharing conference for prosecutors working on trafficking matters. This was an opportunity for prosecutors who had worked on trafficking cases to share knowledge and experience. The CDPP is proposing to hold a similar event in 2008 and has sourced local and international expertise for other training events scheduled for 2008.

## Ensure laws are available to protect witnesses in trafficking matters

Consideration needs to be given to ensuring witnesses in trafficking prosecutions have assured access to consistent and appropriate protections in court. In this regard, there is a wealth of experience that could be drawn upon from the states and territories. Key considerations should include:

- minimising the harm that is caused to victims of trafficking through the process of giving evidence, particularly where the crime involves a sexual element
- protecting the privacy and safety of victims as well as other key witnesses in trafficking prosecutions.

Given the considerable variation in existing laws on this issue, it may be necessary to consider whether consistency could be best achieved through legislative reform at the federal level.

## Share front-line experience and expertise

Knowledge and experience in directly responding to trafficking in persons is limited to a small number of people in Australia. It is important that this knowledge is fostered and shared. It is also important that people working on the front line – at both the junior and senior level – have the opportunity to meet their counterparts, and to understand the realities of how their counterpart agencies work.

At the federal level, an inter-departmental committee on trafficking in persons provides senior officials in Canberra with an opportunity to meet regularly. This helps ensure knowledge is shared, and emerging issues are identified and solved. There would be value in ensuring similar opportunities are available to those involved in the daily operational response to trafficking.

At present, there are few opportunities for front-line or operational officials to assemble and share information and experience, beyond the opportunities provided by individual cases. It may be possible to build these opportunities into internal agency processes. For example, the AFP might bring its investigators together from the various jurisdictions that have been working on trafficking investigations to share 'lessons learnt' and network. Alternatively, it might be useful to consider bringing people together from across a range of agencies, to share recent experiences and information about how their agencies work. It is likely that such discussions would highlight differences in approach, and different issues arising in each location, which could be usefully discussed and explored further.

## Share information through regular reporting

Information about the broad framework of the government's response to trafficking is available. However, information about how the response has actually operated is not well known beyond federal government circles. In the absence of regular, reliable information, there can be a tendency to rely on information available – such as the experiences of one case, or the experience of cases that occurred several years ago. Information-sharing is an important part of building relationships of trust and facilitating cooperation, particularly between the NGO and government sectors.

There is much community interest in the government's response to trafficking in persons. As this response has been refined over time, it is important to regularly release up-to-date information about the government's activities in this area. This could take the form of regular public reports that include information about the key components of the government response and de-identified statistics about known cases.

It is presently possible but relatively time-consuming to source up-to-date statistics from key agencies on aspects of the government's anti-trafficking response. Also, as individual agencies use different units of analysis and collect statistics for diverse purposes, it can be difficult to reconcile statistics from across agencies. It is important that agencies work together to find the best way to produce relevant statistics that can be regularly and easily reported.

Improving key data on trafficking is part of the remit of the Australian Institute of Criminology. Accordingly, the AIC should be included in these efforts. Given the difficulties inherent in reconciling statistics from different agencies, it may be productive to build data collection capacity into any future case management systems, with key de-identified data released to the AIC for research purposes.

## Build cooperation with the non-government sector

While cooperation within government has continued to strengthen, the opportunity for NGOs to participate in existing processes has been relatively limited. Cooperation between the two sectors is important. With proper funding, NGOs should have the capacity to access women in settings that may be closed to law enforcement or other government officials. NGOs also have local and/or sector specific expertise that could make a valuable contribution to the larger anti-trafficking response.

In 2006, the AFP held a colloquium that assembled representatives from a range of NGOs. Several participants spoke highly of the opportunity. There appears to be value in repeating the exercise, and looking for other opportunities to ensure ongoing dialogue and cooperation between non-government and government sectors on trafficking.

To ensure the full range of existing skills and expertise is drawn upon, such dialogue and cooperation needs to include not only those NGOs that work specifically on the issue of trafficking, but also the many NGOs that have particular skills and expertise in related fields. This might include organisations around Australia that work on sexual assault, migrant health and welfare, and the commercial sex industry. Many strong differences of opinion exist within the community sector on the issue of trafficking in women for the purposes of sexual servitude. However, there are also many areas of common interest and agreement. Meaningful cooperation is most likely to be facilitated if all parties have an opportunity to express their views and concerns, so that areas of common interest and agreement can be identified and mutual respect for areas of disagreement ensured.

