



**Australian Government**

# **TRAFFICKING IN PERSONS**

## **The Australian Government Response**

1 July 2010 – 30 June 2011

THE THIRD REPORT OF THE  
ANTI-PEOPLE TRAFFICKING INTERDEPARTMENTAL COMMITTEE

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# Foreword

We are pleased to present this third report of the Anti-People Trafficking Interdepartmental Committee. People trafficking and the associated crimes of slavery, servitude and debt bondage are reprehensible and the Australian Government is determined to thwart these practices wherever possible.

During the past year, the Australian Government has maintained its focus on combating trafficking for labour exploitation. In November 2010, the Australian Government announced it would undertake public consultation on the criminal justice response to slavery and people trafficking to seek views on whether the existing offences in the Commonwealth *Criminal Code* sufficiently cover all forms of exploitation including forced labour. The Australian Government also held a consultation on forced and servile marriage.

Non-government organisations (NGOs) play a vital role in supporting people who have been trafficked and in raising community awareness. In 2010–11 we were pleased to be able to support the work of a number of anti-trafficking organisations, with grants totalling \$1.4 million, and to extend that support to more NGOs, unions and employer representatives working to combat labour exploitation, through grants totalling almost \$490,000.

The Australian Federal Police carried out 45 investigations including Operation Burlywood which resulted in the disruption of a major transnational people trafficking syndicate operating between Australia and Malaysia. The alleged offender is now before the courts, and 10 suspected victims are receiving support and assistance. Commonwealth prosecutors secured three other convictions in 2010–11 and ensured four more individuals were committed to face trial.

We continued to assist victims through the Support for Victims of People Trafficking Program. The victims are increasingly both men and women and found in a range of industries outside the commercial sex industry. We can also report that the 2009 reforms to the People Trafficking Visa Framework have had a positive impact, with eligible victims now receiving Witness Protection (Trafficking) visa offers more quickly than ever before.

Australia continues to play an active role in the region and internationally to combat people trafficking, including in the Bali Process and the United Nations (UN) where we welcomed discussions on people trafficking during Australia's Universal Periodic Review. The Asia Regional Trafficking in Persons Project, the flagship of Australia's people trafficking aid program, worked throughout South-East Asia to build the capacity of police, judges and prosecutors to combat people trafficking.

The Government is committed to combating all forms of people trafficking and to working with government and non-government organisations in Australia, in the region and further afield to prevent trafficking, to investigate and prosecute the perpetrators and to protect and support the victims. This report details the activity of Australian Government agencies and their partners in this important endeavour during 2010–11.

**The Hon Brendan O'Connor MP**

Minister for Home Affairs and Justice

**The Hon Kevin Rudd MP**

Minister for Foreign Affairs

**The Hon Chris Bowen MP**

Minister for Immigration and Citizenship

**The Hon Kate Ellis MP**

Minister for the Status of Women

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# Abbreviations

Asia Regional Trafficking in Persons Project	ARTIP
Association of Southeast Asian Nations	ASEAN
Attorney-General's Department	AGD
Australian Agency for International Development	AusAID
Australian Building and Construction Commission	ABCC
Australian Catholic Religious Against Trafficking in Humans	ACRATH
Australian Crime Commission	ACC
Australian Federal Police	AFP
Australian Institute of Criminology	AIC
Bridging F visa	BVF
Commonwealth Director of Public Prosecutions	CDPP
Criminal Justice Stay visa	CJSV
Culturally and linguistically diverse	CALD
Department of Families, Housing, Community Services and Indigenous Affairs	FaHCSIA
Department of Foreign Affairs and Trade	DFAT
Department of Immigration and Citizenship	DIAC
Financial Action Task Force	FATF
Heads of Commonwealth Operational Law Enforcement Agencies	HOCOLEA
Human Rights Council	HRC
Human Trafficking Teams (from 1 June 2011)	HTT
Interdepartmental Committee	IDC
International Labour Organization	ILO
Non-government organisation	NGO
Organisation for Economic Co-operation and Development	OECD
Senior Migration Officer (Integrity) (Trafficking)	SMOIT
United Nations Convention against Transnational Organized Crime	UNTOC
United Nations Office on Drugs and Crime	UNODC
Universal Periodic Review	UPR
Witness Protection (Trafficking) (Permanent) visa	WPTV

# Executive Summary

In 2009, in response to a recommendation of the Australian National Audit Office, the Australian Government agreed to undertake more systematic annual reporting of outcomes under its anti-people trafficking strategy. In June 2009, the Minister for Home Affairs, the Hon Brendan O'Connor MP, tabled in Parliament the first report of the Anti-People Trafficking Interdepartmental Committee (IDC), covering the period from January 2004 to 30 April 2009. The second report covered 1 May 2009 to 30 June 2010.<sup>1</sup> This is the IDC's third report. It covers the period 1 July 2010 to 30 June 2011.

People trafficking is a complex form of transnational crime that affects almost every country in the world. Men, women and children are trafficked for a range of exploitative purposes including sexual servitude and forced labour. Most victims of trafficking into Australia have been women forced into the sex industry, but Australia is now seeing victims of trafficking and associated slavery-like practices in other industries.

In November 2010, the Government released two discussion papers for public consultation – one on the criminal justice response to people trafficking and slavery, reparations and vulnerable witness protections, and a second on forced and servile marriage. The Government is currently considering the responses to the two discussion papers before making decisions on next steps.

The Minister for Home Affairs and Justice awarded funding to a number of non-government organisations (NGOs) for projects which target labour exploitation. These projects will raise awareness of the plight of vulnerable workers and reach out to particular industries and to at-risk migrant workers, whether working legally or illegally.

The Australian Building and Construction Commission (ABCC) joined the IDC in 2010–11, taking the number of member Commonwealth agencies to 13. Both the ABCC and the Fair Work Ombudsman have succeeded in recovering significant amounts in underpaid wages for migrant workers through audits and investigations and in ensuring that their rights are not being abused. In 2010–11, the Fair Work Ombudsman also initiated court action against a number of companies for underpaying and overworking migrant workers. The ABCC has been conducting an inquiry into sham contracting in the building industry, which appears to be a means of exploiting vulnerable workers, particularly migrants. The ABCC expects to release its report in November 2011.

The Australian Federal Police (AFP) undertook 45 investigations into people trafficking matters in 2010–11, bringing the total since 2004 to 305. Almost 70 per cent of these investigations related to trafficking for sexual servitude and the remainder related to other forms of labour trafficking. At 30 June 2011, there were six trafficking-related matters involving seven defendants before the courts, two of which were in the appeal phase.

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<sup>1</sup> Both previous reports are available as downloads on the people trafficking page on the Attorney-General's Department website, <http://www.ag.gov.au/PeopleTrafficking>.

In 2010–11, the Support for Victims of People Trafficking Program, administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), provided assistance to 80 clients, including 29 new clients (21 women and eight men), the majority of whom were from Thailand and Malaysia. Of the 29 new clients, there were 16 women and one unaccompanied young person under 18 years of age trafficked into the sex industry, while the other eight men and four women were trafficked into other industries.

Under the People Trafficking Visa Framework, the Department of Immigration and Citizenship (DIAC) granted 42 Witness Protection (Trafficking) (Permanent) visas in 2010–11 – 28 to suspected victims of people trafficking and 14 to immediate family members – which is twice the total of the 21 (15 suspected victims and six immediate family members) granted in 2009–10. DIAC also granted 24 Bridging F visas (15 in 2009–10) and 29 Criminal Justice Stay visas (11 in 2009–10).

The third meeting of the National Roundtable on People Trafficking was convened in November 2010. At that meeting, the Government announced it would provide financial support (\$1.4 million over three years) for the work of four Australian NGOs to continue and expand their efforts to combat people trafficking. To supplement the annual Roundtable, and to facilitate increased information exchange and discussion between government and non-government colleagues, the inaugural Senior Officials' Meeting of the National Roundtable on People Trafficking met in Melbourne in May 2011.

The Australian Institute of Criminology (AIC) released a major report on Labour Trafficking, and embarked on new research projects on domestic trafficking, understanding offenders and marriage-related trafficking. Other upcoming projects include people trafficking in the Pacific region and trafficking in the construction industry. Reports on these new areas of research are expected in 2011–12.

Australia continues to take an active role in regional and international efforts to combat people trafficking, including the Bali Process and the Conference of Parties to the *United Nations Convention against Transnational Organized Crime* (UNTOC). During 2010–11, Australia had its Universal Periodic Review (a four-yearly review of each UN member country's human rights record by the UN Human Rights Council) and went before the Committee to Eliminate All Forms of Discrimination Against Women. Both these committees made recommendations with respect to people trafficking.

The Government worked with international partners on a wide range of activities aimed at building regional capacity and reducing opportunities for people traffickers to operate in the region. In 2010–11, Australia provided \$4.3 billion worth of official development assistance to help reduce poverty and promote sustainable development, which will help to reduce the number of people becoming victims of traffickers.

During the next year there will be a continued focus on issues related to trafficking of people for exploitation outside the commercial sex industry. We will also welcome the UN Special Rapporteur on Trafficking in Persons, especially women and children, Ms Joy Ngozi Ezeilo.

# Introduction

People trafficking is a complex crime and a major violation of human rights. It is very different from the crime of people smuggling. People trafficking is the physical movement of people across and within borders through deception, coercion or force for the purpose of exploiting them when they reach their destination country. By contrast, people smuggling is the organised unlawful movement of people across borders, usually on a payment-for-service basis.

There is little reliable data about the nature and extent of people trafficking at a global, regional or domestic level. However, there is general consensus that people trafficking affects almost every country in the world, whether as a source, transit or destination country – or as a combination of these.

The nature of people trafficking varies from region to region. Its most visible form involves trafficking in women and children for sexual exploitation. But around the world men, women and children are trafficked for a wide range of other purposes, including forced labour in industries such as hospitality, construction, forestry, mining or agriculture; domestic and sweatshop labour; illicit adoption; street begging; forced recruitment into militias or armed forces; and the harvesting of body organs.

Opportunities to traffic people into Australia are limited because of our strong migration controls and geographic isolation. However, Australia is a destination country for victims of trafficking, historically from Asia (particularly Thailand, Malaysia, the Philippines and the Republic of Korea).

The Australian Government remains committed to working with other governments domestically and internationally, and with international and non-government organisations, to prevent people trafficking, prosecute the perpetrators and protect and support victims.

Australia's response to people trafficking reflects our obligations as a party to the UNTOC since 2004 and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Trafficking Protocol) since 2005.

Australia has taken a comprehensive, whole-of-government approach to combating people trafficking since instituting its strategy to eradicate people trafficking in late 2003. Since then the Government has committed more than \$100 million to support a range of domestic, regional and international anti-trafficking initiatives, including:

- specialist teams within the Australian Federal Police (AFP) to investigate trafficking and slavery offences and the Australian Policing Strategy to Combat Trafficking in Persons
- legislation to criminalise people trafficking and trafficking-related activities
- a victim support program that provides individual case-managed assistance to eligible victims of trafficking, including access to accommodation, financial assistance, legal and migration advice, training and social support

- visa arrangements to enable suspected victims and witnesses of trafficking to remain in Australia and support the investigation and prosecution of trafficking offences
- specialist immigration officers posted in Thailand, China and the Philippines who focus on people trafficking and aim to prevent trafficking in source countries
- regional activities to deter trafficking, train law enforcement officials and assist the victims of trafficking under Australia's overseas aid program, and
- research into national and regional trafficking activities by the Australian Institute of Criminology.

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

Australia's anti-people trafficking strategy is overseen by an Interdepartmental Committee (IDC), chaired by the Attorney-General's Department (AGD), with membership from the following agencies:

- AusAID
- Australian Building and Construction Commission
- Australian Crime Commission
- Australian Federal Police (AFP)
- Australian Institute of Criminology
- Commonwealth Director of Public Prosecutions (CDPP)
- Department of Education, Employment and Workplace Relations
- Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)
- Department of Foreign Affairs and Trade
- Department of Immigration and Citizenship (DIAC)
- Department of the Prime Minister and Cabinet, and
- Fair Work Ombudsman.

The IDC is responsible for monitoring the implementation of the strategy, reporting to the Government on its effectiveness, and ensuring that emerging issues are addressed on a whole-of-government basis. Relevant agencies remain responsible for administering individual components of the strategy.

An Operational Working Group, comprised of AGD, AFP, CDPP, FaHCSIA and DIAC, has been established as a subcommittee of the IDC to resolve operational issues that arise in the management of individual cases. The group has an important role in referring emerging policy issues for the IDC's consideration.

This is the third report of the Anti-People Trafficking IDC and covers the period from 1 July 2010 to 30 June 2011.

# Public consultation on criminal justice response paper

To date, the majority of identified victims of trafficking in Australia have been found working in the legal and illegal sex industry. Australian authorities are becoming increasingly aware of victims in other industries, including agriculture, construction, hospitality, manufacturing and domestic services. At the same time, investigations have indicated changes in the techniques used by traffickers to try to stay ahead of investigators and prosecutors and to get around migration regulations.

In framing the trafficking offences in the Commonwealth *Criminal Code*, the decision was made to take a broadly inclusive approach that fully and comprehensively criminalised people trafficking. The Commonwealth has prosecuted slavery and trafficking offences involving exploitation in a range of industries. For this reason, it is arguable that existing legislative measures are sufficient to provide coverage for the range of likely offences.

However, as more cases of labour trafficking come to light, it is timely to revisit these provisions to determine whether the Criminal Code sufficiently covers all forms of exploitation when dealing with practices akin to slavery such as forced labour, deceptive recruiting for labour services, and offences relating to receiving and harbouring persons who are trafficked, and to consider some of the unexpected or unintended results of the legislation.

In November 2010 the Minister for Home Affairs and Justice announced that the Government would hold a public consultation on Australia's criminal justice response to slavery and people trafficking and released a discussion paper, *The Criminal Justice Response to Slavery and People Trafficking, Reparations and Vulnerable Witness Protections*.<sup>2</sup>

Submissions were received from anti-trafficking NGOs, industry groups, victim support advocates, the Law Council of Australia, the Australian Federal Police, the Commonwealth Director of Public Prosecutions and other experts.

Submissions addressed a number of perceived gaps in the Criminal Code and called for the following:

- a stand-alone forced labour offence, to bridge a potential gap between the slavery and debt bondage offences
- a labour servitude offence, to encompass non-sexual servitude
- a deceptive recruiting for labour services offence to mirror the existing offence of deceptive recruiting for sexual services, and

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<sup>2</sup> The discussion paper is available as a link on the people trafficking page on the Attorney-General's Department website, <http://www.ag.gov.au/PeopleTrafficking>.

- a harbouring and receiving offence, to criminalise the behaviour of third parties who knowingly or recklessly harbour or receive a trafficked person.

A number of submissions also called for an increase in the existing penalties for debt bondage offences to adequately reflect the severity of the crime.

Many respondents called for the current definitions of “exploitation” and “threat” under the Criminal Code to be broadened. They noted that the Criminal Code definition of “threat” is narrower than the concept in the Trafficking Protocol and that “use of force or threats” in the Criminal Code may not capture more subtle forms of coercion, such as the abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

The public consultation sought views on the availability of reparation orders in Commonwealth criminal proceedings. Respondents supported amending section 21B of the *Crimes Act 1914* (Cth) to provide for any loss suffered “by reason of the offence” rather than for any loss suffered by a person “as a direct result of the offence”. However, respondents pointed to a number of hurdles for victims seeking to obtain reparations.

Instead, the majority of submissions called for a Commonwealth compensation scheme for victims of trafficking or other Commonwealth offences against the person, and/or the harmonisation of the existing State and Territory statutory schemes. Respondents pointed to the fact that no two schemes are the same, with different eligibility requirements, different timeframes, different caps on the maximum compensation and different access to compensation for pain and suffering. In practice, a State or Territory offence will generally be required.

The public consultation lastly sought views on available protections for vulnerable witnesses, including the manner of giving evidence at trial and the use of victim impact statements. Respondents highlighted the need for better protection for victim witnesses with suggestions including:

- allowing victim impact statements in Commonwealth matters, with appropriate safeguards to preserve the right to a fair trial
- allowing the evidence of a victim at trial to be recorded and subsequently tendered at retrial
- introducing procedures similar to those used for witnesses in sexual matters in the States and Territories, such as testimony pre-recorded or by video link, and protection from harsh and unnecessary cross-examination in relation to sexual history
- ensuring the availability of suppression orders in Commonwealth criminal proceedings, and
- providing victims with access to private legal representation or advocacy during trial.

Submissions to the consultation are now being considered by the Government which will make a decision on next steps in due course.

# Public consultation on forced and servile marriage

The issue of forced and servile marriage often arises in the context of discussions about people trafficking and slavery. Forced marriage is understood to be a marriage where a person does not give full and free consent, that is, a marriage which is forced as a result of threats, deception, physical or emotional coercion, or financial duress. The term servile marriage is used to describe a practice where a person is considered to be a chattel that can be sold, transferred or inherited into marriage. This practice is described in the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956*.

By definition, the practices of forced and servile marriage are distinct from arranged marriages. Although chosen by a third party or family member, an arranged marriage requires the full and free consent of the parties to the marriage and these parties have the ability to refuse the marriage.

Forced and servile marriages are a violation of human rights. They impede a person's fundamental rights to freedom and autonomy, and may involve significant harms within the marriage such as physical or sexual violence, imprisonment, enforced pregnancy and murder.

The Australian media have reported several cases involving teenagers at risk of being taken overseas by their parents to be married against their wishes. There was also a case involving a woman who was forced into marriage overseas and who returned to Australia and sought a declaration of nullity or a declaration that the marriage not be recognised under Australian law. These reports have highlighted that Australia is not free from the practice of forced marriage, and it is possible that there are more instances of forced and servile marriage than reports indicate.

In this context, it is important to ensure that Australia has measures in place to protect both potential and actual victims of forced and servile marriage. For these reasons, the Attorney-General, the Hon Robert McClelland MP, and the Minister for Home Affairs and Justice jointly released a discussion paper<sup>3</sup> in November 2010 to facilitate a public consultation process to seek views on whether particular measures are needed to provide adequate deterrence against the practices of forced and servile marriages and to provide appropriate protection for victims. The discussion paper canvassed a range of legislative and non-legislative measures as possible measures for consideration.

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<sup>3</sup> The discussion paper on Forced and Servile Marriage is available on the Attorney-General's Department website, [http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews\\_ConsultationonForcedandServileMarriage?open&query=forced and servile marriage](http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_ConsultationonForcedandServileMarriage?open&query=forced+and+servile+marriage).

The consultation process closed on 25 February 2011. Submissions were received from a range of stakeholders including NGOs, religious groups, legal bodies, individuals and government agencies. Several submissions suggested that forced marriage is likely to be more prevalent than the small number of cases that have been reported to the police would indicate. It was further suggested that the low number of reports may be attributed to the familial nature of some forced or servile marriages, or that victims may not actually identify their marriage to have been forced.

There was support for a combination of legislative and non-legislative measures with a focus on ensuring individuals understand their rights and responsibilities in relation to marriage; that various professionals understand the issues involved in a forced or servile marriage; and that legal avenues or other mechanisms are available to assist victims. Any response should seek to avoid the further victimisation of individuals or the marginalisation of particular communities.

The results of the consultation process are being considered in detail. This will help inform decisions about which measures will be considered further for implementation.

# Funding to combat labour exploitation

As part of its commitment to combating people trafficking in all its forms and for all kinds of work, the Australian Government allocated \$200,000 for projects which work to combat labour exploitation and trafficking. On 25 March 2011 – International Day of Remembrance of the Victims of Slavery – the Minister for Home Affairs and Justice called for expressions of interest from organisations to undertake projects for education and awareness-raising initiatives on labour exploitation, and to provide advocacy and outreach to industries or groups which may be vulnerable to these crimes such as migrant workers, whether working legally or illegally.

