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## **TRAFFICKING IN PERSONS IN AUSTRALIA: MYTHS AND REALITIES**

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## 1. Introduction and Background

Trafficking in persons, especially women and children, is a global phenomenon. It involves the movement of individuals by means of force, threats, deception, fraud, or the payment of money for the purpose of exploitation, especially in the sex industry and other forms of forced labour.

Despite greater public awareness and acknowledgement of the problem by government agencies, trafficking in persons in Australia remains a phenomenon not well understood and poorly researched. Strategic policies, concerted government action, along with prosecutions and convictions of traffickers and other offenders are only slowly forthcoming and the support available to victims of trafficking is only marginally developed.

The true extent of this problem is not fully known, largely due to the clandestine nature of this phenomenon. Reports about the number of trafficked persons in Australia vary greatly depending on the source of information. Government agencies suggest that several hundred persons are trafficked into Australia every year while non-governmental organisations and advocacy groups argue that this trade involves several thousand people. Recent cases in Australia demonstrate the vulnerability of non-citizens to sexual exploitation and forced labour. Reports of foreign women trafficked to Sydney, the Gold Coast, and other parts of Australia for sexual servitude, raises the probability of similar occurrences elsewhere.

One of the major obstacles to government policy making and law reform is the lack of any reliable data and comprehensive account of the levels and patterns of this illicit business. Anecdotal evidence, media reports, and statistical estimates without proper evidentiary bases are the only sources of information currently available about trafficking in persons in Australia. The reported case law is also extremely limited, largely because criminal offences relating to sexual servitude and slavery were only introduced in 1999 with the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* (Cth)<sup>1</sup> followed by the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth).<sup>2</sup>

In short, there is a great discrepancy between the many myths about the levels and patterns of trafficking in persons in Australia, and the available evidence about the true extent of the problem.

In March 2008, The University of Queensland TC Beirne School of Law, Brisbane, in conjunction with The University of British Columbia Faculty of Law and the Centre of International Relations, Vancouver, commenced a research project which provides the first comprehensive analysis of the phenomenon of trafficking in persons and of the exploitation of foreign workers in the sex industry and other forms of forced labour in Australia and Canada.

This article examines four main sources of information on trafficking in persons in Australia including official data and other statistics, reports by international agencies and non-government organisations, media reports, and reported case law. The objective of this article is to review the scale of trafficking in persons in the light of the available, open source evidence, thus contributing to the understanding of the immediate problem, and pave the way for further research on the many facets and aspects associated with trafficking in persons in Australia and elsewhere.

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<sup>1</sup> No 104 of 1999.

<sup>2</sup> No 96 of 2005.

## 2. Official Data and Government Reports

The number of persons that have been trafficked to Australia is not known. No record is kept of persons that have been brought into Australia (legally or illegally) for the purpose of exploitation. There is also no complete statistics about cases reported to police, the number of trafficking and trafficking related investigations, prosecutions of traffickers, and apprehensions of victims of trafficking. Consequently, any published figures on the level of trafficking in persons in Australia are, at best, estimates and are usually the result of guesswork rather than of systematic data collection or comprehensive quantitative research.

Nevertheless, there is a significant — and growing — body of publications, reports, and media releases that speculates about the number of trafficking victims and the scale of the ‘trafficking problem’ in Australia. Among these sources, there is, however, no consensus about the size and extent of the problem. Most of the available evidence is typically presented in the form of non-statistical data and indirect indicators derived from small-scale surveys. There is also a lot of circular cross-referencing between different sources which often blurs or disguises the true origin of the data presented. Where statistics on trafficking cases do exist, their value has been seriously undermined by the lack of a consistent definition of trafficking and the absence of uniform data collection methods.

Estimates and other reported figures on trafficking in persons vary greatly depending on the source of information. Australian Government sources suggest that “there is no evidence of any large scale [trafficking] problem in Australia”.<sup>3</sup> In summary, government agencies seem to be aware of about 100-200 cases of trafficking in recent years. This is in contrast to some non-government organisations which suggest that approximately 1000 trafficked women are in Australia at any one time.

### 2.1 Investigations and prosecutions

The most complete data on trafficking in persons in Australia to date can be found in the *Annual Report* of the Australian Federal Police (AFP) which features a yearly “performance” update on human trafficking related cases. The reporting on this issue commenced in the 2002-03 financial year and the figures are not always reported consistently. Prior to that, there were only sporadic reports about the number of trafficking cases in Australia, largely due to the lack of any actual trafficking offences. For example, in 1999, Senator Ian Macdonald stated in a speech to Parliament that the AFP was aware of 14 cases between September 1997 and March 1999.<sup>4</sup>

It is difficult to make generalisation from the limited available data. Between 2002-03 and 2006-07 the AFP’s so-called Transnational Sexual Exploitation and Trafficking Teams (TSETT) became aware of between 15 and 29 new cases annually; approximately 250 cases have been investigated since 1999 (when sexual slavery laws were first introduced with the *Criminal Code (Slavery and Sexual Servitude) Amendment Act 1999* (Cth)). It is not possible to identify any trends about the levels of trafficking activity from that data.