### **Monitor impact along with performance**

The government's Action Plan to Eradicate Trafficking in Persons includes indicators for measuring progress. These include:

- increased support for victims of trafficking
- increased willingness on the part of victims of trafficking and other potential witnesses to come forward to Australian authorities
- prosecution and conviction of people involved in criminal activities associated with people trafficking
- improved capacity to take up future challenges associated with people trafficking.

At the time of writing, the Australian National Audit Office was undertaking an audit of the action plan.

The government's response to trafficking does not operate in isolation. For example, law reform and law enforcement activities can have an impact that goes well beyond individual victims and offenders. Some of these impacts were raised in this research process, including the potential for law enforcement or compliance activities to affect a wider group of women, beyond those who are victims of trafficking. In line with modern approaches to measuring progress, it is suggested that consideration should be given to monitoring not only the indicators noted above, but also the broader social impact of the government's response to trafficking. Any response to crime can have unintended consequences, including impacts well beyond the intended target audience. It is important that these broader impacts are identified and understood, so unintended consequences can be addressed.

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*The Queen v Wei Tang* (Judges Maxwell, Buchanan and Eames, Supreme Court of Victoria, 20 March and 19 April 2007)

## Appendix

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**Table A1: Interviews conducted**

Organisation	Unit/location	No. of participants	Interview dates
Department of Immigration and Citizenship	Canberra Melbourne, Sydney Bangkok	9	9 May 2007 16 May 2007 17 May 2007 24 May 2007 5 October 2007
Commonwealth Director of Public Prosecutions	Canberra Melbourne, Sydney	7	2 April 2007 30 March 2007 12 July 2007 24 July 2007
Australian Federal Police	TSETT Sydney Melbourne Canberra Hobart Bangkok	8	14 June 2007 23 July 2007 9 August 2007 10 August 2007 13 August 2007 5 October 2007
Office for Women	Canberra	1	16 May 2007 18 July 2007
BSIL Southern Edge Training	Sydney Brisbane Melbourne	5	12 June 2007 13 June 2007
AusAID	Canberra	2	21 August 2007
Victoria Police	Sex Crimes Themes Desk, Sex Crimes Squad	4	18 May 2007
Queensland Police Service	Prostitution Enforcement Taskforce	2	13 June 2007
NSW Police Force	Child Protection and Sex Crimes Squad	1	13 August 2007
Project Respect	Coordinator/Outreach	2	17 May 2007
Australian Catholic Religious Orders against Trafficking	Brisbane Melbourne	3	18 May 2007 12 June 2007
AIDS Council of NSW (NSW Sex Worker Outreach Project)	Sydney	1	1 November 2007
University of Technology Sydney Anti-Slavery Project	Sydney	1	1 November 2007
Department of Justice (Victoria)	Melbourne	1	10 August 2007
Department of Consumer Affairs (Licensing Victoria)	Melbourne	2	10 August 2007





# Research and Public Policy Series

## No. 95

As a new crime type, knowledge about trafficking in persons is still emerging. International and Australian initiatives encompass trafficking for sexual purposes, with issues surrounding transnational migration for work, exploitation and sexual violence, and supporting victims. Research on trafficking in persons is challenged by the small number of cases and concomitant responses. This report provides insight into the issues, barriers and challenges of responding to trafficking of women in Australia through the learned experience of victims' and offenders' contacts.

Victim detection, identification and reporting, and prosecution of traffickers, underlies anti-trafficking responses of compliance and law enforcement through collaborative immigration and policing initiatives. Differing responses by state and national jurisdictions to detect, investigate and prosecute trafficking cases highlight issues of the complexities of transnational trafficking cases, victim support programs, provision of legal advice, prior inconsistent statements and the credibility of witnesses. These underpin the need for more research to characterise the victims of trafficking, reconceptualise the visa framework, provide victim support services, ensure laws protect witnesses and improve policing education.