Following the competitive expression of interest process, funding was awarded to five organisations: the Australian Council of Trade Unions (ACTU), the Australian Hotels Association, the Australian Red Cross, Asian Women at Work and the Construction, Forestry, Mining and Energy Union (CFMEU). The total funds granted exceeded the original commitment by the Government. This was done in recognition of the quality of the projects proposed and the significant benefits they will bring to vulnerable workers. The work done by these NGOs will also support the Government's efforts to learn more about and address labour trafficking as part of the whole-of-government strategy to combat people trafficking.

With the exception of the Australian Red Cross which has been allocated funding for a project over 2011–12, these organisations will be funded over 2011–13. The projects are:

- **Australian Council of Trade Unions**, \$200,000, for a campaign entitled “Labour trafficking is a crime – Spot It, Report It”, including dissemination of videos and other material via electronic and social media and in union training programs, particularly for organisers active in hospitality, agriculture, manufacturing, construction, domestic work and mining. The ACTU is affiliated to the International Trade Union Confederation and participates in the governing forums of the International Labour Organization. These organisations make labour trafficking a priority policy issue.
- **Australian Hotels Association**, \$25,000, for a labour exploitation awareness project involving distribution of an information brochure to 5000 hotels (80 per cent of the market) on how to legally employ overseas workers and manage the visa process and an online seminar on strategies to discourage exploitation in the supply chain.
- **Australian Red Cross**, \$64,974, to increase union and community capacity to identify and combat labour trafficking and exploitation among Indian Temporary Business (Long Stay) (Subclass 457) visa holders in New South Wales and Victoria, including development of training materials and translation of an information flyer into major Indian languages for 457 visa applicants.

- **Asian Women at Work**, \$96,098, to carry out further outreach on work rights and other awareness raising, education and social support to migrant women in low-paid and precarious employment across Sydney, including in clothing outwork, factories, cleaning, nail and beauty salons, restaurants, aged care and child care.
- **Construction, Forestry, Mining and Energy Union**, \$100,000, for awareness-raising and education initiatives, including the production of multi-lingual pamphlets in the industries seen as particularly vulnerable to exploitation, including construction, mining, forestry and parts of manufacturing. The CFMEU will also run workshops for union organisers and use the grant to exchange information and foster partnerships within the union movement, and with NGOs and the media.

# Investigation and prosecution

One of the performance indicators of Australia's anti-people trafficking strategy is the prosecution and conviction of people involved in criminal activities associated with people trafficking.

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

The *United Nations Convention against Transnational Organized Crime* (UNTOC) and its Trafficking Protocol establish a framework for international cooperation, including various forms of assistance for the conduct of investigations and prosecutions and for the extradition of offenders. This is particularly important for Australia, as all people trafficking investigations to date have involved transnational crimes.

The AFP maintains an extensive international network of officers posted to Australia's overseas missions. The officers provide a conduit for Australian and overseas law enforcement agencies to exchange information and progress investigations. This network is complemented by Department of Immigration and Citizenship (DIAC) specialist immigration officers posted in Thailand, China and the Philippines who focus on people trafficking issues and aim to prevent trafficking in source countries.

The AFP's Human Trafficking Team (HTT) investigates people trafficking matters, both proactively and through referrals from other Commonwealth or State Government agencies, industry or NGOs. Formerly the Transnational Sexual Exploitation and Trafficking Team, or TSETT, the name was changed to Human Trafficking Team on 1 June 2011 to better reflect the full spectrum of people trafficking offences

The HTT National Coordinator is based in Canberra, with HTTs in Sydney, Melbourne and Brisbane. The AFP also has members trained in people trafficking in Darwin and Perth. For trafficking matters in other locations, the HTT can draw upon additional support from the AFP's generic crime operations function which involves members in each capital city.

Since 2004, most victims of trafficking have come to the attention of authorities in Sydney and Melbourne and have primarily concerned allegations of sexual exploitation. This reflects the population concentration and the size of the local sex industries in these cities. Trafficking victims have also been identified in Queensland, South Australia and the Australian Capital Territory. The HTT is increasingly focusing its attention on the States and Territories other than New South Wales and Victoria, particularly with its renewed focus on labour trafficking, in accordance with the Australian Policing Strategy to Combat Trafficking in Persons 2011–13.

## Primary legislative provisions

### *Criminal Code*

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

The slavery offences (division 270) apply to all persons, regardless of whether the conduct occurs within or outside of Australia. Enacted in 1999, these offences have a maximum penalty of 25 years' imprisonment.

Specific people trafficking provisions were enacted in 2005, fulfilling Australia's legislative obligations under the Trafficking Protocol. The offences are not limited to trafficking that involves sexual slavery or sexual servitude but cover trafficking in all its forms. The legislation provides for:

- people trafficking offences, in which the trafficker organises or facilitates the transport of the victim into, out of or within Australia, by using force, threats or deception or by being reckless as to the exploitation of the victim
- debt bondage offences, to prevent traffickers from using unfair debt contracts or other similar arrangements to force victims into providing sexual services or other labour to pay off large debts<sup>4</sup> (the debt bondage offences provide an alternative in cases in which it may be difficult to prove the commission of one of the more serious offences), and
- specific offences for trafficking in children, which criminalise organising or facilitating the transportation of a child into, out of or within Australia, where there is intention for the child to be used, or recklessness as to whether the child will be used, to provide sexual services or will be exploited. (The elements of this offence are different from the elements of trafficking in adults, as it does not require the use of force or deception.)

With the exception of offences related to domestic trafficking, all these offence provisions have extended geographic jurisdiction, and can cover circumstances in which the crime has taken place in Australia and overseas, or in which the crime has been committed outside Australia by an Australian company, citizen or resident.

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4 "Debt bondage" is defined in the Act as occurring when a person pledges their services or the services of another person as security for a debt where the reasonable value of those services is not applied to repay the debt or the length and nature of the services respectively is not limited or defined.

**Table 1: Criminal Code**

Section	Offence	Maximum penalty
270.3(1)	Intentionally possess or exercise right of ownership over a slave, engage in slave trading or enter into a commercial transaction involving a slave ("slavery" is defined in section 270.1)	25 years
270.3(2)	Enter into commercial transactions involving a slave or provides finance for any commercial transaction or for any act of slave trading and is reckless as to whether the transaction or act involves a slave, slavery or slave trading ("slave trading" is defined in section 270.3(3))	17 years
270.6(1)	Cause another person to enter into or remain in sexual servitude ("sexual servitude" is defined in section 270.4(1))	15 years (20 years for aggravated offence) <sup>a</sup>
270.6(2)	Conduct a business involving the sexual servitude of another ("conducting a business" is defined in section 270.6(3))	15 years (20 years for aggravated offence) <sup>a</sup>
270.7(1)	Intentionally induce another person to enter into an engagement where the other person is deceived about providing sexual services, the nature of the sexual services to be provided, the extent to which the person will be free to leave or cease providing sexual services, the involvement of exploitation or debt bondage or the confiscation of travel or identity documents ("sexual service" is defined in section 270.6(2) and "deceive" in section 271.1)	7 years (9 years for aggravated offence) <sup>a</sup>
271.2(1), (1A), (1B), (1C)	Trafficking offences involving the use of force or threats, or recklessness as to whether the trafficked person will be exploited (see section 271.5 for domestic trafficking offences)	12 years (20 years for aggravated offence) <sup>b</sup>
271.2(2), (2A)	Trafficking offences where the trafficked person is deceived about providing sexual services or involvement of exploitation or debt bondage or confiscation of travel or identity documents	12 years (20 years for aggravated offence) <sup>b</sup>
271.2(2B), (2C)	Trafficking offences where there is an arrangement for the trafficked person to provide sexual services but they are deceived about the nature of those sexual services, the freedom to leave or cease providing sexual services, or any debt owed in connection with the arrangement	12 years (20 years for aggravated offence) <sup>b</sup>
271.4(1), (2)	Trafficking in children where there is intention to use the child, or recklessness as to whether the child will be used, to provide sexual services or to be otherwise exploited (see section 271.7 for domestic trafficking in children offences)	25 years

Section	Offence	Maximum penalty
271.8(1)	Intentionally cause another person to enter into debt bondage ("debt bondage" is defined in the Dictionary to the Act)	12 months (2 years for aggravated offence) <sup>b</sup>

- a aggravated sexual servitude/deceptive recruiting/debt bondage offences refer to an offence committed against a person under 18 years (see s 270.8, s 271.9).
- b aggravated trafficking offences are where the offender intended the victim to be exploited by the offender or another person or subjected the victim to cruel, inhuman or degrading treatment or the offender is reckless as to a danger of death or serious harm to the victim (see s 271.3 and s 271.6).

## Employer sanctions offences

The *Migration Act 1958* makes it an offence to knowingly or recklessly employ or refer for work a person who does not have a valid visa or is working in breach of their visa conditions. Penalties are up to \$13,200<sup>5</sup> and two years' imprisonment for individuals, and up to \$66,000 per illegal worker for companies. For aggravated offences – where a person is exploited through forced labour, sexual servitude or slavery (section 245AH) – maximum penalties rise to \$33,000 and five years' imprisonment for individuals and \$165,000 per illegal worker for companies. Offences related to false documentation or visas granted to other people attract a penalty of 10 years' imprisonment and/or \$110,000. One case was successfully prosecuted in the reporting period for knowingly or recklessly allowing a person to work in breach of their visa conditions.

**Table 2: Migration Act provisions**

Section	Offence	Maximum penalty
234	Providing false documents and statements <sup>a</sup>	10 years/\$110,000
236	Offences relating to visas	10 years/\$110,000
245AB	Allowing an unlawful non-citizen to work	2 years (5 years for aggravated offence <sup>b</sup> )
245AC	Allowing a non-citizen to work in breach of a visa condition	2 years (5 years for aggravated offence <sup>b</sup> )
245AD	Referring an unlawful non-citizen for work	2 years (5 years for aggravated offence <sup>b</sup> )
245AE	Referring a non-citizen for work in breach of a visa condition	2 years (5 years for aggravated offence <sup>b</sup> )

- a There are various other provisions in the Migration Act that also relate to fraud.
- b Aggravated employer sanction offences occur where a worker is being exploited (that is, in a condition of forced labour, sexual servitude or slavery in Australia) and the offender knows of, or is reckless as to, that circumstance.

<sup>5</sup> If imprisonment is the only penalty specified for a Commonwealth offence, as is the case for sections 245AB to 245AE, section 4B of the *Crimes Act 1914* (Cth) states that fines may be imposed on corporations as an alternative (and for individuals, in addition) to a prison sentence.

## State and Territory criminal offences

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

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

## Investigations

Between January 2004 and June 2011, the AFP's HTT undertook 305 investigations and assessments of allegations of trafficking-related offences. These assessments and investigations sometimes lead to matters being referred to the Commonwealth Director of Public Prosecutions, mostly for matters related to sexual servitude. A smaller number of investigations involved labour exploitation as the primary criminal conduct.

The AFP carried out 45 investigations in 2010–11, 35 of them being new referrals. This compares with 38 investigations in 2009–10. Approximately 69 per cent of the investigations were related to trafficking for sexual exploitation, and the remainder related to trafficking for other forms of labour exploitation.

During the reporting period, 89 per cent of people interviewed who were identified as victims of trafficking cooperated with an investigation.

Of the 35 new referrals received by AFP in 2010–11, 39 per cent were Philippines nationals, 26 per cent were Indian nationals and 9 per cent were Chinese nationals. The remainder of the suspected victims were drawn primarily from various North and South-East Asian countries.

## Significant AFP operations

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

There are significant practical challenges in investigating crime across international borders, including the challenges of communication, and differences in legal and political systems and national institutions. Victims, traffickers and evidence can be located in more than one country, and the same set of circumstances can generate investigations and prosecutions in more than one jurisdiction. Larger operations can involve concurrent investigations in multiple locations throughout Australia, and require the support of the AFP's overseas liaison network.

## Operation Burlywood

In October 2008, the AFP received information from DIAC indicating that Malaysian females were being trafficked to Australia for the purpose of sexual exploitation. This referral resulted in a complex AFP operation which led to the disruption of a major transnational trafficking syndicate operating between Malaysia and Australia.

On 11 August 2010, the AFP's HTT executed four search warrants and charged Chee Mei Wong, a 36-year-old Malaysian woman living in Sydney, with numerous offences. These included operating a business involving sexual servitude contrary to section 270.6(2) and people trafficking contrary to section 271.2(1B) of the *Criminal Code*, and allowing non-citizens to work in breach of their visa conditions contrary to section 245C of the *Migration Act*.

On 20 October 2010, the HTT executed further search warrants at numerous colleges in Sydney as part of this ongoing investigation in partnership with the Department of Education, Employment and Workplace Relations and DIAC.

As a result of Operation Burlywood, 10 suspected trafficking victims were identified and subsequently placed on the Support for Victims of People Trafficking Program. Each of the suspected victims held student visas; the trafficking syndicate had required these victims to work in breach of the working conditions of their student visas.

As a result of this investigation, two Malaysian nationals were arrested in Kuala Lumpur.

## Diveye Trivedi

On 8 December 2008, DIAC referred to the AFP an Indian national (the complainant) who arrived in Australia from India on a Temporary Business (Long Stay) (Subclass 457) visa to work in an Indian restaurant in Sydney.

The complainant provided a statement to the AFP alleging that his travel and requirements for travel to Australia were facilitated by the owner/operator of the restaurant and upon arrival to Australia the complainant was subjected to exploitative conditions in the restaurant by the owner. This included living and bathing in the restaurant and working approximately 12 hours a day, seven days a week with minimal and irregular rest periods. The complainant alleges he had limited freedom of movement, was continually abused and that his family in India was threatened.

On 15 September 2010, AFP members arrested the restaurant owner, Diveye Trivedi. Mr Trivedi was subsequently charged with people trafficking contrary to section 271.2(1B) of the *Criminal Code*. A trial is scheduled to commence on 4 October 2011.

This investigation is significant as it is just the second prosecution for labour trafficking since the introduction of the trafficking offences into the *Criminal Code* in 2005.

## Namthip Netthip

Since May 2007, 12 Thai females have provided information to the AFP's HTT in relation to allegations of sexual servitude, people trafficking, deceptive recruiting and debt bondage originating in Thailand. Each of the complaints involved Namthip Netthip.

Ms Netthip was arrested in 2009. On 30 March 2010 at the Downing Centre Local Court in Sydney she pleaded guilty to knowingly conducting a business that involved the sexual servitude of 11 other persons between 30 August 2005 and 1 April 2008, contrary to section 270.6 of the Criminal Code. She also pleaded guilty to a number of immigration offences against section 234(1)(b) and (c) of the *Migration Act* for making false statements to immigration officials.

On 30 July 2010, NSW District Court Judge Helen Murrell handed down her decision on sentencing. In the reasons for decision, Judge Murrell considered the submissions made by counsel, sexual servitude precedents, the objective seriousness of the sexual servitude offence, the need for both general and specific deterrence, the early guilty plea and Ms Netthip's individual circumstances.

Ms Netthip was sentenced two years and three months' imprisonment (three years discounted by 25 per cent to reflect the guilty plea) with a non-parole period of 13 months for the sexual servitude offences, followed by a recognisance release order to be of good behaviour for 14 months. Judge Murrell considered the migration offences to be part and parcel of the sexual servitude offence and ordered Ms Netthip to be of good behaviour for three years and six months.

Ms Netthip's conviction is the first guilty plea submitted in relation to charges of people trafficking and sexual servitude, and highlights the advantage of having designated human trafficking teams who have specialist skills and knowledge to apply in an investigation.

## Mao Ru Zhang

A 30-year-old Chinese woman, Mao Ru Zhang, was charged on 12 November 2010 in the Melbourne Magistrates Court with two counts of causing another person to remain in sexual servitude contrary to subsection 270.6(1) of the Criminal Code and two counts of causing another person to enter into debt bondage contrary to subsection 271.8(1) of the Criminal Code. Ms Zhang allegedly lured two women from China by promising them the opportunity to further their studies in Australia, but forced them to work as sex workers under exploitative conditions in Melbourne and Sydney. Ms Zhang was arrested after raids in four Melbourne suburbs by the AFP's HTT, assisted by DIAC and Consumer Affairs Victoria. A trial date has been set for 5 March 2012.

## Working with State and Territory law enforcement

The Australian Policing Strategy to Combat Trafficking in Persons 2011–13 was endorsed by the AFP and all State and Territory police on 4 May 2011. The AFP and its State and Territory policing partners have committed to ensuring that Australia's anti-trafficking strategy remains relevant and responsive to emerging trends and issues. For this reason and in recognition of Australia's international obligations, the focus of the Strategy was broadened to encompass all forms of people trafficking, including labour and organ harvesting. The Strategy outlines a number of obligations, primarily for the AFP, but also for State and Territory police forces, which are:

- promoting awareness of people trafficking as a crime
- maintaining partnerships with government and non-government organisations (NGOs) and developing prevention programs
- contributing to assessments and intelligence products prepared by the Commonwealth, States and Territories
- ensuring that appropriate technical tools are available to police agencies
- ensuring that all suspected victims are referred to the contracted welfare service provider
- providing appropriate training and education to police personnel, and
- contributing to reviews of legislation and regulatory regimes.

Complementing the delivery of the Human Trafficking Investigators Program (refer to *Law Enforcement Training* below for further information), HTT has completely revised its standard operating procedures with the publishing of a new AFP *Practical Guide for Human Trafficking Investigations*, with a complementary aide memoire. These new policy documents are available to all AFP investigators nationally and internationally and will be made available to stakeholders.

The AFP has held high-level meetings with Victoria and Queensland Police in regard to cooperatively implementing the Australian Policing Strategy obligations. Meetings with senior police officials in other States and Territories will occur in 2011–12.

The States and Territories are responsible for regulating the sex industry under the residual powers of the Australian Constitution. Most have enacted legislation against the offence of sexual servitude. The legislation is enforced collaboratively by State and Federal police.

### Cooperative work with New South Wales Police

On 3 September 2010, the New South Wales Police (NSWP) charged a 26-year-old man with specially aggravated kidnapping contrary to section 86(3) of the *Crimes Act 1900* (NSW) and causing a person to enter into or remain in sexual servitude contrary to section 80D(1) of the *Crimes Act*. The victim alleged she was held as a virtual prisoner for up to a year, her passport was seized and she was forced to work as a sex worker to pay off a debt of approximately \$20,000. The AFP worked cooperatively with the NSWP on this investigation and enabled the victim to gain access to the Support for Victims of People Trafficking Program.

On 28 February 2011, the NSW Police charged a 62-year-old man in Newcastle with causing his wife to enter into or remain in sexual servitude contrary to section 80D(1) of the NSW Crimes Act. The man was committed for trial on 20 June 2011. The AFP is in contact with the NSW Police regarding this investigation and appropriate support will be provided to the victim where required.

These cases highlight the positive benefits of State and Commonwealth agencies working in partnership to implement the Australian Policing Strategy to Combat Trafficking in Persons.

### Cooperative work with Queensland Police

During the reporting period, the Brisbane HTT worked closely with the Queensland Police Service Prostitution Enforcement Taskforce to identify victims of people trafficking and associated criminal offences. On 12 and 13 May 2011, a joint operation involving the AFP, Queensland Police and DIAC resulted in the dismantling of an illegal prostitution syndicate. Queensland Police arrested eight persons, laid 22 charges and seized more than \$22,000. An AFP currency detection dog was used during the execution of associated search warrants and the AFP Financial Investigations Team is continuing with proceeds of crime inquiries.

### Cooperative work with Victoria Police

During the reporting period the Melbourne Office HTT continued to work closely with other Commonwealth, State and local government agencies to deliver a program of proactive visits to at-risk businesses. During the reporting period, the HTT was involved in more than 32 compliance visits throughout Victoria as well as other routine attendances on suspect premises. HTT members also provided assistance and subject matter advice to Victoria Police on search warrants involving illegal brothels.

## Referrals

In Australia, people trafficking cases have been referred to authorities by various sources and means. The referral of many matters has resulted from official State and Australian Government activities, including by State and Territory police. Other matters have been referred by industry representatives or NGOs. NGOs are increasingly playing a role in referrals. In 2010–11, two referrals were received from NGOs. Some matters have been referred by concerned individuals or co-workers of those suspected of being trafficked. A small number of referrals have also been received from those either working at or connected to various embassies and missions located in Australia.