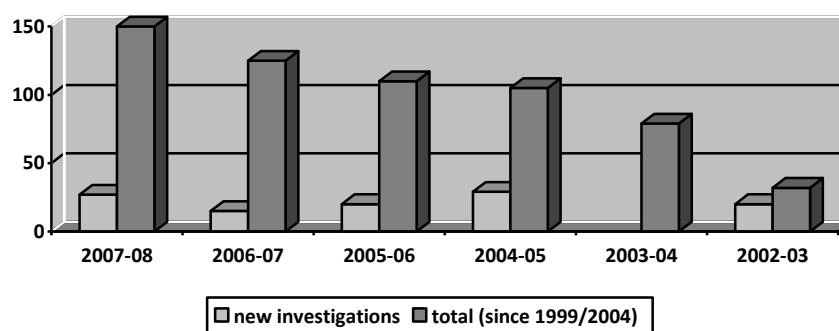
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<sup>3</sup> Senator Chris Ellison, then Minister for Justice and customs, as referenced in Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Current Issues Brief No 28 2002-03 (Department of the Parliamentary Library, 2003) 5.

<sup>4</sup> Australia, Senate, *Hansard* (24 Mar 1999) (Ian Macdonald).

Figure 1: Reported cases of human trafficking, Australian Federal Police, 2002-08<sup>5</sup>

Financial year	New investigation during period	Total (since 2004)	Total (since 1999)
Apr 2007-Mar 08	27 <sup>6</sup>	150 <sup>7</sup>	
2006-07	15	125	n/a
2005-06	20	110	n/a
2004-05	29		105
2003-04	n/a	-	79
2002-03	20	-	32



In the 2006-07 financial year, the AFP further reported 23 arrests of alleged traffickers along with 14 prosecutions and four convictions, though some of these convictions have since been appealed.<sup>8</sup> According to sources from the United States (US), the AFP conducted 27 investigations between April 2007 and March 2008.<sup>9</sup>

There is no current and credible information about the 'value' of the illicit market for trafficking in persons in Australia. While there are some reports about the debts owed by victims to traffickers,<sup>10</sup> it is not known just how much money trafficking in persons generates for the criminal organisations involved in this industry. In 1999, however, Senator Ian Macdonald stated in a speech before Parliament that trafficking nets approximately one million dollars per week to the organisers.<sup>11</sup> It is not clear on what basis this figure was calculated.

Police investigations further reveal that trafficking in persons to Australia is carried out by small but highly sophisticated organised crime networks that frequently involve family and business connections between Australians and overseas

<sup>5</sup> AFP, *Annual Report 2006-07* (2007) 25–26; AFP, *Annual Report 2005-06* (2006) 35; AFP, *Annual Report 2004-05* (2005) 32; AFP, *Annual Report 2003-04* (2004) 37; AFP, *Annual Report 2002-03* (2003) 94.

<sup>6</sup> US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 61 citing AFP sources.

<sup>7</sup> January 2004 to 29 Feb 2008, Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 6.

<sup>8</sup> See Section 6 below.

<sup>9</sup> US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 61.

<sup>10</sup> See Section 2.1 below.

<sup>11</sup> Australia, Senate, *Hansard* (24 Mar 1999) (Ian Macdonald).

contacts<sup>12</sup> There is no proven link between trafficking in persons and other forms of organised crime.<sup>13</sup>

## 2.2 Victims

Official information relating to the victims of human trafficking is very sketchy and often very anecdotal and inconsistent. The total number of persons trafficked to Australia is not known and there are also no annual statistics about new arrivals of trafficked persons. The Australian Government estimated in 2004 that “[t]he number of people trafficked into Australia [is] well below 100.”<sup>14</sup> In 2007, the Attorney-General’s Department, relying on information from the Australian Crime Commission (ACC) and other law enforcement agencies, suggested that less than 100 victims of trafficking were found in Australia since mid-2004.<sup>15</sup>

A parliamentary inquiry conducted in 2004 found that while “approximately 300 women are trafficked into the country each year for sex work, the number of those who can be considered to be in servitude is likely to be relatively small.”<sup>16</sup> Australia’s comparatively remote location, the lack of any land borders, and its stringent visa requirements and immigration controls are generally seen as the main reasons for the low levels of trafficking into this country.<sup>17</sup>

It is noteworthy that all official reports of trafficking for the purpose of sexual exploitation in Australia relate exclusively to women. The very limited available evidence relating to male victims in Australia only refers to instances of labour exploitation, especially in the agricultural sector.<sup>18</sup>

Moreover, there is no evidence of any child trafficking occurring in Australia,<sup>19</sup> though there have been individual reports in the print media about under-age girls from

<sup>12</sup> AFP, *Annual Report 2006-07* (2007) 25; AFP, *Annual Report 2005-06* (2006) 35–36; *Annual Report 2003-04* (2004) 37.