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

People trafficking does not imply illegal entry; all suspected victims to date have entered on a valid visa, although immigration malpractice or fraud may later become apparent. In 2010–11, 33 reports of possible people trafficking were referred by DIAC to the AFP for assessment. Suspected victims had entered Australia on a variety of visa types, including tourist, student and working holiday visas, and some held electronic visas. Some visas had expired by the time they were located, making the holders unlawful “overstayers”, while the immigration status of others remained lawful.

Also during this period, Melbourne, Sydney and Brisbane-based HTT personnel assisted DIAC with approximately 35 compliance visits at various work sites in both metropolitan and regional/rural areas.

## Changes in criminal methodology

People traffickers are alert to matters raised in court by investigators and prosecutors and adapt their methodologies accordingly. For example, it is now common for people traffickers not to physically restrain (lock up) or overtly control, or seize passports or identification papers from victims.

During the reporting period, it was identified that one people trafficking syndicate used the hawala alternative remittance system as a means of transferring earnings from one of its brothels (mixed income – both victims and non-victims) offshore to the Republic of Korea. The funds remitted were approximately \$40,000 per week during a full financial year. Hawala works by transferring money without actually moving it. It is based upon depositing funds with a remitter, who then contacts another remitter offshore to tell them of the deposit and the funds are then released to the recipient. The first remitter then charges a fee for the transfer. Hawala does not leave a paper trail (actual or virtual) as there are no wire or electronic transfer records.

## Prosecutions

Securing prosecutions is a key objective of the Australian Government’s anti-people trafficking strategy.

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

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

- there are reasonable prospects of a conviction being secured, and
- the prosecution would be in the public interest.

In making this decision, the prosecutor must evaluate how strong the case is likely to be when presented in court. This evaluation continues at each phase of the trial process. The decision can only be made based on admissible evidence. Not all the information gathered during the course of the investigation will necessarily be admissible. The evaluation must take into account such matters as the availability, competence and credibility of witnesses and their likely effect on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence open to the defendant and any other factors that could affect the likelihood of a conviction.

The cooperation of suspected trafficking victims is essential to the investigation and prosecution of people trafficking offences. The major impediment to prosecuting trafficking-related offences is the reluctance of people to give evidence, particularly as they (or their families) may have been the subject of violence or threats of violence. Because people trafficking prosecutions rely heavily on the evidence of individual victims, corroboration of that evidence is often necessary to meet the high standard of proof in criminal proceedings. Corroborating this evidence is often challenging.

Since the commencement of Divisions 270 and 271 of the Criminal Code, 13 people have been convicted of people trafficking-related offences. Nine of those defendants were convicted of slavery offences, three of sexual servitude offences and one of people trafficking. As at 30 June 2011, six people trafficking matters, involving seven defendants, were before the courts. Two of those six matters were at the appeal stage.

The following provides a summary of prosecutions in 2010–11. More detailed information on these matters can be found in Appendix 1.

**Trevor McIvor and Kanokporn Tanuchit** were each convicted of five counts of intentionally possessing a slave contrary to section 270.3(1)(a) of the *Criminal Code* and five counts of intentionally exercising a power attaching to the right of ownership over a slave contrary to section 270.3(1)(a) of the *Criminal Code*. Mr McIvor and Ms Tanuchit subsequently appealed against their convictions to the NSW Court of Criminal Appeal. On appeal, the convictions were set aside and retrials ordered on the basis that on a number of occasions the trial judge had expressly instructed the jury in relation to the fault issue and the indicia of slavery in such a way that may have confused the jury. On 30 July 2010, following a retrial, both were again found guilty on all counts. On 17 December 2010 Mr McIvor was sentenced to 12 years' imprisonment with a non-parole period of seven years and six months and Ms Tanuchit was sentenced to 12 years' imprisonment with a non-parole period of seven years.

On 29 September 2009, two men, **Ho Kam Ho and Kam Tin Ho**, were convicted in the Supreme Court of Victoria on six and four charges respectively of possessing and exercising a power of ownership over a person under the slavery provisions of the Criminal Code. On 4 November 2009, **Kam Tin Ho and Sarisa Leech** were convicted in the Supreme Court of Victoria on two charges of possessing and exercising a power of ownership over a person under the slavery provisions of the Criminal Code. Appeals against both conviction and sentence by Kam Tin Ho, Ho Kam Ho and Sarisa Leech were heard on 16 and 17 June 2011 in the Victorian Court of Appeal and judgment has been reserved.

On 18 February 2010, after a retrial in the Supreme Court in Cairns, **Melita Kovacs**, along with her husband **Zoltan Kovacs**, was found guilty and subsequently resentenced to eight and four years' imprisonment respectively. Ms Kovacs initially sought leave to appeal against her sentence in the Supreme Court but on 17 November 2010 abandoned this appeal.

**Namthip Netthip** pleaded guilty to one offence of conducting a business involving sexual servitude contrary to section 270.6(2) of the *Criminal Code* and one offence contrary to section 234 of the *Migration Act* relating to false migration documentation. On 29 July 2010, Ms Netthip was sentenced to two years and three months' imprisonment, to be released on a 14-month recognisance release order after serving 13 months.

**Table 3: Charges in finalised matters, by Criminal Code provision, 2010–11**

	270.3(1)	270.3(2)	270.6(1)	270.6(2)	271.2(1B)	271.8(1)
HO, Ho Kam						
HO, Kam Tin						
KOVACS, Melita						
KOVACS, Zoltan						
LEECH, Sarisa						
McIVOR, Trevor						
NETTHIP, Namthip						
TANUCHIT, Kanokporn						

**Table 4: Charges in finalised matters, by Criminal Code provision, 2004–11**

	270.3(1)	270.3(2)	270.6(1)	270.6(2)	271.2(1B)	271.2(2B)	271.8(1)
DOBIE, Keith							
DS							
HO, Ho Kam							
HO, Kam Tin							
KOVACS, Melita							
KOVACS, Zoltan							
LEECH, Sarisa							
McIVOR, Trevor							
NETTHIP, Namthip							
SEIDERS, Johan							
TANG, Wei							
TANUCHIT, Kanokporn							
YOTCHOMCHIN (KENT), Somsri							

## Law enforcement training

### Human Trafficking Investigators Program

In cooperation with its police partners, the AFP has started meeting its Australian Policing Strategy obligations with the training of three police officers respectively from New South Wales, Victoria and Queensland Police at the 1/2011 Human Trafficking Investigators Program (HTIP). The HTIP was the first people trafficking training course to be delivered in two years and 20 investigators from Canberra, Sydney, Melbourne, Brisbane, Darwin and Perth successfully completed the two-week program.

An objective of the program is to develop the knowledge and skills required to successfully conduct complex, sensitive and/or protracted investigations of offences involving people trafficking in a multi-jurisdictional or international environment.

The program focuses on:

- 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 affect a victim's ability and willingness to become a witness in a trafficking investigation, including displaying sensitivity to cultural issues when conducting interviews, and
- identifying and demonstrating behavioural interview techniques when dealing with adult victims of people trafficking.

The program includes presentations from NGOs about the different perspectives on trafficking. While the program was primarily developed to meet the needs of AFP investigators, the course is also open to investigators from State and Territory police services and foreign law enforcement agencies.

As of 30 June 2011, 175 investigators had completed the course since 2004. This included 122 AFP investigators, 31 investigators from State and Territory police (all jurisdictions), one representative from DIAC and 21 investigators from foreign police services.

### Achieving Collaborative Awareness Exercise

In meeting its Australian Police Strategy obligations concerning other government and non-government partners, on 14 April 2011, HTT hosted an Achieving Collaborative Awareness Exercise at the AFP Edmund Barton Conference Centre. The purpose of the event was to collectively identify current and future legislative, administrative, service and socio-legal-oriented activities that could disrupt criminal groups benefiting from trafficking people for sex, labour or organ harvesting. Representatives from the Australian Government and State and Territory governments, NGOs, industry and the unions were invited to attend. A total of 50 invitees attended the exercise.

At the exercise, two scenarios were presented to two panels that each consisted of a mix of 13 of the invited subject matter experts who represented their respective government, NGO, industry or union body. The scenarios, one for labour exploitation and the other for sex trafficking, were then worked through by the respective panels.

The feedback was highly complimentary of the Collaborative Awareness Exercise and a number of outcomes were identified and are being progressed:

- consideration be given to changing the name TSETT to something more representative of all the different types of people trafficking offences
- production of a Human Trafficking Compendium that provides details of each stakeholder's role, legislative, administrative and socio-economic remedies to investigating or disrupting people trafficking
- distribution of a DVD that recorded the day's events to selected parties for training and stakeholder familiarisation purposes, and
- establishment of a Human Trafficking Community with regular stakeholder meetings, initially in Brisbane, Sydney and Melbourne, then Darwin, Perth and Hobart (commenced in Brisbane and Melbourne).

## Immigration compliance law enforcement training

DIAC continues to provide training about combating people trafficking to onshore compliance officers through the people trafficking module of the compliance training program, with guest speakers from the AFP and an NGO, Anti-Slavery Australia. Training sessions on people trafficking are also provided to staff being posted overseas or working within the border environment. In April and June 2011, DIAC also participated in AFP-run discussion exercises on panels with other agencies and NGOs, in which the role and capacities of each agency in the anti-people trafficking strategy were identified.

## Australia's response to serious and organised crime

People trafficking is a complex form of transnational organised crime. A range of people may be involved in the trafficking process, including those engaged in recruitment, transport and harbouring of trafficking victims, and in providing false identification or immigration documentation.

The Australian Government is committed to disrupting, investigating and prosecuting organised crime in all its forms. In 2008, the Government recognised organised crime as significant national security threat for the first time.

On 25 November 2009, the Attorney-General and the Minister for Home Affairs and Justice released the Commonwealth Organised Crime Strategic Framework.

The Attorney-General's Department led development of the Framework on behalf of the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA).

The Framework establishes a comprehensive and coordinated response to target the most significant threats from organised crime in order to reduce its impact on the community. It aims to ensure effective cooperation and collaboration among policy, regulatory, law enforcement and intelligence agencies to combat organised crime.

The Framework also aims to improve information and intelligence sharing between law enforcement and partner agencies to create a more accurate picture of organised crime in Australia and enhance the Government's ability to address organised crime in all its forms.

The key elements of the Framework are:

- the Organised Crime Threat Assessment, prepared every two years by the Australian Crime Commission (ACC) to provide a picture of the most significant threats from organised criminal activity
- the Commonwealth Organised Crime Response Plan to align Commonwealth efforts to respond to the most significant organised crime threats, and
- multi-agency responses, such as taskforces, and working groups to respond to operational, policy, regulatory and legislative issues.

The 2011 unclassified Organised Crime Threat Assessment, titled *Organised Crime in Australia*, includes an assessment of crimes against the person including people trafficking and is available at [www.crimecommission.gov.au](http://www.crimecommission.gov.au).

## Commonwealth Organised Crime Response Plan 2010–11

On 26 November 2010, the Minister for Home Affairs and Justice released the overview of the Commonwealth Organised Crime Response Plan (Commonwealth Response Plan). The Commonwealth Response Plan targets the three priority organised crime risks of amphetamine-type stimulants, money laundering and identity crime, identified by the ACC in its Organised Crime Threat Assessment. The Commonwealth Response Plan has been endorsed by the HOCOLEA.

## National Organised Crime Response Plan 2010–13

On 10 December 2010, the Attorney-General and the Minister for Home Affairs and Justice released the National Organised Crime Response Plan overview (the National Response Plan) in conjunction with State and Territory Attorneys-General. It provides a new framework for strengthened multi-jurisdictional collaboration and coordination in combating organised crime in Australia.

Under the National Response Plan, Commonwealth and State and Territory Governments have agreed to a set of strategic principles and protocols to underpin a national response to organised crime. Governments have also committed to work together on a range of specific measures, including to:

- improve consistency of legislation to fight organised crime
- remove impediments to effective sharing of information and intelligence, and
- target the priority organised crime risks identified in the Organised Crime Threat Assessment.

The National Response Plan has been endorsed by all Australian Attorneys-General and Police Ministers through the then Standing Committee of Attorneys-General and Ministerial Council for Police and Emergency Management – Police (MCPEMP).

### National Criminal Intelligence Fusion Capability

On 13 July 2010, the Attorney-General and the Minister for Home Affairs and Justice formally launched the National Criminal Intelligence Fusion Capability within the ACC. The Government committed \$14.5 million in the 2010–11 Budget to establish the Fusion Capability.

Through the “fusion” of a broad range of public and private-sector data with criminal intelligence holdings, the Fusion Capability is able to identify high-risk cash flows, patterns of crime and the individuals, businesses and corporate structures involved in criminal enterprise in Australia.

The Fusion Capability involves a range of partners, including the AFP, the Australian Securities and Investments Commission, the Australian Taxation Office (ATO), the Australian Transaction Reports and Analysis Centre, Centrelink, the Australian Customs and Border Protection Service and the Department of Immigration and Citizenship.

In the first 12 months of operation, the Fusion Capability identified 53 new targets suspected of being involved in serious and organised crime, including money laundering, fraud, drug trafficking and people smuggling.<sup>6</sup>


### Criminal Assets Confiscation Taskforce

The Criminal Assets Confiscation Taskforce, led by the AFP, commenced operation in January 2011 and was formally launched by the Attorney-General and the Minister for Home Affairs and Justice on 10 March 2011.

The Taskforce takes a dynamic, integrated approach to criminal asset confiscation at the Commonwealth level by bringing together intelligence, operations, legal and other specialist resources to enhance the identification of potential asset confiscation matters and strengthen their pursuit.

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<sup>6</sup> For further information, see [http://www.ministerhomeaffairs.gov.au/www/ministers/oconnor.nsf/Page/MediaReleases\\_2011\\_ThirdQuarter\\_13July2011-53newcriminaltargetsidentifiedinFusionsfirstyear](http://www.ministerhomeaffairs.gov.au/www/ministers/oconnor.nsf/Page/MediaReleases_2011_ThirdQuarter_13July2011-53newcriminaltargetsidentifiedinFusionsfirstyear).



The objectives of the Taskforce are to:

- disrupt and deter serious and organised crime in Australia by removing the proceeds and instruments of crime
- provide a coordinated approach to Commonwealth criminal asset confiscation
- maximise the effectiveness of confiscation efforts, and
- protect the public finances of Australia from criminal abuse of the tax system through asset confiscation action and identification of matters appropriate for referral to the ATO for taxation treatment.

Subject to the passage of legislative amendments, the Taskforce is scheduled to become permanent from January 2012.

# Support for victims of trafficking

The Australian Government response to people trafficking continues to focus on providing appropriate support and services for victims of trafficking.

## People Trafficking Visa Framework

The Australian Government's comprehensive People Trafficking Visa Framework enables foreign nationals who are suspected victims of trafficking to remain lawfully in Australia if they do not already hold a valid visa. Holders of a valid visa are able to access support while remaining on that visa.

The visa framework for trafficked people is comprised of three types of visas: the Bridging F visa, the Criminal Justice Stay visa and the Witness Protection (Trafficking) (Permanent) visa.

- A person identified by the AFP as a suspected victim of people trafficking may be eligible for a Bridging F visa (BVF) for up to 45 days. A BVF can also be granted to immediate family members in Australia. A BVF has no work rights, but the holders receive intensive victim support through the Support for Victims of People Trafficking Program. There is also an option to grant a second BVF for a further 45 days (taking the total to 90 days), during which time the person will continue to receive intensive victim support. The offer of a second BVF may be considered on a case-by-case basis.
- After the expiry of a BVF a Criminal Justice Stay visa (CJSV) may be granted to a suspected victim of trafficking at the request of police. A CJSV allows the holder to remain in Australia for as long as their presence is required for law enforcement purposes. The CJSV holder is allowed to work and receives support under the Justice Support Stream of the Support Program. CJSV holders have access to Special Benefit, Rent Assistance and a Health Care Card administered by Centrelink (if they are eligible); assistance in securing longer-term accommodation; Medicare and the Pharmaceutical Benefits Scheme; legal services and interpreters; assistance in obtaining employment and training (including English-language training); and links to social support.
- A suspected victim or a witness who has made a contribution to an investigation or prosecution of an alleged trafficking offender may be eligible for a Witness Protection (Trafficking) (Permanent) visa (WPTV) if, as a result of their assistance, they would be in danger were they returned to their home country. This visa allows the holder to remain in Australia permanently, and immediate family members may be included in the visa application. Until 30 June 2009, the legislation provided for the granting of a temporary

WPTV, which was a prerequisite for a permanent WPTV. The legislation relating to the temporary visa was repealed on 1 July 2009. A WPTV may be granted to a person if the following, among other criteria prescribed in the Migration Regulations, are met:

1. the Attorney-General certifies that:
  - the person made a contribution to, and cooperated closely with, the prosecution of a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions (whether or not the person was convicted), or
  - the person made a contribution to, and cooperated closely with, an investigation in relation to which the Director of Public Prosecutions has decided not to prosecute a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions,
2. the person is not the subject of a prosecution for an offence that is directly connected to that prosecution, and
3. the Minister for Immigration and Citizenship considers the person would be in danger if returned home.

Between 1 July 2010 and 30 June 2011, DIAC granted 24 BVFs and 29 CJSVs to suspected victims of people trafficking and their immediate family members, while 42 WPTVs were granted, 28 to suspected victims and 14 to their immediate family members (*see table below*).

Between 1 July 2009 and 30 June 2010, following the removal of the temporary visa stage in the Witness Protection (Trafficking) visa process, DIAC granted 33 BVFs and 23 CJSVs to suspected victims and immediate family members. Twenty-one WPTVs were granted, 15 to suspected victims and six to their immediate family members. Seven of these victims had previously been granted Witness Protection (Trafficking) (Temporary) visas (*see table below*).

Under the earlier legislation, between 1 January 2004 and 30 June 2009, 131 BVFs and 97 CJSVs were granted to suspected victims of trafficking. Seventeen suspected victims were granted Witness Protection (Trafficking) (Temporary) visas, and two victims and three of their immediate family members were granted Witness Protection (Trafficking) (Permanent) visas (*see table below*).

**Table 5: Trafficking visas granted, 2004-05 to 2010-11**

Visa type	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Bridging F visa	31	11	16	34	39	33	24
Criminal Justice Stay visa	23	8	18	18	30	23	29
Witness Protection (Trafficking) (Temporary) visa	0	0	4	13	0	n.a.	n.a.
Witness Protection (Trafficking) (Permanent) visa	0	0	0	0	5	21	42

Note:

- The number of visas cited includes those granted to both suspected victims of trafficking and their immediate family members.
- For the Bridging F and Criminal Justice Stay visas only, the number granted reflects the ability to grant such visas more than once to the same person.
- The Witness Protection (Trafficking) (Temporary) visa was removed on 30 June 2009.

## Support for Victims of People Trafficking Program

Australia provides a comprehensive range of support services for suspected trafficking victims through its Support for Victims of People Trafficking Program (the Support Program).

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

Most victims of trafficking identified in Australia have been women working in the sex industry (in both legal and illegal brothels). Generally the women have been recruited from low socio-economic countries and are attracted by the perception of improved economic opportunities in Australia. Increasingly, Australian authorities are identifying victims of trafficking in other industries including agriculture and hospitality.

FaHCSIA administers the Support Program, which is delivered on the ground by a contracted case management service provider. In March 2009, the Australian Red Cross was contracted to deliver case management services for the Support Program, following a two-stage tender process. This contract was due to expire on 30 June 2011 but has been extended until February 2012.

The Australian Red Cross responds 24 hours a day, seven days a week, 365 days a year in all States and Territories to assist clients as required. Case managers are responsible for ensuring the appropriate delivery of support services to meet the client's individual needs. They help clients to access a range of support services, which may include:

- suitable accommodation that meets the AFP's security requirements
- income support
- medical treatment (through Medicare and the Pharmaceuticals Benefits Scheme, or as approved)
- counselling
- legal and migration advice
- skills development training, including English-language classes and vocational guidance, and
- social support.

Clients who have dependent children living with them may receive assistance with arranging child care, schooling, counselling and medical support, if required. They can also be assisted to access parenting support or education as needed.

The Support Program is divided into the following streams:

- **Assessment Stream** – intensive support for up to 45 days to all identified victims of trafficking irrespective of whether they are willing or able to assist police. If the person does not have a valid visa, they can be granted a Bridging F visa for 45 days. This provides an extended recovery and reflection period and time for victims to assess their options. Victims have access to the following support as needed: secure accommodation; a living allowance; a food allowance; an amount for the purchase of essentials such as clothing and toiletries; access to health care, including counselling; access to interpreters; and access to legal services.
- **Extended Assessment Stream** – this provides access to a further 45 days' support for victims of trafficking who are willing, but not able, to assist with an investigation and prosecution of a people trafficking offence. This extended period of support is provided on a case-by-case basis and is designed to provide additional assistance to victims suffering from medical conditions and trauma. If the suspected victim of trafficking does not hold a valid visa, a second Bridging F visa for up to 45 days may be granted.
- **Justice Support Stream** – support until the investigation and prosecution of a people trafficking matter is finalised. In the Justice Support Stream clients have access to the following support as needed and if eligible: Special Benefit, Rent Assistance and a Health Care Card administered by Centrelink; assistance with securing longer-term accommodation; assistance to purchase essential furniture and household items; access to Medicare and the Pharmaceutical Benefits Scheme; access to legal services and interpreters; assistance to obtain employment and training (including English-language training) if desired; and links to social support.

- **Temporary Trial Support Stream** – intensive support (similar to that provided under the Assessment Stream) for victims who return to Australia to give evidence pertaining to a people trafficking prosecution. Recipients are entitled to short-term accommodation and a weekly living and food allowance.

There is also a 20-day **transition period** for victims leaving the Program.

## Statistical profile of the Support Program

Between 1 July 2010 and 30 June 2011, 29 new clients entered the Support Program, comprising 21 women and eight men. As at 30 June 2011, 18 of these new clients remained on the Program.

Fifty-nine per cent of new clients (17) entering the Support Program between 1 July 2010 and 30 June 2011 were trafficked into the sex industry. Twelve clients (eight men and four women) were located in non-sex industries.

In 2010–11, one unaccompanied minor was referred to the Support Program as a suspected victim of trafficking into the sex industry.

The majority of new clients referred to the Support Program during the reporting period were from the Philippines (seven) and Malaysia (six).

Of new clients referred to the Support Program in this period, 25 clients (86 per cent) were located in NSW (see Table 6).

**Table 6: New clients referred to the Support Program in 2010–11, by State and Territory**

State/Territory	Number of new clients
NSW	25
VIC, QLD, ACT	4
SA, TAS, WA, NT	0
<b>TOTAL</b>	<b>29</b>

## Total number of clients on the Support Program during 2010–11

There were a total of 80 clients supported on the Support Program during 2010–11, compared to 65 clients in 2009–2010 (see Table 7).

A total of 29 new clients were referred to the Support Program during 2010–11. Twelve clients left the Support Program between 1 July 2010 and 30 June 2011. At 30 June 2011, there were 68 clients on the Support Program compared to 51 clients on 1 July 2010. Sixty-three clients (79 per cent) supported on the Support Program in 2010–11 were women trafficked into the sex industry (see Table 8).

At 30 June 2011, a total of 184 clients (165 women and 19 men) had been referred to the Program since its inception in 2004. Of the women, 149 have been trafficked into the sex industry and 16 into other industries. No men on the Support Program have been trafficked into the sex industry.

**Table 7: Number of clients on the Support Program, by financial year**

Financial Year	Number of Clients
2005-06	41
2006-07	48
2007-08	60
2008-09	59
2009-10	65
2010-11	80

**Table 8: Number of clients on the Support Program client numbers, by type of exploitation and gender**

	Non-sexual exploitation*		Sexual exploitation		Total	
	2009-10	2010-11	2009-10	2010-11	2009-10	2010-11
Male	3	9	0	0	3	9
Female	7	8	55	63	62	71
<b>Total</b>	<b>10</b>	<b>17</b>	<b>55</b>	<b>63</b>	<b>65</b>	<b>80</b>

\* Non-sexual exploitation includes all other forms of exploitation and trafficking that occurs outside the sex industry including labour trafficking, slavery, domestic servitude and organ trafficking.

Thailand (40 per cent), Malaysia (21 per cent), the Philippines (11 per cent) and the Republic of Korea (9 per cent) were the main source countries for clients supported on the Support Program in 2010-11 (see Table 9).

**Table 9: Number of clients on the Support Program by country of origin/citizenship**

Country of origin/citizenship	2010–11	Total since 2004
Thailand	32	77
Malaysia	17	32
Philippines	9	10
Korea	7	31
Other*	15	34
<b>Total</b>	<b>80</b>	<b>184</b>

\* Countries with less than five clients in any given financial year.

### Challenges in delivering the Support Program

As a result of their experience of being trafficked, clients on the Support Program are particularly vulnerable and many have complex and diverse needs. Providing individual support to meet those needs can be challenging. The challenges faced in delivering the Support Program include:

- **Access to safe, appropriate and affordable accommodation.** Accessing affordable and safe accommodation, particularly at short notice, remains a challenge for some clients on the Support Program. This has particularly been the case for new clients with complex needs such as mental health issues or drug/alcohol dependency issues. Clients requiring secure, independently funded long-term accommodation also present a challenge.
- **Family reunification for clients granted Witness Protection (Trafficking) (Permanent) visas.** The Support Program has had an increase in the number of clients seeking family reunification once they have been granted the Witness Protection (Trafficking) (Permanent) visa. Many clients have dependent children living in their home country. These clients often face significant costs associated with travel and establishing their children in Australia. Families require extensive casework support to assist with issues such as housing, furniture, clothing and access to childcare, schools and other government, health and social services.

## CASE STUDY

### A Support Program client

Ms J\* was trafficked for sexual exploitation and referred to the Support for Victims of People Trafficking Program in 2006. Since that time she has given evidence in the initial prosecution and then retrial of her alleged traffickers. Ms J has three children who were cared for by her mother in their country of origin after Ms J came to Australia.

While on the Support Program, Ms J has remained independent, only requiring occasional support from the Australian Red Cross. Ms J received support to deal with issues relating to the prolonged separation from her children while she has been in Australia to testify against her traffickers. The separation from her children has been distressing and made her role as a parent more difficult.

Ms J was also supported during the subsequent reunification of her family after she and her children were granted Witness Protection (Trafficking) (Permanent) visas in 2011. During her time on the Support Program, Ms J had worked to be able to afford the costs associated with bringing her children to Australia and establishing their lives as a family. It was a great moment when Ms J was finally reunited with her children after a number of years and was able to accompany them to Australia.

On the family's arrival in Australia, Ms J required extensive settlement and casework support to undertake such tasks as enrolling the children in school, organising uniforms and supplies, linking her and the children to Centrelink, applying for Medicare and accessing health care. Much of this support has been provided by her Australian Red Cross caseworker, as settlement support services are limited to refugee, humanitarian and protection visa holders. The caseworker also worked with Ms J to overcome language and systemic barriers, and assisted her to advocate for herself in accessing eligible services.

Ms J's children have since settled into school and are working to improve their English skills. Ms J is currently studying and is looking forward to a stable future with her children in Australia.

\* *Given the small number of clients on the Support for Victims of People Trafficking Program and the need to preserve the privacy of individual clients, this case study is representative, drawing on the common experiences of a number of clients.*

# Protection for vulnerable workers

Discussions about people trafficking sometimes conflate issues of trafficking, forced labour and substandard working conditions.

People are in a situation of forced labour if they enter work or service against their will and cannot leave it without penalty or threat of penalty. Forced labour is defined in the *Criminal Code Act 1995* (Cth) Dictionary by reference to section 73.2(3):<sup>7</sup>

**forced labour** means the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

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

While many victims of trafficking end up in situations of forced labour, not all victims of forced labour are trafficked. The International Labour Organization estimates that globally some 12.3 million people are victims of forced labour, and that 2.4 million of those people have been trafficked. There is also an important distinction to be drawn between people in forced labour situations and those who may have poor working conditions.

Australia's workplace law and practice – supported by migration law and relevant State laws – requires all people who undertake productive work in Australia to be engaged in accordance with its provisions (including salary, employment conditions and standards, workers' compensation, and occupational health and safety) and to receive the same protection as Australian nationals (in terms of investigation by the competent Australian authority of all underpayment and exploitation claims).

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

However, foreign workers may be vulnerable to exploitation by those who facilitate their journey to Australia or by employers once in Australia. Labour trafficking may result in exploitation of foreign workers through forced labour, debt bondage or slavery. It is also possible for Australian citizens and permanent residents to be trafficked for labour exploitation within Australia.

<sup>7</sup> Forced labour is defined by the International Labour Organization as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (ILO Convention No. 29, 1930).

While the matters investigated by the Fair Work Ombudsman and the Australian Building and Construction Commission may not fall within the criminal offences of slavery or trafficking, they illustrate the important role of these organisations in protecting the rights of workers who are exploited in Australia.

## Fair Work Ombudsman

The Fair Work Ombudsman is responsible for providing education, assistance and advice about the Commonwealth workplace relations system. In addition, the agency is also responsible for impartially enforcing compliance with the *Fair Work Act 2009* (FW Act) and related instruments.

Offences relating to the trafficking of persons do not fall within the operational remit of the Fair Work Ombudsman. If the Fair Work Ombudsman identifies behaviour in the course of its investigations that could amount to trafficking of persons, evidence is referred to the Australian Federal Police (AFP). The Fair Work Ombudsman's relationship with the AFP enables a two-way referral of investigations where appropriate, with an emphasis on victims of trafficking.

The FW Act contains minimum entitlements for all employees in the federal workplace system, including short- and long-term work visa holders and international students.

During 2010–11, the Fair Work Ombudsman remained active in education about and the enforcement of workplace rights for foreign workers. In enforcing compliance, the agency makes no distinction between legal and illegal workers where there are contraventions against foreign workers.

Between 1 July 2010 and 30 June 2011, the Fair Work Ombudsman conducted 585 investigations involving Temporary Business (Long Stay) (Subclass 457) visa and other visa holders, recovering more than \$510,000 in unpaid entitlements.

The Fair Work Ombudsman also continued to conduct targeted audits within industry sectors and in geographic areas that commonly employ foreign workers.

For example, a national targeted campaign within the cleaning industry was undertaken, which involved both an extensive education campaign and 315 random audits conducted against cleaning businesses. This campaign recouped at least \$242,450 in back pay for 621 employees nationally.

At a local level, audits are often conducted as a result of tip-offs relating to businesses employing foreign or migrant workers within particular geographic areas. In the first half of 2011, for example, audits were conducted on Japanese restaurants and Asian grocery stores in a particular Melbourne suburb following numerous tip-offs about businesses in these areas exploiting international students and work visa holders.

During 2010–11, the Fair Work Ombudsman continued to litigate matters involving foreign workers given their particular vulnerability in the workplace and in order to enhance specific deterrence. Penalties imposed by the courts as a result of action undertaken by the Fair Work Ombudsman included:

- In August 2010, \$148,500 against a Sydney company, DZ Import and Export Trading Company, and \$29,700 against its director for underpaying two Chinese nationals a total of \$20,894. The employees worked as a bookkeeper and stock controller for the company and had limited English skills.
- In December 2010, \$82,100 against the owner of petrol retailer, AM Retail Solutions, who was involved in underpaying 56 staff more than \$500,000. The employees included a number of recently arrived foreign nationals, some of whom were under 21 years of age.
- In May 2011, \$123,000 against a construction company, Kentwood Industries Pty Ltd and a further \$24,600 against director Jian Yan Zhang for the underpayment of \$242,000 to five Chinese construction workers. These workers were paid as little as \$3 per hour and worked up to 11 hours a day, six to seven days a week without rostered days off, and were not paid penalty rates or annual leave entitlements.

Beyond its direct compliance activity, the Fair Work Ombudsman's educational services targeted to foreign workers and students include:

- provision of the Fair Work Information Statement and information about the Fair Work Ombudsman and Fair Work Australia in 26 languages,
- an international students' webpage<sup>8</sup> with a fact sheet, checklists and information on workplace rights, with translated information in six languages, and
- a plain-English information guide specifically for international students on the Fair Work Ombudsman web page entitled "Do you know your workplace rights?" which has been distributed to universities, TAFEs and private education providers.

During 2010–11, a specific culturally and linguistically diverse (CALD) community engagement strategy was developed to improve accessibility to Fair Work Ombudsman information, tools and other support to foreign workers.

Some of the initiatives developed include the production of YouTube videos (in 14 languages), created to help non-English speakers to understand their rights at work, and establishing a broad base of contacts within community-based organisations in order to develop awareness of the Fair Work Ombudsman and its services in migrant communities.

The Fair Work Ombudsman continues to develop relationships, receive intelligence and work with organisations that represent vulnerable foreign workers such as Scarlet Alliance (which represents Australian sex workers), the University of Technology Sydney's Anti-Slavery Australia, the Overseas Students Ombudsman and community organisations such as Asian Women at Work, which represents workers of an Asian background in the Sydney region.

The Fair Work Ombudsman works with the Department of Immigration and Citizenship (DIAC) at both local (regional) and strategic levels to address exploitation among employers of visa holders.

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<sup>8</sup> See <http://www.fairwork.gov.au/employment/international-students/pages/default.aspx>.

## Australian Building and Construction Commission

The Office of the Australian Building and Construction Commissioner (ABCC) is a Commonwealth statutory agency responsible for ensuring compliance with the *Building and Construction Industry Improvement Act 2005* (BCII Act), the National Code of Practice for the Construction Industry and other relevant laws. The ABCC is the workplace relations regulator for the building and construction industry.

The ABCC ensures building and construction work is carried out fairly and productively for the benefit of all building industry participants and the Australian economy as a whole. Its role is to assist building industry participants to understand workplace relations laws, monitor workplace conduct and investigate alleged contraventions.

An important part of the ABCC's role is the provision of advice and assistance to all building and construction industry participants, including those from culturally and linguistically diverse (CALD) backgrounds. The ABCC is currently developing a strategy to support the ABCC's work with CALD stakeholders in the building industry. This includes identifying the CALD communities in the sector and increasing the capability of the ABCC to engage and provide assistance to these industry participants. Under this strategy, the ABCC will also explore possible regulatory activities related to the rights of workers in Australia on temporary visas and the exploitation of vulnerable foreign workers.

Following a decision by Commissioner Leigh Johns in October 2010 which expanded the ABCC's investigatory role to include underpayment of wages, the ABCC now regulates compliance with wages and entitlements matters in the building and construction industry. This work has increased the ABCC's engagement with the exploitation of vulnerable workers, including foreign workers who are in Australia on a visa which permits work and those who are working in contravention of their visa conditions or who have no valid visa. Of the \$136,932 recovered for workers by the ABCC between March and June 2011, \$15,700 was on behalf of foreign workers.

ABCC investigations in this field have resulted in close cooperation with DIAC and the AFP. The ABCC and DIAC entered into a Memorandum of Understanding designed to facilitate the exchange of information between the two agencies on labour agreements and Temporary Business (Long Stay) (Subclass 457) visa monitoring and compliance.

The ABCC joined the Anti-People Trafficking IDC on 31 March 2011.

### ABCC's Sham Contracting Inquiry in the building and construction industry

Contracting and labour-hire arrangements play a significant role the building and construction industry. The industry demands mobile and flexible labour arrangements that can adapt to rapidly changing economic conditions.

Sham contracting means the misrepresenting or disguising of an unlawful employment arrangement as a contract for service. The ABCC is particularly concerned about the incidence of sham contracting among migrant and CALD communities; many current ABCC investigations involve people from China or the Republic of Korea, particularly those involved in the finishing trades such as plastering and painting. Vulnerable workers are more likely to be adversely impacted by this unlawful conduct.

In November 2010 ABC Commissioner Johns announced the ABCC's Sham Contracting Inquiry and Roundtables.<sup>9</sup> A Discussion Paper was released in December 2010. The ABCC called for submissions by 7 March 2011 and received more than 20 responses from interested parties.

Roundtables were conducted in Canberra, Sydney, Melbourne, Perth and Brisbane. Approximately 150 people attended each Roundtable.

Information from written submissions, the roundtable consultations and information in the public domain will be analysed and will form the basis of a public report, which may recommend a range of initiatives. The report will be released in late 2011 and will contain recommendations on specific regulatory actions aimed at assisting victims of sham arrangements from CALD communities.

The ABCC commenced 136 sham contracting investigations during 2010–11. During the same period the ABCC was the applicant in three matters before the Federal Court alleging that the sham contracting provisions of the *Fair Work Act 2009* had been contravened.


## Labour trafficking fact sheets

In November 2010, the Minister for Home Affairs and Justice launched labour trafficking fact sheets for employees and employers which are a practical guide to provide employers and employees with the steps they can take to combat forced labour and people trafficking. The fact sheets were developed by a working group established by the National Roundtable on People Trafficking.

The employers' fact sheet lists the steps they can take to combat people trafficking, including promoting workplace awareness of practices constituting trafficking or forced labour, having a company policy listing workers' working conditions and their rights and responsibilities, using only reputable recruitment and employment agencies for contract labour and monitoring these agencies, and checking supply chains to ensure slave labour has not been used.

The employees' fact sheet lists the signs that may indicate that a fellow employee is the victim of trafficking. These include the person appearing to be servicing a debt to the employer or a recruitment service, being unable to quit at any time, not having access to their passport and other documents, living at the workplace, having less favourable working conditions than other employees, and being subjected to violence or threats.

<sup>9</sup> For more information, see <http://www.shamcontractinginquiry.gov.au/>.



The fact sheets are being translated into relevant languages: Tamil, Tagalog, Mandarin, Korean, Thai and Vietnamese.

The fact sheets are available at <http://www.ag.gov.au/PeopleTrafficking>.

## Employer sanctions legislation review

On 21 May 2010, the former Minister for Immigration and Citizenship, Senator the Hon Chris Evans, announced a review of the penalties and enforcement facing Australian employers who recruit illegal workers. He appointed independent legal expert Mr Stephen Howells to provide options for making the legislation more robust and strengthening the available penalties for businesses. As part of his review, Mr Howells consulted widely with Australian employers, union and industry representatives as well as Australian Government and State and Territory agencies. The Howells Review was finalised in March 2011 and Mr Howells's report was provided to the Minister for the Government's consideration.

# Building partnerships with the community

The Australian Government is committed to building stronger partnerships with the non-government sector.

## National Roundtable on People Trafficking

In partnership with his colleagues, the Minister for Home Affairs and Justice convened the third National Roundtable on People Trafficking on 24 November 2010. The purpose of the Roundtable is to provide an opportunity to reframe relationships between the Government and NGOs and to establish a consultative mechanism on trafficking issues, especially emerging issues.

The 2010 Roundtable was attended by representatives from a range of organisations, including Anti-Slavery Australia (formerly the Anti-Slavery Project); Australian Catholic Religious Against Trafficking in Humans (ACRATH); Australian Council for International Development; Australian Human Rights Commission; Australian Industry Group; Australian Women Lawyers; Australian Workers Union; Australian Red Cross; Construction, Forestry, Mining and Energy Union; Law Council of Australia; International Organization for Migration; Liquor, Hospitality and Miscellaneous Workers Union (now United Voice); Master Builders Association; Project Respect; Scarlet Alliance; Salvation Army; and Victim Support Australia, along with the member agencies of the IDC.

Ministers and members of the Roundtable discussed domestic and global achievements and opportunities for increased engagement between Roundtable members.

A major focus of the meeting was on trafficking for labour exploitation, with the Government announcing it would hold a public consultation on the criminal justice response to slavery and people trafficking, reparation and vulnerable witnesses, and would provide funding for projects that target labour trafficking and exploitation (see the previous chapter for further detail on these initiatives).

The public consultation on slavery and people trafficking coincided with the announcement that the Government would hold a public consultation on possible reforms to address the practices of forced and servile marriage.

The Minister for Home Affairs and Justice also announced that funding of \$1.4 million would be provided to Anti-Slavery Australia, ACRATH, Project Respect and Scarlet Alliance (see below in this chapter for further information).



Attendees at the 2010 National Roundtable on People Trafficking, including, front from left, Minister for the Status of Women, the Hon Kate Ellis MP, Minister for Immigration and Citizenship, the Hon Chris Bowen MP, and the Minister for Home Affairs and Justice, the Hon Brendan O'Connor MP.

The Minister for the Status of Women, the Hon Kate Ellis MP, told the Roundtable that providing safe, appropriate and sustainable housing for clients on the Support for Victims of People Trafficking Program is a significant challenge. In May 2011, FaHCSIA convened a meeting on housing to explore available options (see below). The meeting was held under the auspices of the Roundtable.

## National Roundtable Senior Officials' Meeting

At the Roundtable meeting held in November 2010, members agreed that a less formal meeting of the Roundtable should be held annually to supplement the Ministerial-level Roundtable.

The first Senior Officials' Meeting of the Roundtable took place in Melbourne on 19 May 2011. Members provided updates on their activities and achievements and the issues and challenges that might be confronting them. The Attorney-General's Department provided briefings on the outcomes of the two public consultations on the criminal justice response to slavery and trafficking and on forced and servile marriage and what the next steps might be, noting that many Roundtable members had provided submissions to one or both consultations.

The meeting discussed Australia's international engagement on people trafficking including through the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, the outcome of the AFP's Achieving Collaborative Awareness Exercise, recent work on trafficking-related victims of crime compensation, family reunification for those granted Witness Protection (Trafficking) (Permanent) visas and the translation of people trafficking-related materials into community languages. Scarlet Alliance and the Australian Institute of Criminology also provided a progress report on their joint research project on risks and protections related to trafficking as perceived by sex workers.

In November 2010, Roundtable members agreed to explore the option of an online community on trafficking. The Attorney-General's Department is currently developing an online resource.

## National Roundtable Meeting on Housing

In conjunction with the Senior Officials' Meeting in Melbourne, FaHCSIA convened a housing meeting to discuss the range of current housing options available. The workshop involved a number of Commonwealth and Victorian Government representatives and non-government housing providers and advocates as well as anti-trafficking NGOs.

Sourcing safe, secure, affordable and appropriate accommodation for trafficked people is difficult. The meeting was an opportunity for the Australian Red Cross, the provider of the Support for Victims of People Trafficking Program, to describe the challenges in obtaining appropriate and affordable accommodation for clients and to outline the housing currently available to clients. It enabled participants to share information about the availability and eligibility criteria of a range of crisis, short- and longer-term housing options and identified a number of potential accommodation options for the Australian Red Cross to investigate further.

## Practical support for the work of anti-trafficking NGOs

NGOs play a vital role in identifying and supporting people who have been trafficked, as well as raising community awareness of all forms of trafficking in Australia.

In October 2008, the Australian Government announced funding of \$1 million to support four Australian NGOs in their efforts to combat people trafficking. Anti-Slavery Australia, Project Respect, Scarlet Alliance and Australian Catholic Religious Against Trafficking in Humans (ACRATH) were each granted \$250,000 to provide vital outreach for trafficking victims and to conduct education and awareness-raising initiatives on people trafficking. Each works in collaboration with other groups and individuals, both government and non-government. At the 2010 Roundtable, the Minister for Home Affairs and Justice announced further funding for the four NGOs of \$1.4 million (\$350,000 each) to support their work in 2011-2014. The funding is provided from confiscated criminal assets under the *Proceeds of Crime Act 2002* (POCA).

Anti-Slavery Australia is the only specialist legal and policy centre in Australia focused on slavery, trafficking and extreme labour exploitation. It is part of the Faculty of Law at the University of Technology, Sydney. With its grant, Anti-Slavery Australia is developing an enhanced general community awareness campaign to raise awareness of all forms of labour trafficking in consultation with stakeholders, and is also providing trafficked people and people who are vulnerable to trafficking with information about their legal rights under Australian immigration and labour law.

Project Respect is a non-profit community organisation that aims to empower and support women in the sex industry, including women trafficked to Australia. Project Respect is using its grant to expand its program of outreach to women in the sex industry, and to provide information and referrals to services for health, housing, legal advice, drugs and alcohol, and other issues.

Scarlet Alliance is the Australian Sex Workers Association. Scarlet Alliance is working to enhance the capacity of peer educators in Australia to provide support to migrant sex workers to decrease their vulnerability to trafficking. As part of this project, Scarlet Alliance is working in partnership with Empower Foundation of Thailand.

ACRATH is committed to working towards the elimination of people trafficking in Australia, the Pacific and internationally. With its grant, ACRATH is working to raise awareness, share information and build networks nationally and globally. ACRATH also facilitates the provision of direct services to people trafficked into Australia.

Further information on the work of these NGOs in 2010–11 is available below.

### Anti-Slavery Australia (formerly the Anti-Slavery Project) – University of Technology, Sydney



Thanks to our POCA grant, this year the Anti-Slavery Australia team went far beyond our usual realm of the law and providing legal advice and representation to men and women who have been trafficked to Australia. This year we sat in the director's chair to become film and TV producers! Recognising that awareness about trafficking in Australia has focused on women in the sex industry

who have experienced serious exploitation, the grant to Anti-Slavery Australia was to raise awareness of all forms of trafficking in Australia. Together with Iris Pictures, we produced three community service announcements (CSAs) to be screened in cinemas across Australia in 2011 and on free-to-air and pay TV. The CSAs address trafficking into domestic servitude, agricultural work and the commercial hospitality industry.

We worked with a consultative group and members of the community to ensure the best approach was chosen and we thank ACRATH, the Attorney-General's Department, Asian Women at Work, Australian Institute of Criminology, Australian Red Cross, Fiona McLeod SC, Project Respect, Uniting Church, United Voice and World Vision for advice and consultation. The scripts for each of the CSAs have been translated into seven languages: Bahasa Malaysian, Chinese, Hindi, Korean, Tagalog, Thai and Vietnamese. We also made four longer films to raise awareness in the general Australian community, particularly among legal and health professionals and secondary students.

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A complete DVD containing the educational films, CSAs and translations is available from Anti-Slavery Australia or on our website, <http://www.antislavery.org.au/>.

Anti-Slavery Australia has also established a new community network, the Sydney Trafficking Response Network, to bring together individuals and organisations to develop best-practice support of trafficked people and the sound development of policy initiatives.

Look out for the inaugural Anti-Slavery Australia awards recognising individuals and organisations which have made a significant contribution to the development or implementation of anti-trafficking initiatives in Australia. As with everything we do, are very grateful to the many volunteers who contribute so effectively and whole-heartedly to our shared work.

### *Anti-Slavery Australia legal service highlights*

During 2010–11 Anti-Slavery Australia represented more than 70 clients resulting in 39 grants of permanent residence to people who have been trafficked in Australia. The visas have been Witness Protection (Trafficking) (Permanent) visas and in some cases, the grant of a protection visa on the basis of the Refugee Convention.

In the past year we have lodged 13 applications for victims' compensation in NSW and Victoria and we have partnered with a pro bono legal firm to lodge a further 12 applications. This represents a total of 25 applications for financial compensation under statutory victims' compensation schemes.

This year our research focus has been on forced marriage and we are now exploring the role of deceptive recruitment in labour trafficking.



Minister for Home Affairs and Justice, the Hon Brendan O'Connor MP, with members of Anti-Slavery Australia, from left, Ruth Chandler, Frances Simmons, Director Jennifer Burn and Joanne Pugsley.

## ACRATH – Australian Catholic Religious Against Trafficking in Humans



During the past year ACRATH's work has been greatly assisted and enhanced by its increasing collaboration with the Australian Government and with other anti-trafficking NGOs. We were delighted when Minister O'Connor invited ACRATH to mark the International Day commemorating the end of the transatlantic slave trade in March 2011 by organising a community forum (see below). We are also

encouraged by the progress made by the anti-trafficking roundtable discussions, especially the most recent one on housing.

ACRATH is now active in five States; a South Australian ACRATH group began in early 2011. We have increased the number of presentations that we have given to schools, universities and church communities. We have also worked to improve the efficacy of our website. An ACRATH member now manages our site and uploads material fortnightly. ACRATH has called on our contacts, both in person and in cyberspace, to take action to stop people trafficking and to support people who have been trafficked.

ACRATH has worked to ensure that trafficked people are able to access their human rights here in Australia. We have offered assistance to trafficked women and we are currently advocating for an improvement in accommodation for trafficked people.

We are engaged in a process of working with other NGOs and law firms on a project to assist trafficked people to access compensation for the crime committed against them. We have begun building on the strengths of our global congregational networks, and have worked effectively at collaborations with Australian NGOs.



Members of ACRATH meet with the Minister for the Status of Women, the Hon Kate Ellis MP. From left are Christine Carolan, Sister Louise Cleary, Minister Ellis, Sister Carole McDonald, Sister Noelene Simmons and Sister Ann Laidlaw.



National chair of ACRATH Sister Louise Cleary addresses a public meeting in Melbourne.

## Project Respect



Project Respect is a non-profit community-based organisation that aims to empower and support women in the sex industry, including women trafficked to Australia. Project Respect was fortunate to be able to use the grant provided from the Proceeds of Crime Act to expand its program of outreach to women in the sex industry.

In 2010–11, this grant allowed Project Respect to:

- Employ two workers with relevant qualifications; one of whom is bilingual (Mandarin/English). Project Respect also worked with a number of skilled bilingual volunteers from Thai and Korean backgrounds.
- Provide outreach to 42 legal brothels within Victoria and supply each with information kits containing details on trafficking and other concerns for women in the industry (in a number of languages).
- Provide more than 734 hours of individual support to women in the sex industry.
- Refer women supported through this project to more than 60 other specialist service providers (in line with their support needs).
- Formalise the active involvement of a number of women from the sex industry in the organisation's planning and service delivery, including on the Committee of Management, staff team and volunteers.
- Continue to encourage peer support and education through weekly community lunches and three annual weekends away.
- Provide training and information sessions to ensure that other services are aware of issues in the sex industry (including trafficking) and are able to support trafficked women and women in the sex industry appropriately.

The work that Project Respect was able to carry out meant it gained invaluable information and insight into trafficking in the sex industry in Victoria.

## Scarlet Alliance



The Scarlet Alliance, Australian Sex Workers Association Migration Pilot Project, which commenced in the latter half of 2009, has continued and grown throughout 2010–11.

The meetings we held in the first stages of the project with sex worker peer educators and migrant sex workers have informed our ongoing work. The outcome of the consultations was that much needed to be done in providing support and services for migrant sex workers.

Principal to this was the lack of resources in appropriate languages. The project has continued to work on producing these resources. These have been made available as PDFs for peer educators to print out and hand out when conducting outreach or are able to be accessed online at the Scarlet Alliance website. The project has created three portals on the website for resources in Chinese, Korean and Thai with in-language navigation tabs so sex workers who speak a little or no English can readily access and navigate the site. With the aim of improving peer education to migrant sex workers, the migration project supports the work of peer educators through interpreting and translation support and provision of relevant resources and information.

To inform our work from a solid evidence base and to ensure the project is truly representative and continues to meet the actual needs of migrant sex workers, we hold regular steering committee meetings. The steering committee is comprised of sex workers from Chinese, Korean and Thai-language backgrounds and CALD peer educators from State and Territory sex worker organisations and sex worker representatives from Zi Teng (Hong Kong) and Empower Foundation (Thailand).

In 2009–11 Scarlet Alliance, in partnership with the Australian Institute of Criminology, has conducted a research project to address the gap in primary research on sex workers' experiences in Australia, exploring any differences, if they exist, between migrant and non-migrant sex workers that is evidenced in demographic data, workplace conditions and access to services and information. The research also looked at risk and protective factors around more general exploitation within the workplace for migrant and non-migrant sex workers and examined the migration experiences of migrant sex workers in Australia, including possible vulnerabilities to and protection from trafficking.

The project has worked successfully in shifting government and anti-trafficking community sector understandings of the nature of the sex industry and migration and the general absence of trafficking from the sex industry in Australia. This has entailed regular networking, consultation and individual and systemic advocacy with Australian Government agencies, NGOs and community organisations on sex work and migration issues.

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As well as participation on the National Roundtable on People Trafficking, project staff have provided training to stakeholders at a variety of forums, including to the Australian Red Cross's Support for Victims of People Trafficking Program staff, to newly recruited members of the Human Trafficking Team at the Australian Federal Police in Canberra, at universities and at national conferences. In addition, the project has been involved in lobbying for equitable access to visas and translated information for sex workers travelling to Australia, input into submissions to government and responding to negative media around migrant sex workers and inaccurate reporting on people trafficking issues.



Scarlet Alliance moved into new headquarters in Redfern in Sydney.

## Guidelines for NGOs Working with Trafficked People

In November 2010, the Minister for Home Affairs and Justice released the second edition of the national *Guidelines for NGOs Working with Trafficked People*. The Guidelines, which are a collaborative product of the National Roundtable on People Trafficking, were updated to take into account significant changes to the Support for Victims of People Trafficking Program and the People Trafficking Visa Framework which came into effect on 1 July 2009.

The Guidelines are based on 10 principles for working safely and ethically with the victims of trafficking:

1. Understand and protect the rights of trafficked people
2. Always act to protect people's safety
3. Negotiate informed consent
4. Provide appropriate referral information

5. Protect privacy and confidentiality
6. Provide culturally appropriate services
7. Provide professional and ethical services
8. Know how to respond to subpoenas and other requests for information
9. Know how to support witnesses in court proceedings
10. Recognise families and children have special needs.

The 48-page revised Guidelines are being translated into Chinese, Korean, Tagalog, Thai and Vietnamese and these translated editions will be available in late 2011.

The Guidelines are available at [www.ag.gov.au/peopletrafficking](http://www.ag.gov.au/peopletrafficking).

## Raising community awareness

On 17 July 2011, the Minister for the Status of Women announced funding of \$126,960 to enable the Australian Red Cross to develop and deliver a training package for community service providers to better understand the complex needs of victims of people trafficking and how to best support them. Information resources will also be developed to complement the training.

The aim of the training is to help mainstream services to meet the individual needs of trafficked people. This will include housing and homelessness, employment and services to assist with mental and physical health and well-being.

It is anticipated that the Australian Red Cross will run at least 50 training sessions for community service providers in a number of capital city and regional locations. The locations of these sessions have been determined based on the number of people referred to the Support for Victims of People Trafficking Program and include Sydney, Melbourne, Brisbane, Adelaide, Gold Coast and Canberra. Two regional locations are yet to be identified.

From May to August 2011, the Australian Institute of Criminology (AIC) held a series of information sessions about people trafficking around Australia, including Mildura, Perth, Kalgoorlie, Adelaide, Hobart and Darwin. This was a response to AIC research highlighting a lack of recognition in the community of trafficking situations, and the conflation of people smuggling and people trafficking. These sessions aimed to raise awareness of the differences between trafficking and smuggling, as well as the difference between bad working conditions and criminal exploitation involving sexual exploitation, forced labour, debt bondage and slavery.

During 2010–11 the Attorney-General's Department continued to work with Universal McCann, the Australian Government's master media buying agency, to provide pro bono advertising in Australia's newspapers. The small "public notice"-style advertisements were aimed at clients of adult services and encouraged them to call an AFP hotline. They have been running in the personal services sections of metropolitan and suburban newspapers since January 2006. By the end of December 2010, the media support for these advertisements was worth approximately \$638,139 – with \$91,860 in value across metropolitan and suburban titles achieved between July and December 2010. Additional

coverage was received between January and June 2011, however figures for the value of this coverage are unavailable.

## International Day of Remembrance of the Victims of Slavery

In December 2007, the United Nations General Assembly designated March 25 as the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade. The International Day of Remembrance was first observed in 2008 to mark the 200th anniversary of the abolition of the slave trade. The British Parliament passed its Slave Trade Act on that date in 1807. While it was established to remember the lives of Africans who were forced into slavery in the Americas, International Remembrance Day is an opportunity to highlight modern forms of slavery such as servitude, debt bondage and people trafficking.

The Minister for Home Affairs and Justice marked International Day of Remembrance of the Victims of Slavery 2011 by calling for expressions of interest (EOI) for the labour exploitation project funding detailed earlier in this report. He opened the EOI process at a community forum hosted by ACRATH at the Christian Brothers Treacy Centre in Parkville in Melbourne and attended by a wide cross-section of NGOs and others involved in anti-people trafficking work. The Minister outlined the attention the Australian Government is giving to labour trafficking and labour exploitation because Australian authorities are now identifying an increasing number of trafficking victims in industries other than the sex industry.

Around the world, trafficked men, women and children are exploited in a range of industries such as hospitality, construction, forestry, agriculture, mining and fishing, along with providing domestic and sweatshop labour. The Minister said that NGOs, unions and industry bodies have an important role to play in identifying and supporting people who have been exploited, as well as raising community awareness of all forms of trafficking in Australia.

Further information on the outcome of the EOI for projects which combat labour exploitation is available earlier in the report.

## World Vision Australia panel discussion and postcards



World Vision Australia hosted a panel discussion on “Human trafficking the unfair trade” on 21 February 2011 at Parliament House. The forum highlighted World Vision’s anti-trafficking work in the Asia-Pacific region and was addressed by the Minister for Home Affairs and Justice, World Vision Australia CEO Tim Costello, trafficking expert and former UN adviser

Dr Anne Gallagher, and World Vision’s Ambassador for Trafficking, actor Damian Walshe-Howling. All spoke about child slavery and the ways in which everyone can help to reduce the crime.

World Vision Australia ran an electronic postcard campaign in the lead-up to Christmas 2010 in which more than 110,000 Australians asked the Australian Government to “Give Child Labour the Sack”. The campaign was designed to draw attention to the issue of labour exploitation in the products Australian consumers buy. Members of World Vision’s youth wing, Vision Generation, delivered the names of those who filled out postcards to the Minister for Foreign Affairs, the Hon Kevin Rudd MP, on the lawns in front of Parliament House earlier on 21 February. Give Child Labour the Sack is part of World Vision’s Don’t Trade Lives campaign against people trafficking and slavery, particularly in chocolate and coffee production.

The postcards said individuals, governments and businesses directly and indirectly fuel the crimes of people trafficking and slavery – including the worst forms of child labour – and have a role to play in combating it. The sender pledges to be a more ethical consumer and calls on the Australian Government to appoint an ambassador for trafficking; encourage “destination countries” to engage in anti-trafficking and migrant labour protection initiatives; continue to fund innovative programs in the areas of prevention, protection and criminal justice responses; help to reduce the market in Australia for products produced by child and trafficked labour; and encourage Australian businesses to have transparent, traceable and independently verifiable supply chains free from labour exploitation.

Mr Rudd told journalists: “If you have seen little kids who are obviously being exploited, if you go and you hear about and you see reports about workshops which depend on bonded labour of children under the age of 12, 10, eight and younger, and still reports of slavery itself – this is an abomination in the 21st-century world.”

He said the Government was providing \$7.5 million for Project Childhood in the Mekong Sub-region. Project Childhood was developed by AusAID (detailed later in this report) with the prevention work provided by World Vision.

World Vision will again run the Give Child Labour the Sack postcard campaign in the lead-up to Christmas 2011.

The International Labour Organization estimates that 115 million children are trapped in the worst forms of child labour including through slavery, trafficking, debt bondage and forced or compulsory labour for armed conflict. Consumers are often unaware that trafficked and exploited labour has been used to produce the goods they buy.

The Australian Government has taken action to improve corporate social responsibility in a number of ways, including through adherence to the OECD Guidelines for Multinational Enterprises, support for the UN Global Compact, and the implementation of domestic criminal provisions for certain human rights violations relating to corporations – including trafficking – with extra-territorial jurisdiction. Under the Commonwealth Procurement Guidelines, Government agencies are required not to contract with suppliers that are known to engage in exploitative labour practices, such as slavery or people trafficking.

# Building partnerships in our region and beyond

Australia continues to take an active role in international efforts to combat people trafficking.

## Bali Process

In March 2011, the Fourth Bali Process Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime – which was co-chaired by the Minister for Foreign Affairs and his Indonesian counterpart, Dr Marty Natalegawa – delivered strong outcomes on people trafficking. Ministers agreed to reinvigorate Bali Process cooperation on practical measures and activities aimed at increasing the capacity of countries to address people trafficking.

They agreed to enhance practical measures aimed at strengthening the capacity of Bali Process members to address people trafficking, particularly in the areas of victim assistance and protection. Ministers also agreed to a regional cooperation framework under which members are encouraged to cooperate in putting in place disincentives for trafficking.

In line with these commitments, Australia and Indonesia will co-host a technical experts' meeting in early 2012 with officials from the region to consider practical measures across the spectrum of the people trafficking response, including prevention, protection of and assistance to victims, and prosecution of perpetrators of this crime. The International Organization for Migration is also planning a Bali Process workshop to consider issues related to the assistance and repatriation of trafficking victims.

## United Nations

Australia continued to actively engage on anti-trafficking issues at UN Human Rights Council (HRC) sessions, in the UN General Assembly and through the UN HRC's Universal Periodic Review process. Australia co-sponsored a resolution at the 65th session of the UN General Assembly aimed at strengthening the efforts of member States to combat trafficking in women and girls (Resolution 65/190).

Australia continues to support the work of the UN Special Rapporteur on trafficking in persons, especially in women and children, Ms Joy Ngozi Ezeilo, and is looking forward to her visit in November 2011. Australia engaged with the Special Rapporteur during the Interactive Dialogue on trafficking at the 17th session of the HRC.

At the HRC's Universal Periodic Review, Australia continues to raise the issue of people trafficking, noting both progress and concerns within UN member States. During the UPR's 9th to 11th sessions, which took place during the reporting period, Australia made reference to people trafficking in its interventions during the reviews of human rights in Estonia, Lebanon, Mongolia, Denmark, Nepal, Belgium, Namibia, Niger, Liberia and Malawi.

On 30 July 2010, the UN General Assembly adopted the UN Global Plan of Action to Combat Trafficking in Persons to urge governments worldwide to take coordinated and consistent measures to try to defeat the scourge. The Plan calls for integrating the fight against people trafficking into the UN's broader programs to boost development and strengthen security around the world. Importantly, the Plan calls for universal ratification of the international instruments used in the fight against people trafficking: the *United Nations Convention against Transnational Organized Crime* (UNTOC) and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Trafficking Protocol). It also calls for the setting up of a UN voluntary trust fund for victims of trafficking, especially women and children. The UN estimates that more than 2.4 million people are currently being exploited as victims of people trafficking.

## Conference of Parties to the United Nations Convention against Transnational Organized Crime (UNTOC)

Australia continued to call for universal adoption of the UNTOC, the key international instrument used to combat people trafficking. At the fifth Conference of the Parties (COP) to the UNTOC in Vienna in October 2010 – which marked the 10<sup>th</sup> anniversary of the UNTOC – Australia supported a resolution urging States to ratify the UNTOC's supplementary Trafficking Protocol and welcomed the adoption of the UN General Assembly resolution creating the Global Plan of Action to Combat Trafficking in Persons. Australia also supported the ongoing work of the UNTOC Working Group on Trafficking in Persons in progressing and improving implementation of the Trafficking Protocol. It will participate in the next Working Group meeting in Vienna in October 2011. At 30 June 2011, 162 countries had ratified the UNTOC and 146 countries had ratified the Trafficking Protocol. Of the countries in the Asia-Pacific region, only 22 countries were parties to the UNTOC and 13 to the Trafficking Protocol.

## UN Human Rights Council's Universal Periodic Review of Australia

Australia underwent its first UN HRC Universal Periodic Review (UPR) of its human rights record in 2010–11. Established by the UN in 2006, the UPR examines the human rights records of all 193 member States once every four years and is designed to encourage countries to comply with their international human rights obligations. Australia submitted

its national report for the UPR to the UN on 18 October 2010. An Australian Government delegation appeared before the HRC at the 10th UPR Session in Geneva on 27 January 2011 and responded to questions from other countries about Australia's human rights record. Australia deferred consideration of the 145 recommendations made to it until the June 2011 session of the HRC so that consultation with Australian Government agencies, State and Territory governments, NGOs and the public could take place.

The Australian Government lodged its response to the 145 recommendations on 27 May 2011. It accepted in full or in part 137, or more than 90 per cent, of the recommendations. The UPR report on Australia was formally adopted on 8 June 2011 in Geneva. The UPR recommendations that the Government has accepted will inform the development of an updated National Human Rights Action Plan. Australia will provide the HRC with an interim report ahead of its next UPR appearance outlining how the accepted recommendations are being implemented.

The UPR made five recommendations relevant to people trafficking, all of which were accepted by Australia. The recommendations called on Australia to continue or strengthen work it is already doing to combat people trafficking:

- Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and people trafficking in a comprehensive and sustainable manner, bearing in mind international human rights and humanitarian principles (Thailand)
- Strengthen further its commitment to the Bali Process as the principal mechanism in the region which deals with people smuggling and trafficking (Indonesia)
- Consider using the OHCHR's (Office of the High Commissioner for Human Rights) *Recommended Principles and Guidelines on Human Rights and Human Trafficking* as a guide in its anti-trafficking measures (Philippines)
- Increase its efforts to fight human trafficking (Azerbaijan), and
- Increase efforts to criminally prosecute trafficking offenders, including employers and labour recruiters who subject migrant workers to debt bondage and involuntary servitude (United States).

Australia rejected a recommendation that it become a party to the *International Convention on the Rights of Migrant Workers* as it views the existing protections in place for migrant workers as adequate. The rights of migrants and temporary entrants to Australia are protected under domestic and international law, including the human rights conventions to which Australia is already a party. In addition, Australia has strong legislative protections that apply to all workers.

Further information on the UPR is available on the Attorney-General's Department website: [http://www.ag.gov.au/www/agd/agd.nsf/Page/Human\\_rights\\_and\\_anti-discriminationInternational\\_Human\\_Rights](http://www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationInternational_Human_Rights).

## UN Committee on the Elimination of Discrimination against Women

Australia appeared before the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) on 20 July 2010 at the UN headquarters in New York to discuss Australia's CEDAW report. Following Australia's appearance, the CEDAW Committee outlined its principal areas of concern and recommendations regarding Australia's implementation of CEDAW in a set of concluding observations.

Regarding trafficking, the CEDAW Committee recommended that Australia:

- adopt a human rights framework in the National Plan to Eradicate Trafficking in Persons
- improve coordination among government agencies involved in anti-trafficking
- undertake a formal review on the return of trafficked persons and provide repatriation guidelines
- review the provision of accommodation for trafficked women
- undertake an impact assessment of the Bali Process, and
- evaluate and monitor the ARTIP (Asia Regional Trafficking in Persons) Project and continue assistance to ASEAN (Association of Southeast Asian Nations) States to improve investigation and judicial process.

The excerpt below details the Committee's observations on trafficking in full.

### Trafficking

30. The Committee commends the State party for the measures it has adopted in order to combat trafficking in human beings and the exploitation of women, including the implementation of a multi-million dollar National Plan to Eradicate Trafficking in Persons mirroring the objectives of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons*. It furthermore notes with satisfaction that, in response to the Committee's 2006 recommendations, the State party provides a more humanitarian response to suspected victims of trafficking through the Support for Victims of People Trafficking Programme and the People Trafficking Visa Framework since 1 July 2009. The Committee also notes the efforts made by the State party internationally and regionally to address the problem of trafficking in human beings across borders.

*Continued next page*

31. The Committee recommends that the State party adopt a human rights framework in its revised Action Plan and consider complementary approaches to the current criminal justice approach. The Committee recommends that the State party take steps to improve coordination among government agencies involved in anti-trafficking for its full cycle of work. The Committee further recommends that the State party undertake a formal review on the return and reintegration of trafficking victims and develop guidelines for repatriation for police and other relevant personnel. The Committee also recommends that the State party review the provision of accommodation for women trafficked into Australia with a view to offering more options and reduce stress on their victims. The Committee requests the State party to include in its next report information on civil proceedings for provision of access to compensation for victims, the number of cases and the amount of compensation awarded. The Committee urges the State party to undertake an impact assessment of the Bali Process in order to ensure the sustainability of its networking among the countries under this project. The State party is also encouraged to evaluate and monitor the Asia Regional Trafficking in Persons Project (ARTIP) and to continue its assistance to member states of ASEAN in order to improve investigation and judicial process in cases of trafficking in human beings.

## Australia's Ambassador for People Smuggling Issues

Australia's Ambassador for People Smuggling Issues (currently Mr James Larsen) continues to work closely with foreign governments and international organisations through the Bali Process to promote strong responses to people smuggling and people trafficking. Throughout the year, the Ambassador has co-chaired with his Indonesian counterpart a series of officials-level meetings of the Bali Process to address these issues.

## Building regional capability

The drivers of people trafficking are many and complex. In our region there is a strong demand for cheap or easily exploited labour. There is also a vast supply of people seeking an income to meet their most basic needs, and others seeking opportunities to improve their lives or living standards. These conditions create great potential for trafficking and other forms of exploitation. Global financial downturns and economic recessions further increase the vulnerability of such people to exploitation.

The International Labour Organization (ILO) estimates that at any one time there are likely to be around 1.3 million trafficking victims in the Asia-Pacific region. Victims of trafficking for sexual or labour exploitation include women, children and men, but current research suggests that women and children make up the majority of victims. Trafficking victims from

East Asia have been identified in many parts of the world, but the United Nations Office on Drugs and Crime (UNODC) has found that a significant amount of trafficking occurs within East Asia itself.

An effective response to combating trafficking and other forms of exploitation requires changing the conditions that allow trafficking and labour exploitation to flourish. Changing the conditions of poverty, underemployment and unemployment, corruption, gender inequality, discriminatory cultural norms, lack of access to education, and social and political instability will reduce the vulnerability of people and communities to trafficking and other forms of exploitation. Achieving these preventive measures takes time, but they are more sustainable and provide multiple life-changing benefits.

In 2011–12, Australia will provide approximately \$4.8 billion in official development assistance, most of which will be managed by AusAID. The Australian aid program addresses the conditions listed above largely through its five strategic goals:

- saving lives
- promoting opportunities for all
- sustainable economic development
- effective governance, and
- humanitarian and disaster response.

Progress towards these goals will create better livelihood options, increase education and awareness, empower women and promote the rights of children.

Developing, enforcing and ensuring wide public awareness of laws and regulations to prevent criminal and unscrupulous practices by traffickers, recruiters and employers are also important ways to change the conditions that allow trafficking and exploitation.

The Australian aid program focuses on the Asia-Pacific region and the total value of the program in East Asia in 2011–12 will be \$1.2 billion.

AusAID also funds a number of specific anti-trafficking activities to promote change and to assist victims, outlined below.

### Asia Regional Trafficking in Persons (ARTIP) Project

ARTIP (\$21 million; 2006–11) aims to strengthen the criminal justice system response to trafficking and improve cross-border cooperation in South-East Asia, primarily through training and capacity building for law enforcement officers, judges and prosecutors, and also through improving anti-people trafficking policy, legal, research and outreach capability in the region.

ARTIP builds on an earlier regional aid initiative, the \$11 million Asia Regional Cooperation to Prevent People Trafficking Project (2003-06), which piloted the approach of strengthening the criminal justice system. ARTIP partner countries are Cambodia, Indonesia, Laos, Burma, the Philippines, Thailand and Vietnam. ARTIP also works closely with ASEAN and engages with all ASEAN countries at a regional level.

ARTIP achievements to June 2011 include providing training and capacity building to more than 6000 law enforcement officials, judges and prosecutors since 2006; developing standard operating procedures for use by police in all ASEAN countries; assisting cross-border cooperation on trafficking cases; better treatment of victims; drafting or revising anti-trafficking legislation for partner governments; and the development with the UNODC of the world-first *ASEAN Trafficking in Persons Handbook on International Legal Cooperation*.

### Tripartite Action to Protect Migrants in the Greater Mekong Sub-region from Labour Exploitation (TRIANGLE)

TRIANGLE (\$10.5 million; 2010–14), a five-year project being implemented by the ILO, aims to reduce the exploitation of vulnerable migrant workers and their families in the Greater Mekong Sub-region. The project is working in Cambodia, southern China, Laos, Thailand and Vietnam, with Malaysia as a destination country. It will strengthen recruitment and labour protection policies and their implementation, promote legal and safe migration, increase community awareness of exploitative practices, and provide better support services for migrant workers. The ILO expects the project to help 20,000 documented and undocumented migrant workers to avoid entering, or to withdraw from, exploitative working conditions. The project commenced in mid-2010.

### Project Childhood

AusAID developed Project Childhood (\$7.5 million; 2010–14) as a five-year program to extend beyond the small-scale awareness-raising and training projects on child sex tourism funded since 1994. The project is informed by the ASEAN five-year Transition Plan for a Sustainable Response to Child Sex Tourism in South-East Asia, funded by AusAID. Project Childhood currently consists of a prevention pillar and a protection pillar to help combat child sex tourism in the Mekong Sub-region (Cambodia, Laos, Thailand and Vietnam). The prevention pillar is being implemented by the NGO World Vision Australia. The protection pillar is designed to strengthen the law enforcement response to the commercial sexual exploitation of children, and is being implemented by the UNODC, working with Interpol. Work under this pillar commenced in mid-2010.

### MTV EXIT Campaign

AusAID partnered with USAID to support music television network MTV's End Trafficking and Exploitation (EXIT) Campaign providing \$800,000 from March to June 2010. AusAID has committed an additional \$1.95 million to support the work of the MTV Exit Foundation in 2011 and 2012. Activities include six youth forums, road shows and awareness-raising concerts in the trafficking markets of Thailand, the Philippines, Cambodia, Vietnam, Indonesia and Malaysia. Twelve localised documentaries on people trafficking will be launched in Indonesia, Thailand, Vietnam, the Philippines, Cambodia, Laos, Burma, China, Taiwan, Japan, Korea and Malaysia. The aim of the campaign is to raise awareness, shift attitudes and behaviour and assist the prevention of people trafficking.



South-East Asian youth are most vulnerable to trafficking: Fans at the MTV Exit concert, Ho Chi Minh City, 2010.

### Prevention, return and reintegration of victims in our region

AusAID continues to support a range of NGO projects that aim to prevent trafficking, assist victims and improve child protection. This includes entering into a long-term partnership agreement with UNICEF (2008–15) and support for Save the Children and Child Fund projects promoting child rights, protection and advocacy. Other projects include World Vision's Assistance, Support and Protection for Migrant and Trafficked Women and Children project in the Burma-Thailand border areas and the Mekong Delta Regional Trafficking Strategy 2, which focuses on child trafficking.

# Bangkok Post

## Fostering the next generation of activists

*An MTV campaign raises human-trafficking awareness among Thai youth*

Musicians, media personalities and the next generation of creative youth gathered in Chiang Mai last week to shed light on human trafficking and related human rights issues. MTV EXIT's (End Exploitation and Trafficking) latest campaign stop included a forum for creative, activism-minded youth from all over Thailand and a free concert for 20,000 screaming fans headlined by Korean pop act Super Junior M.

Starting on Wednesday, June 22, 40 young people aged 14 to 23 convened in Chiang Mai to receive media and public-speaking training. The youth were selected for their involvement in community organisations around Thailand. By educating them in media techniques, MTV EXIT hopes to foster the next generation of activists.

"I had an opportunity to learn about communications, public speaking and the issues in my community," said Pas, a 16-year-old girl from Ratchaburi, speaking through a translator at the closing ceremony for the forum.

"When I get home, my friends and I will start two campaigns, one for young people and one for our parents. For the youth, we will organise a camp where they can learn about the issues. For the parents, it will be an awareness campaign."

Many of the children who took part in the forum planned to start similar campaigns upon returning to their home provinces.

The forum culminated with a screening of five PSA-style short films created by the youth. The shorts dramatised some of the issues around human trafficking, and called for the public to speak out anytime human rights abuses are encountered.

"Some of these kids had never used cameras before. It was incredible to see the quality of what they came up with," said Simon Golf, executive director of MTV EXIT. The organisation will keep in touch with each of the participants and provide support wherever possible for the campaigns started by the youth. Similar forums will be held in the next two years in other countries around Southeast Asia including Singapore, Malaysia and Cambodia, said Golf.

While MTV EXIT hopes to see long term dividends from educating tomorrow's activists, they also opted for a more immediate, direct approach with Saturday's massive outdoor concert at Chiang Mai's 700th Anniversary Stadium.

Thai groups ETC, Slot Machine, Thaitanium and Southside Phuket appeared, as well as American outfit Sargent Avenue. Between sets, video presentations about human trafficking and exploitation were played to further hammer home the concert's overlying message.

...

The day after the concert, Super Junior M and [Australian singer] Kate Miller-Heidke spoke to the media about their involvement in the campaign

“Human trafficking is a huge issue in Thailand and across Asia. Some people don’t realise how big of an issue it is,” said Eunhyuk, one of the members of Super Junior M.

“Before we got involved, I myself didn’t know much about it. Now I’ve had an opportunity to learn. This problem is bigger and bigger every day,” he said.

The artist had an opportunity to visit a nearby camp for children who had been rescued from exploitative circumstances.

“We had a chance to speak to two kids who live at the shelter. One had been there 2 years, one 8 years. Both of them, their parents are dead and they have no memory of their parents. They both want to be pastry chefs and work in a hotel. These kids have a bright future, and we are very proud of them,” said Eunhyuk.

“In the face of the tragic stories you hear and the traumatic things that all the kids have been through, when you go to one of those shelters, I’m always struck by the resilience of the kids and the joy that emanates from them,” said Miller-Heidke. She hoped to help erase the stigma toward victims of human rights violations.

“Just speaking about the issue helps. Hopefully over time it will help to take away from the stigma of people who have to return to their villages only to find themselves outcasts because of what they’ve been through,” she said.

Seeing the situation first hand also gave Miller-Heidke a chance to reflect on her own situation, and that of everyone fortunate enough not to be a victim of such crimes.

“You realise how much you take for granted. It’s a reminder of how lucky I am to be free,” she said.

While human trafficking and exploitation are not issues anyone expects to see disappear overnight, MTV EXIT hopes that events like the one in Chiang Mai can start to build a movement towards larger scale, systemic change.

“Music is really an incredible force for change and this concert illustrated that,” said Matt Love, MTV EXITs campaign director. “Tonight, over 20,000 people attended this concert in solidarity to make a statement that we all have to join together to end modern day slavery.”

*Edited online article from the Bangkok Post newspaper, published 29 June 2011*

## Preventing people trafficking to Australia

DIAC has three positions at overseas posts which are focused on preventing people trafficking at its source: one in Bangkok since 2003, with two others since 2008, initially in Manila and Beijing, the latter moving to Guangzhou in January 2010. These positions are part of DIAC's overseas compliance network and provide regional coverage. DIAC's overseas compliance staff are known as "integrity officers", with the three specialised positions known as the Senior Migration Officers (Integrity) (Trafficking), or SMOITs.

The SMOITs vet visa applications for evidence of fraud that may indicate potential trafficking and analyse trends in visa processing, including:

- applicants' travel patterns
- use of migration agents, and
- the visa classes being targeted by trafficking organisations.

The SMOITs work closely with the AFP to identify trafficking links with Australia and liaise with local government and non-government agencies to identify ways to prevent trafficking.

SMOITs are part of a larger network of compliance officers attached to key overseas posts to identify, respond to and counter immigration fraud and malpractice. They also work closely with local police and immigration officials to combat people smuggling, people trafficking and irregular migration.

DIAC also undertakes capacity-building activities and provides technical assistance to a number of countries to support their efforts to address irregular migration. In particular, there is a strong focus on people trafficking and people smuggling.

DIAC has continued its targeted capacity-building programs with immigration agencies in the Middle East, Asia and the Pacific (as noted in the 2009–10 report). These programs include:

- document examination equipment and training provided to front-line immigration officers at airports and land borders. The training and equipment have helped to deter irregular migration by enabling more officers to confidently and accurately detect fraudulent travel documentation at borders
- facial image comparison training to enhance agencies' ability to prevent irregular movement by developing immigration officers' skills to detect fraudulent use of travel documents by impostors
- intelligence analysis capacity-building activities to boost agencies' capacity to capture data and to analyse and report on trends in irregular migration through the region, and
- immigration investigations training to strengthen officers' capacity to investigate criminal activity related to irregular migration.

DIAC also builds capacity in the region through other activities, including border assessments; alert systems design and implementation; passport systems; identity verification; legal and regulatory frameworks; and protection frameworks.

DIAC works closely with other whole-of-government stakeholders on the Bali Process for People Smuggling, People Trafficking and Related Transnational Crime. DIAC undertakes practical measures and activities aimed at increasing the capacity of States to address people smuggling and people trafficking through the adoption of a regional cooperative framework and a range of immigration-related workshops, research projects and information sharing.

## Building legal capacity in our region

In 2010–11, the International Legal Assistance Branch (ILAB) in the Attorney-General's Department has continued to undertake several legal assistance projects related to people trafficking. This involved working with counterparts in the region on measures to improve legal frameworks to combat people trafficking, and on related issues. The projects included:

- ongoing work with the Cambodian Government on legislation to implement obligations under the Trafficking Protocol
- providing a significant technical legal assistance program in the Asia-Pacific region in which AGD works with countries on “following the money” from transnational crimes including people trafficking. This includes strengthening anti-money laundering and proceeds of crime frameworks in order to target people trafficking and associated money laundering and confiscate the proceeds of people trafficking offences
- continuing to assist Pacific Island countries including Cook Islands, Nauru and Samoa with the reform of criminal legislation, which includes strengthening provisions on people trafficking and people smuggling
- cooperating with authorities in Maldives on options for legislating against people smuggling and trafficking, and
- ongoing participation with the Malaysian Attorney-General's Chambers in the Malaysia-Australia Bilateral Technical Legal Working Group on People Smuggling and Trafficking, which has met regularly since December 2009 to discuss technical legal issues in legislating effectively against people smuggling and trafficking.

ILAB works collaboratively with other agencies such as DIAC and AusAID to ensure that our anti-people trafficking capacity-building initiatives are coordinated to maximise the effectiveness of the Australian Government's investment in regional capacity building on people trafficking.

## Trafficking in children for adoption

A commitment of Australia as a contracting State under the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* is to prevent the abduction, the sale of, or traffic in children for the purposes of intercountry adoption through the implementation and observance of Convention safeguards. The *Guide to Good Practice* to the Convention defines the term “trafficking” as referring to the payment of money or other compensation to facilitate the illegal movement of children for the purposes of illegal

adoption or other forms of exploitation.<sup>10</sup> While there are differing interpretations of the term “trafficking” within intercountry adoption and broader international frameworks, malpractice in adoption is clearly inconsistent with the principles of the Hague Convention.

In 2010–11, the Attorney-General’s Department, as the Australian Central Authority under the Hague Convention, has continued in its endeavours to address child trafficking and malpractice in intercountry adoption at the domestic and international level.

At the domestic level, Australia has developed a Protocol for Responding to Allegations of Child Trafficking in Intercountry Adoption which is available on AGD’s website.<sup>11</sup> The Protocol provides information about assistance and support available to adoptive families and adoptees where there are allegations or concerns about child trafficking within a country of origin, from where a child has been adopted to Australia, or there have been specific concerns raised in an individual case. To assist when cases of concern arise, Australia has developed *Guidelines for Raising Cases of Concern*. These provide guidance around information sharing between Australian Central Authorities regarding intercountry adoption cases of concern.

To maintain the integrity of its intercountry adoption programs, Australia only has programs with a limited number of countries where it can be satisfied that the principles of the Hague Convention are in place. This is the case even where the country concerned is not a signatory. Australia regularly reviews its programs to ensure a country’s ongoing compliance with these principles, and to identify risks of child trafficking. Where cases of concern arise, consideration is given to whether there are broader program implications and whether it is necessary to prioritise a review of the program concerned. Australia may consider introducing safeguard measures for a program, such as suspending a program or limiting the sending of new adoption applications.

To inform Australian families of the realities and inherent risks in intercountry adoption Australia has prepared an *Information Statement on the Realities of Intercountry Adoption* which is provided to prospective adoptive families when they are first considering intercountry adoption and is available on AGD’s website.<sup>12</sup> Educating prospective adoptive parents about the realities and risks of intercountry adoption is identified in the Convention’s *Guide to Good Practice* as an important measure to prevent undue pressure on sending countries.<sup>13</sup>

At the international level, in early 2011 Australia convened a working group to develop more effective and practical forms of cooperation between States to prevent and address malpractice in intercountry adoption, in accordance with a recommendation of the 2010 Special Commission on the practical operation of the Hague Convention. Those involved in the working group include sending and receiving countries and non-government organisations. Working group members have provided comments on a discussion paper drafted by Australia setting out proposed principles and cooperative measures to prevent and address such malpractice. Australia has also contributed to the work of the

10 *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice No. 1*, paragraph 74, [http://www.hcch.net/index\\_en.php?act=publications.details&pid=4388](http://www.hcch.net/index_en.php?act=publications.details&pid=4388).

11 [http://www.ag.gov.au/www/agd/agd.nsf/Page/Intercountry\\_AdoptionWhats\\_New#protocoljune](http://www.ag.gov.au/www/agd/agd.nsf/Page/Intercountry_AdoptionWhats_New#protocoljune).

12 [http://www.ag.gov.au/www/agd/agd.nsf/Page/Intercountry\\_AdoptionAdoption\\_Fundamentals](http://www.ag.gov.au/www/agd/agd.nsf/Page/Intercountry_AdoptionAdoption_Fundamentals).

13 *Guide to Good Practice*, paragraph 641.

Intercountry Adoption Technical Assistance Program (ICATAP). ICATAP, which is operated by the Permanent Bureau of the Hague Conference, provides assistance to governments of certain States planning to ratify or accede to the Hague Convention, or which have ratified or acceded but are experiencing difficulties with implementation of the Convention. The provision of this assistance is an important way for Australia, as a receiving country, to support countries of origin.

## Trafficking and money laundering

People trafficking is an organised crime that may involve other offences such as money laundering (ML).

The Financial Action Task Force (FATF), established by the G7 (now the G20) Summit in Paris in 1989, is the international body responsible for the development and promotion of national and international policies to combat ML and terrorist financing (TF). The FATF identifies ML and TF techniques, assesses compliance with the FATF Standards through a sophisticated peer review system and, in the case of non-cooperative and high-risk jurisdictions, recommends whether countermeasures should be applied by other countries. Since its creation, the FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals.

The FATF's International Cooperation Review Group (ICRG) adopted new procedures in 2009 in response to a call by G20 leaders. Those procedures aim to encourage jurisdictions identified by the ICRG as having systemic anti-ML and counter-TF deficiencies to comply more closely with FATF standards. This includes the requirement to fully implement the UNTOC and to criminalise people trafficking and the smuggling of migrants.

There is limited knowledge about the methods used by criminal organisations to launder the illegal proceeds of people trafficking. Therefore, the FATF Working Group on Typologies (WGTY) has conducted a typology project on ML risks arising from people trafficking. Typologies study the methods, techniques and trends of ML and TF. Australia responded to a questionnaire of FATF member countries as part of the WGTY research for the report.

The WGTY's report, released in May 2011, said there is evidence that criminals are increasingly turning to people trafficking and people smuggling as these are seen as highly profitable. According to the UN Office on Drugs and Crime, people trafficking is the third-largest source of income for organised crime groups after drug trafficking and arms trafficking.

According to the report, common regions of origin for trafficked people are the Commonwealth of Independent States (former Soviet republics), Central and South-Eastern Europe, Western Africa and South-East Asia. Trafficked people are destined for Western Europe, North America and Western Asia.

The report said that the questionnaires showed the main trends detected for trafficking-related ML are the use of cash-based trades, money service businesses, hawala systems, cash couriers, front companies, commingling of funds, aliases, straw men and false documents. Investments in real estate, cars and lavish lifestyles are also frequently reported.

The main findings arising from the questionnaire, case studies, analysis of the literature and a workshop in Cape Town in November 2010 include:

- there is a lack of adequate information about the number of persons trafficked and smuggled and even less information about the income generated and how it is laundered
- there is a need to change people trafficking and smuggling from “low-risk/high-reward” to “high-risk/low-reward” crimes
- there are region-specific trends and distinctions that can be drawn among countries of origin, transit and destination
- the ML techniques are similar to those found with other serious crimes
- there are links between trafficking and smuggling and other organised crime, and
- pursuing ML activity from trafficking and smuggling calls for effective cooperation between all relevant agencies.

## Financial investigations

The complexity of the investigation of people trafficking cases necessitates long-term sustained efforts based on solid intelligence gathering and analysis and multi-agency collaboration. Financial investigations play a crucial role in the prosecution and disruption of people trafficking syndicates.

In most instances proceeds of crime are difficult to identify due to the mixing of legitimate and illegitimate income of brothels and other businesses as well as misrepresentation of true earnings to avoid scrutiny by taxation and law enforcement authorities. In some instances poor recordkeeping by business owners makes it even more difficult to identify true earnings.

The AFP estimates that approximately \$5 million has been recovered as a result of its people trafficking investigations during the reporting period.

The AFP gave a presentation on people trafficking at the annual International Conference on Financial Crime and Terrorism Financing in July 2010 in Kuala Lumpur. The presentation focused on money laundering and red flags that can be used by financial institutions to identify the movement of potentially illegitimate money. Invitees to this event acknowledged the AFP’s expertise and leadership in the area of people trafficking on an international stage.

# Understanding people trafficking

## Australian Institute of Criminology research

The AIC will conclude its four-year Trafficking in Persons Research Program in early 2012 and is planning its work for future years. The AIC is a recognised authority on trafficking. Its research publications are frequently cited and its work informs a variety of reports, forums and processes to combat this crime.

A summary of the Trafficking in Research Program for 2010–11 is below.

### ***Labour Trafficking report***

A research and public policy (RPP) paper on labour trafficking was released during the reporting period. While the body of literature on trafficking for sexual exploitation has grown steadily, much less is known about trafficking into other industries.

The resulting report by Fiona David, *Labour Trafficking*,<sup>14</sup> launched in November 2010 by the Minister for Home Affairs and Justice, examines what is known about labour trafficking in Australia, based on both reported and unreported crime. It assesses the known or likely incidence of people trafficking in the agricultural, cleaning, hospitality, construction and manufacturing industries, or in less formal sectors such as domestic work and home help.

The research confirms that while the precise size of the labour trafficking problem remains unknown, there have been instances of unreported and/or unrecognised labour trafficking. The report suggests there is a lack of awareness by “front-line” agencies and services that certain exploitative practices are criminal offences under Australian law. Many participants interviewed for the research, including those working directly on anti-trafficking issues, were unsure where to draw the line between “bad work” and criminal conduct such as labour trafficking, and others were unaware that Australia’s anti-trafficking laws could apply beyond the sex industry.

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<sup>14</sup> Fiona David, *Research and Public Policy Series no.108: Labour Trafficking*, Canberra, Australian Institute of Criminology, 2010, <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp108.aspx>.

## Trafficking in the construction industry

The AIC is undertaking research on migrant workers in construction, noting the lack of information on industries identified as risky for exploitation among the migrant workforce. The research will include consultation with experts, unions, NGOs, corporations and construction workers. The project is funded by the AIC, the Sisters of the Sacred Heart Josephite Counter-trafficking Project and the Catholic Archdiocese of Sydney. Data collection and literature reviews for this project will begin in the second-half of 2011.

## Domestic trafficking

The AIC has initiated research on domestic trafficking within Australia. While the UN Trafficking Protocol only recognises transnational trafficking, domestic trafficking is a criminal offence under sections 271.5 to 271.7 of the *Criminal Code*. The research will analyse several cases prosecuted in Australia and examine what risks and protections against domestic people trafficking emerge from analysis of these cases. A Trends and Issues paper on domestic trafficking will be released in late 2012.

## Understanding offenders and offending

A project on trafficking offending will draw on two major theories of criminology: rational choice theory (that is, individual offenders are rational individuals who respond to factors such as cost, profit and risk), and routine activities theory (that is, criminal events depend on a convergence of a motivated offender with a suitable opportunity and an absence of capable guardians). The research will include analysing a sample of trafficking cases to understand the individuals involved in offending and the situations, people and processes that enable the offending. A Trends and Issues paper on organised crime and trafficking will be released in late 2011.

## Trafficking and marriage arrangements

In response to both anecdotal and officially reported evidence of marriage-related trafficking, the AIC initiated a project to investigate:

- forced and servile marriage in the context of people trafficking
- the use of sham marriages and spouse visas to facilitate people trafficking
- types of marriage arrangements that may involve trafficking risks, such as arranged marriages, marriage brokering, online introductory services and “mail-order” brides, and
- the implications for Australia around prevention, detection, prosecution and victim services.

It will involve the analysis of case files; interviews with professionals and case workers from government, NGOs, law enforcement and immigration; and interviews with migrant women where marriage may have played a role in their victimisation. The research will develop the evidence base upon which more targeted responses (prosecutions, appropriate visas, clarity of Australian legislation related to trafficking offences) can be built. The project is at the data collection phase, with analysis and findings to be completed by the end of 2011.

## Child trafficking


A Trends and Issues paper on child trafficking in the Asia-Pacific region,<sup>15</sup> released in 2011, examines definitions of child trafficking, the forms it takes in Asia and the Pacific, the factors which increase vulnerability to trafficking and mechanisms for the protection of children from this crime. The paper highlighted the confusion that surrounds the definition of child trafficking and the difficulty in identifying child trafficking cases. Vulnerabilities such as certain cultural norms and statelessness are factors potentially increasing the risk of child trafficking, driven by the demand for cheap labour and intercountry adoption. Empirical evidence is lacking on related situations such as trafficking of children for adoption and marriage, trafficking of boys for sexual exploitation and the vulnerability of refugee and migrant children. In addition to this report, the AIC is reviewing inter-country adoption and links to trafficking and other non-adoption scenarios and child trafficking.

## Sex worker migration and vulnerabilities to trafficking

To improve knowledge about vulnerabilities relevant to people trafficking, the AIC has partnered with Scarlet Alliance to conduct a multilingual survey of both migrant and non-migrant sex workers in Sydney, Melbourne, Adelaide, Queensland (Brisbane and Townsville), Western Australia (Perth and Kalgoorlie) and the ACT. The project will allow a better understanding of sex workers' experiences in Australia, identifying vulnerabilities to trafficking and exploring strategies used by sex workers to reduce the risks of trafficking. Migration experiences, access to justice and services, and working conditions of migrant sex workers compared with non-migrant sex workers are examined. A profile of the survey respondents are as follows:

- the majority of respondents were aged between 25 and 39. There was a surprising number of respondents aged over 40 (129 respondents or 22 per cent).
- most respondents were female, with male and transgender sex workers under-represented
- as migrant sex workers were targeted for survey collection, 58 per cent of respondents were born in China, Korea and Thailand, with the majority born in Thailand. Just over one-quarter of respondents were born in Australia
- overall, respondents were well-educated, with more than half having a tertiary-level qualification
- the majority of respondents work on average six to 10 hours a day, three to four days a week and see 19 or fewer clients a week, and
- overall, the vast majority of respondents were satisfied with their current income, and the majority had never been on a contract.

15 Jacqueline Joudo Larsen, *Trends and Issues in Crime and Criminal Justice no. 415: The trafficking of children in the Asia-Pacific*, Canberra: Australian Institute of Criminology, April 2011, <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi415.aspx>.



This project is in progress, with the survey closed and preliminary analysis of the survey responses already concluded. Further detailed analysis will be undertaken in 2011.

### **Trafficking in the Pacific**

The Pacific region remains an important area for research on people trafficking due to its proximity to Australia. The AIC's two papers from this project – one reviewing Australia's Pacific Seasonal Workers Pilot Scheme and the other on general vulnerabilities of trafficking in the Pacific region – have undergone review and will be released in coming months.

# The year ahead

The UN Special Rapporteur on Trafficking in Persons, Joy Ngozi Ezeilo OON, will visit Australia in November 2011. Ms Ezeilo is a Nigerian lawyer, feminist and academic who was appointed Special Rapporteur in 2008. The Special Rapporteur is responsible for assessing measures taken by countries to combat people trafficking and protect the human rights of trafficked people. Australia is a strong supporter of this mandate and co-sponsored the Human Rights Council resolution extending the mandate in June 2011. Country visits are part of the Special Rapporteur's functional responsibilities, and governments are responsible for providing Ms Ezeilo with all necessary information related to her responsibilities. The Australian Government looks forward to the opportunity to discuss its successes and challenges in combating this heinous crime.

In 2011–12 the Government will continue to consider options for responding to the two public consultations – on the criminal justice response to slavery and people trafficking and on forced and servile marriage.

Four prosecutions are pending in the coming months. Mao Ru Zhang and Chee Mei Wong face separate sexual servitude charges, Diveve Trivedi has been charged with people trafficking while being reckless as to whether the victim faced exploitation, and a woman known as X faces a range of Commonwealth charges including slavery, debt bondage and Migration Act offences and an ACT charge of operating a brothel other than in a prescribed location. Three others, Kam Tin Ho, Ho Kam Ho and Sarisa Leech, are awaiting the outcome of appeals to the Victorian Court of Appeal against their convictions for slavery offences and against their sentences. Further information on these cases can be found in Appendix 1.

The Government will continue to support victims through the Support for Victims of People Trafficking Program. In 2011–12 the challenges include finding accommodation that is appropriate and secure, often at short notice, and meeting the needs of those victims invited to accept a Witness Protection (Trafficking) (Permanent) visa. This visa enables eligible trafficking victims and their immediate family members to remain in Australia permanently, but family reunification is often costly and complex.

In 2011–12 Australia will continue to combat trafficking through its international aid and development program. AusAID is developing the next phase of its work with law enforcement and criminal justice in relation to trafficking following the end of the five-year ARTIP Project in August 2011. In late February, Australia and Indonesia will co-host a meeting of technical experts in Jakarta as part of the Bali Process. Officials from the region will look at measures that address the central themes of prevention, protection and prosecution.

The Attorney-General's Department will continue working on revising the Communications Awareness Strategy to ensure that it remains relevant and encompasses trafficking in all its forms.

# Appendix 1: Prosecutions

## Namthip Netthip

The offender, Namthip Netthip, was born in Thailand and came to Australia in 1987 before becoming an Australian citizen in 1994. After arriving in Australia, from time to time she worked in brothels either as a sex worker or as a receptionist. Between about August 2005 and March 2008, Ms Netthip conducted a business through which she organised the placement of 11 Thai women in brothels in Australian cities, including Sydney, Newcastle, Wollongong, Melbourne, Canberra, Adelaide and Perth. Each complainant was recruited in Thailand. A Thai facilitator arranged passports and visas and made travel arrangements. Each complainant agreed that, once in Australia, she would repay a “debt” of \$53,000.

Prior to the departure of each complainant from Thailand, Ms Netthip discussed the terms of the arrangement with her. Each complainant allegedly informed Ms Netthip that she had previously worked in the sex industry, either in Thailand or elsewhere. Seven of the 11 complainants informed Australian authorities that they had worked in the sex industry before coming to Australia.

Ms Netthip organised food, work-related medical expenses and mobile telephones for the complainants. On arrival in Australia, each complainant stayed at accommodation arranged by Ms Netthip. Later, some moved to rental properties or other private accommodation, for which they paid. Some complainants were driven to and from their place of work while others travelled by public transport. Complainants had access to the internet and could contact their families in Thailand.

Ms Netthip supervised the placement of each complainant in an Australian brothel. If a complainant was dissatisfied with her placement, Ms Netthip improved work conditions or transferred the complainant to another brothel.

Except in the case of one Newcastle brothel, each brothel deducted its fee and paid the remainder of the complainant’s earnings to her. From her net earnings, each complainant repaid her debt to Ms Netthip by transferring cash or making a bank deposit. In the case of the Newcastle brothel, repayments were made directly by the brothel owner to Ms Netthip.

The speed at which a debt was repaid depended upon the proportion of her earnings that a complainant elected to retain for personal purposes. On average, a complainant took about six months to repay her debt.

From the sum of \$53,000, Ms Netthip paid the agent in Thailand \$20,000. After paying for rent, food, telephone, medical and other expenses of each complainant, Ms Netthip received a net profit of between \$10,000 and \$18,000. She estimated that her net profit in relation to all complainants was about \$60,000 to \$70,000. Taking into account the average time taken to repay a debt and the net profit on each transaction, the estimated total net

profit appeared to be an underestimate. However, in the absence of more detail about individual transactions, the NSW District Court could not be confident that the total net profit significantly exceeded \$70,000.

It was part of the arrangement that, after a complainant arrived in Australia on a visitor's visa, Ms Netthip would assist the complainant to apply for a protection visa about six weeks later. To substantiate the claim for refugee status made by a complainant, Ms Netthip provided her with false information about the conditions that she had experienced in Thailand. The offender coached complainants about the manner in which they should respond to questions posed by DIAC officers. Once a complainant had applied for a protection visa, she was entitled to work while she awaited the outcome of the immigration assessment.

Ms Netthip was charged in 2009 with one offence of conducting a business involving sexual servitude, contrary to section 270.6(2) of the Criminal Code; nine counts of people trafficking while reckless as to whether the persons would be exploited, contrary to section 271.2(1B) of the Code; 11 offences of intent to cause another to enter into debt bondage, contrary to section 271.8(1) of the Code; and 11 offences of causing delivery of false migration documentation, contrary to section 234 of the *Migration Act*.

Ms Netthip pleaded guilty in the Downing Centre Local Court on 30 March 2010 to conducting a business involving sexual servitude contrary to section 270.6(2) of the Criminal Code and one offence contrary to section 234 of the Migration Act relating to false migration documentation. Ten other Migration Act offences were taken into account under section 16BA of the *Crimes Act 1914* (Cth). All remaining trafficking and debt bondage charges were withdrawn.

On 30 July 2010, Ms Netthip was sentenced in the NSW District Court to two years and three months' imprisonment with a non-parole period of 13 months, followed by a recognisance release order to be of good behaviour for 14 months. She was also ordered to be of good behaviour for three years and six months on the migration offences.

## Trevor McIvor and Kanokporn Tanuchit

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

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

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

These offences were discovered by the AFP when one of the victims (the one who thought she was to work as a masseuse) covertly obtained the telephone number of the Thai Consul-General and requested assistance.

Following a jury trial in the NSW District Court in 2007, the accused were each convicted of five counts of intentionally possessing a slave contrary to section 270.3(1)(a) of the Criminal Code and five counts of intentionally exercising a power attaching to the right of ownership over a slave contrary to section 270.3(1)(a) of the Criminal Code.

Mr McIvor was sentenced to a total effective sentence of 12 years' imprisonment with a non-parole period of seven years and six months. Ms Tanuchit was sentenced to a total effective sentence of 11 years' imprisonment with a non-parole period of seven years.

On appeal to the NSW Court of Criminal Appeal in 2009, the convictions were set aside and retrials ordered on the basis that on a number of occasions the trial judge had instructed the jury in relation to the fault issue and the indicia of slavery in a way that may have confused the jury.

On 30 July 2010, following a retrial, Mr McIvor and Ms Tanuchit were found guilty on all counts. On 17 December 2010 they were sentenced at the NSW District Court by Judge John Williams. In total, Mr McIvor was sentenced to 12 years' imprisonment with a non-parole period of seven years and six months (the same penalty as was imposed after the first trial). Ms Tanuchit was sentenced to 12 years' imprisonment with a non-parole period of seven years.

## Kam Tin Ho and Ho Kam Ho

Kam Tin Ho and Ho Kam Ho were part of a sophisticated and well-organised scheme to bring Thai women to Australia to work in the sex industry. In the course of the scheme, the women were variously traded, possessed and used as items of property, thereby reducing them to the condition of slavery.

The scheme was run from Bangkok, Sydney and Melbourne. Kam Tin Ho was its Melbourne principal and Ho Kam Ho was active in its Melbourne operation. The women entered Australia on three-month tourist or business visas issued in Bangkok.

The visas were arranged by people who created false cover stories for the women to travel to Australia. The women were chaperoned into Australia and handed over to their controllers. They were to stay in Australia for as long as possible and to work without

breaching their visas. The scheme also relied upon the submission of applications for protection visas when the women's short-stay visas were about to expire. In each case, the women were taken to migration agents to sign protection visa applications that falsely claimed they were fleeing some sort of persecution in Thailand. The women took part in these arrangements voluntarily.

The women came to Australia from Thailand with the knowledge that they were going to work in the sex industry; all but one had previously worked as prostitutes. They were aware that they had to pay off a contractual debt to secure their trip to Australia and the opportunity to earn money to assist their families in Thailand, which meant that before earning money for themselves they would be required to service a specified number of clients. For some, the number of clients or jobs owed was 650; for others it was 750.

Clients were charged \$125 per half-hour service by the brothel. The debts owed by the women, and therefore the gross value of their work during this period, were between \$81,000 and \$94,000 each. The duration of the contracts depended on how quickly a woman serviced enough clients to erase the debt. This was usually around three to four months, six days a week. On those six days, most of the women were paid \$5 for each \$125 service they performed and \$50 was deducted from the debt. The seventh day of each week was titled their "free day" or "day off" when they could work and keep \$50 of each \$125 service.

These arrangements were accompanied by the exercise of very strict control over almost every aspect of the women's lives. For at least the duration of their contracts, and usually longer, they were not permitted to keep possession of their passports. They would be transported, by either Ho Kam Ho or another person, between the brothels and their places of residence, which were usually shared by several of the women. The costs of the women's accommodation, food and incidentals were paid. They were effectively restricted to the residential premises. They were not allowed to have a key and were given strict instructions that they were not to go outside unaccompanied. If they needed anything, they were usually instructed to contact their particular minders, one of whom was Ho Kam Ho. On the rare occasions when they were permitted to go out to eat or to go shopping, the excursion would be under supervision. When their contracts had been fulfilled, the women were expected to continue working for at least the balance of 12 months after their arrival. They were allowed to keep \$50 from each service they performed. However, the restrictions on their freedom of movement generally remained in place.

All the women were mature adults, educated and aware. Each acted or was prepared to act voluntarily as a prostitute and each entered in Australia willingly and knowingly on false documentation. Each came to Australia to help her family, who were in difficulty in Thailand. When in Australia, each was in a situation of personal, social and cultural isolation. The financial transaction counts reflect the expropriation of funds earned from prostitution to the women's families.

Following a 10-week trial in the Victorian Supreme Court in 2009, Kam Tin Ho was found guilty of five counts of intentionally possessing a slave contrary to section 270.3(1)(a) of the Criminal Code; one count of intentionally exercising over a slave a power attaching to the right

of ownership, contrary to section 270.3(1)(a) of the Criminal Code; and four counts of being a party to two non-reportable cash transactions for the purpose of attempting to ensure that the transactions would not give rise to a significant cash transaction, contrary to section 31(1) of the *Financial Transaction Reports Act 1988* (Cth). The total effective sentence imposed upon Kam Tin Ho was 14 years' imprisonment with a non-parole period of 11 years.

Ho Kam Ho was found guilty by the jury on four counts of intentionally possessing a slave contrary to section 270.3(1)(a) of the Criminal Code in relation to offences involving four women, and guilty on one count of being a party to two non-reportable cash transactions for the purpose of attempting to ensure that the transactions would not give rise to a significant cash transaction, contrary to section 31(1) of the Financial Transaction Reports Act. The total effective sentence imposed upon Ho Kam Ho was 10 years' imprisonment with a non-parole period of seven years.

Kam Tin Ho and Ho Kam Ho have lodged appeals against both conviction and sentence. The appeals were heard on 16 and 17 June 2011 in the Victorian Court of Appeal and judgment was reserved.

## Kam Tin Ho and Sarisa Leech

In 2003, KW, a 30-year-old Thai prostitute, met Sarisa Leech in Bangkok then came to Australia to work as a prostitute, her fare having been paid by others. She knew that her ticket and accommodation in Australia, as well as a visa, had been arranged for her. KW came to Australia on a short-stay visa on the basis that she would be attending a "team building seminar". False documents attached to the visa application certified as to that intention. KW was told that these arrangements created a debt owed by her, to be paid off by her providing sexual services to 650 men in particular Melbourne brothels.

After arriving in Australia, KW was taken to an apartment in Fitzroy. She lived there with a woman known as "Lisa". In the early stages she did not have a key to the apartment, and from time to time a man known as "Ben" brought food.

Later, Ms Leech also lived in the apartment with KW and Lisa. KW lived in the apartment for three months before she started working in the brothel to which she was assigned. When Ms Leech was there, KW would ask for her permission each time she went out of the apartment. The relationship between Ms Leech and KW was apparently friendly; Ms Leech assisted KW with the English language and showed her how to use public transport.

Part of the plan for KW involved obtaining a protection visa, thus extending her stay in Australia to enable her to work. Both Ms Leech and Kam Tin Ho assisted in this process. KW was required to learn a false story about why she was seeking the protection visa – in essence, that she had converted from Buddhism to Mormonism in Thailand and was afraid that she would be persecuted if she went back to Thailand. Without any real assistance from KW, except to sign documents containing untrue claims, KW's application for the protection visa passed through several legal stages. The purpose of the application was to create delay while she worked in Melbourne.

Ms Leech told KW that she would be starting work. KW was given the name “Cindy” by Mr Ho, and began work at a brothel in South Melbourne. KW was told that Ms Leech, Mr Ho and Ben would supervise her. The arrangement in the brothel was that clients paid \$125 for half an hour of sexual services and that money was placed into a locked box by employees, including KW. She was told by Ms Leech that \$50 of the \$125 would be deducted from the debt she owed. KW was instructed to also place her passport there. KW said she never took her passport home, although she wanted to have her passport with her.

It took KW three or four months to pay off the debt she owed, and she kept her own record of the clients that she serviced. On a free day in the week and after she had paid off the debt, she was entitled to earn \$50 of \$125 herself from each customer.

Mr Ho’s activities involved speaking to KW about clients’ complaints about the service she provided. KW was told she needed to service the clients “quite nicely”.

After the debt was paid KW asked whether she could stop working and was told she could not because there were no girls at the shop. KW worked in the brothel from 11am to 2am and would see as many as 16 customers during that time. When she was working, the premises were locked and she could not leave. Even when ill, KW continued to work in the brothel. When Ms Leech was in Thailand, she rang KW and told her that if she did not work she would be sent back to Thailand.

Once the debt was “paid”, KW appeared to have more freedom to leave the apartment and had a key to the apartment.

Ms Leech and Mr Ho spoke with KW about how to deal with any questions that she might be asked. That process was repeated when Mr Ho called her again, suggesting that if there were problems she could complain, although he did not indicate to whom she should complain.

On 4 November 2009 in the Victorian Supreme Court, Mr Ho and Ms Leech were each found guilty of an offence of intentionally using a slave contrary to section 270.3(1)(a) of the Criminal Code. Ms Leech was also found guilty of intentionally possessing a slave, also contrary to section 270.3(1)(a) of the Criminal Code.

Ho was sentenced to six years’ imprisonment, of which part was to be served cumulatively upon the sentences imposed by Justice Philip Cummins on 29 September 2009 (see above, Kam Tin Ho and Ho Kam Ho). The total effective sentence was therefore 14 years and six months’ imprisonment. The non-parole period of 11 years, imposed by Justice Cummins, was affirmed.

Ms Leech was sentenced to six years’ imprisonment with a non-parole period of three years and six months.

Mr Ho and Ms Leech have lodged appeals against their convictions and sentences. The appeals were also heard on 16 and 17 June 2011 in the Victorian Court of Appeal and judgment was reserved.

## Zoltan Kovacs and Melita Kovacs

The defendants allegedly formed a plan to bring a Filipina woman to Australia to work in their shop and to provide domestic services. Zoltan Kovacs and a friend travelled to the Philippines to identify a suitable woman for the friend to marry to entitle her to enter Australia. The woman the friend married in February 2001 then applied for a visa to come to Australia and arrived in Australia in August 2002. She was then made to work for the Kovacses, both in their takeaway shop in Weipa and in their home as a child minder and housekeeper, until the debt for the travel to Australia was paid. There was a suggestion that this would take five years.

The marriage was a sham, and evidence from the woman was called at the trial. Evidence was also called from the person she married, who had already pleaded guilty to breaches of the *Migration Act 1958* (Cth) arising from the sham marriage.

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

Following a trial in the Supreme Court in Townsville in 2007, Zoltan and Melita Kovacs were each found guilty and convicted and sentenced in relation to one count each of arranging a marriage for the purpose of assisting the complainant to get a stay visa contrary to section 240(1) of the Migration Act; intentionally possessing a slave contrary to section 270.3(1)(a) of the Criminal Code; and intentionally exercising over a slave a power attaching to the right of ownership, namely the power to use, contrary to 270.3(1)(a) of the Criminal Code.

Mr Kovacs was sentenced to a total effective sentence of eight years' imprisonment with a non-parole period of three years and nine months. Ms Kovacs was sentenced to a total effective sentence of four years' imprisonment with a non-parole period of 18 months.

Zoltan and Melita Kovacs each appealed against their convictions on the counts of intentionally possessing a slave and intentionally exercising power over a slave. The Queensland Court of Appeal upheld their appeals in 2008, set aside the verdicts of guilty on these counts and ordered retrials.

Following a six-day jury trial, which commenced on 8 February 2010, Ms Kovacs was again found guilty and sentenced to four years' imprisonment with a non-parole period of 291 days. Ms Kovacs lodged an application to appeal against her conviction and sentence; however on 17 November 2010 she abandoned this appeal.

At his retrial, Mr Kovacs pleaded guilty to the charges and was convicted, resulting in a total effective sentence of 12 years' imprisonment with a non-parole period of 15 months, taking into account the time already served (1431 days).

## Mao Ru Zhang

A 30-year-old Chinese woman, Mao Ru Zhang, was charged on 12 November 2010 in Melbourne Magistrates Court with two counts of causing another person to remain in sexual servitude contrary to subsection 270.6(1) of the Criminal Code and two counts of causing another person to enter into debt bondage contrary to subsection 271.8(1) of the Criminal Code. Ms Zhang allegedly lured two women from China by promising them the opportunity to further their studies in Australia, but forced them to work as sex workers under exploitative conditions in Melbourne and Sydney. Ms Zhang was arrested after raids in four Melbourne suburbs by the Australian Federal Police (AFP) Human Trafficking Team, assisted by the Department of Immigration and Citizenship (DIAC) and Consumer Affairs Victoria. A trial date has been set for 5 March 2012 in the Victorian County Court.

## Chee Mei Wong

On 11 August 2010, the defendant, a Malaysian woman living in Sydney, Chee Mei Wong, was charged with sexual servitude contrary to section 270.6(1) of the Criminal Code following the AFP's Operation Burlywood syndicate investigation into people trafficking, sexual servitude and migration-related offences. Ms Wong was committed for trial on 13 September 2011. No trial date has yet been set.

## Diveye Trivedi

Diveye Trivedi, the owner of an Indian restaurant in Sydney, has been charged with people trafficking contrary to section 271.2(1B) of the Criminal Code. It is alleged that Mr Trivedi facilitated the entry of the victim into Australia and was reckless as to whether the victim would be subject to labour exploitation. A trial has been set down in the NSW District Court for 4 October 2011.

The AFP had received a referral from DIAC in relation to an Indian national (the complainant) who arrived in Australia from India on a Temporary Business (Long Stay) (Subclass 457) visa to work in the restaurant.

The complainant provided a statement to the AFP alleging that his travel and requirements for travel to Australia were organised by Mr Trivedi and upon arrival to Australia, the complainant was subjected to exploitative conditions in the restaurant. The exploitative conditions included having to live and bathe in the restaurant, and to work approximately 12 hours a day, seven days a week with minimal and irregular rest periods. The complainant had limited freedom of movement, was continually abused and the complainant's family in India was threatened.

On 15 September 2010, AFP members arrested Mr Trivedi. He was charged with people trafficking pursuant to section 271.2(1B) of the Criminal Code. A trial is scheduled to commence on 4 October 2011.

## ‘X’

The defendant, “X”, appeared in the ACT Magistrates Court on 18 November 2009 charged with one offence of debt bondage contrary to section 271.8 of the Criminal Code; one offence of possessing a slave contrary to section 270.3 of the Criminal Code; three offences of allowing an unlawful non-citizen to work contrary to section 245AB(2) of the *Migration Act 1958* (Cth) and two offences of allowing a non-citizen to work in breach of a visa condition contrary to section 245AC of the Migration Act. Ms X has also been charged with attempting to pervert the course of justice contrary to section 43 of the *Crimes Act 1914* (Cth) and one offence of operating a brothel other than in a prescribed location contrary to section 18 of the *Prostitution Act 1992* (ACT). Ms X has pleaded not guilty to all charges. A trial date has been set for 19 March 2012 for four weeks in the ACT Supreme Court.

The case involves a woman who allegedly brought a sex worker from Thailand to Australia to work in exploitative conditions in Canberra. The sex worker was put on a contract to repay \$43,000.

A Victorian man related to the case has also been charged with two counts of sexual intercourse without consent, operating a brothel in a non-prescribed location and an act of indecency without consent. A one-week trial is due to commence in Canberra on 12 December 2011.

# Appendix 2: AIC research

## AIC people trafficking outputs in 2010–11

- Renshaw L & Joudo Larsen J, *Monitoring of People Trafficking*, paper presented at the Australian and New Zealand Society of Criminology Conference, Alice Springs, 27–30 September 2010
- Beacroft L, *Trafficking in Persons: Overview and Opportunities for Prevention and Intervention*, paper presented to the Crime Stoppers Australia Training Conference, Canberra, 26 October 2010
- Joudo Larsen J, *People Trafficking*, paper presented to the International Serious and Organised Crime Conference, Melbourne, 18–19 October 2010, presentation slides available at <http://www.aic.gov.au/events/aic%20upcoming%20events/2010/isoc.aspx>
- David F, *Research and Public Policy Series no.108: Labour trafficking*, Canberra: Australian Institute of Criminology, 2010, <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp108.aspx>
- Joudo Larsen J, *Trends & Issues in Crime and Criminal Justice no. 401: Migration and people trafficking in Southeast Asia*, Canberra: Australian Institute of Criminology, 2010, <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi401.aspx>
- David F, *Labour Trafficking*, paper presented to Forced Labour Seminar, Anti-Slavery Centre, UTS, Sydney, 18 February 2011
- David F, *Labour trafficking in Australia: Definitions, drivers and why it is significant for Australia*, paper presented at the 3rd Annual Border Security Conference, Melbourne, 10–11 May 2011
- Joudo Larsen J, Trends and Issues in Crime and Criminal Justice no. 415: *The trafficking of children in the Asia-Pacific*, Canberra: Australian Institute of Criminology, 2010, <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi415.aspx>
- Beacroft L and Joudo Larsen J, *Monitoring Trafficking in Persons: Developing a Conceptual Framework and Supporting Minimum Dataset*, Workshop with Operational Working Group, Anti-People Trafficking Interdepartmental Committee, DIAC, Canberra, May 2011
- Renshaw L, *A report on trafficking issues in Australia*, presented to Experts Meeting on Crime Prevention and Trafficking in Persons, International Centre for Criminal Law Reform and Criminal Justice Policy, Montreal, Canada, 21-22 March 2011
- Joudo Larsen J, *People trafficking in Australia*, paper presented to the British Society of Criminology Conference, Newcastle-upon-Tyne, 3-6 July 2011
- Information Sessions on Trafficking in Persons: recent research and approaches to tackling it, a series of forums for non-experts, held in Mildura, Perth and Kalgoorlie in June 2011.