<sup>13</sup> Cf Judy Putt, “Human trafficking to Australia: a research challenge” (2007) 228 *Trends & Issues in Crime and Criminal Justice* 2.

<sup>14</sup> Australian Government, *Australian Government’s Action Plan to Eradicate Trafficking in Persons* (2004) available at [www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_AustralianGovernmentsActionPlantoEradicateTraffickinginPersons-June2004](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernmentsActionPlantoEradicateTraffickinginPersons-June2004) (accessed July 4, 2008) 6.

<sup>15</sup> Australia, Attorney-General’s Department, *Australia’s Strategy to Combat People Trafficking*, March 2007, 3 (copy held with author).

<sup>16</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.70.

<sup>17</sup> Australia, Attorney-General’s Department, *Australia’s Strategy to Combat People Trafficking*, March 2007, 3 (copy held with author); cf Elaine Pearson, “Australia” in, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance against Trafficking in Women, 2007, 28 at 29, available at [www.gaatw.net/index.php?option=com\\_content&task=blogcategory&id=0&Itemid=179](http://www.gaatw.net/index.php?option=com_content&task=blogcategory&id=0&Itemid=179) (accessed July 21, 2008).

<sup>18</sup> US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 61; see Section 4 below.

<sup>19</sup> Elaine Pearson, “Australia” in, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance against Trafficking in Women, 2007, 28 at 28, available at [www.gaatw.net/index.php?option=com\\_content&task=blogcategory&id=0&Itemid=179](http://www.gaatw.net/index.php?option=com_content&task=blogcategory&id=0&Itemid=179) (accessed July 21, 2008).

Thailand being brought to Australia to work in the sex industry<sup>20</sup> and some case law confirms that some victims of human trafficking entered Australia as minors.<sup>21</sup>

### 2.2.1 Recruitment and Transportation

AFP reports reveal that the majority of victims of human trafficking are from Southeast Asian nations and also from Korea. In official reports and other literature, Thailand is repeatedly singled out as the principal source country of both trafficked women and foreign sex workers in Australia generally.<sup>22</sup> The women often come from rural parts of northern Thailand though many have previously worked in the sex industry in Bangkok, Macao, Japan, or Singapore.<sup>23</sup> Indonesia and Malaysia appear to be the second and third main countries of origin. Smaller numbers have also arrived from mainland China, Hong Kong, and the Philippines.<sup>24</sup> This seems to confirm a general trend which reflects the development of an Asian sex industry in Australia since the 1980s.<sup>25</sup> There have been only isolated cases of victims trafficked from non-Asian countries, including Czech Republic, the former Soviet Union, and Ghana.<sup>26</sup>

From the limited information available, it appears that women and girls are often targeted by recruiters, so-called spotters, or are contacted by friends or relatives who are paid by the spotters. The victims are promised employment in Australia and frequently surrender their passports to the trafficker when the first contact is made — and then wait, sometimes for months, until they leave for Australia.<sup>27</sup>

A parliamentary inquiry into trafficking in persons in Australia conducted in 2004, found that women brought to Australia fall into three different categories:

The first group comprises women who come to Australia intending to work in the sex industry.

The second group come knowingly intending to work in the sex industry, but are misled by traffickers as to the conditions under which they will be working. This second group includes women who have worked in the sex industry previously in and/or abroad as well as those that have never engaged in prostitution before. [...]

The third group are totally deceived about the fact that they will be required to work as prostitutes in Australia. These women are often told that they will be working in businesses unrelated to the sex industry, such as restaurants, travel services, or domestic work.<sup>28</sup>

<sup>20</sup> “Thai girls on a long road to oblivion” (12 Apr 2003) *The Weekend Australian*.

<sup>21</sup> See Section 6.2 below.

<sup>22</sup> US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 61.

<sup>23</sup> Linda Brockett & Alison Murray, “Thai Sex Workers in Sydney” in R Perkins et al (eds), *Sex Work and sex Workers in Australia*, Sydney (NSW): UNSW Press, 1994, 191 at 193-194, 196.

<sup>24</sup> Australia, Attorney-General’s Department, *Australia’s Strategy to Combat People Trafficking*, March 2007, 3 (copy held with author); AFP, *Annual Report 2006-07* (2007) 25; AFP, *Annual Report 2004-05* (2005) 32; *Annual Report 2003-04* (2004) 37.

<sup>25</sup> Linda Brockett & Alison Murray, “Thai Sex Workers in Sydney” in R Perkins et al (eds), *Sex Work and sex Workers in Australia*, Sydney (NSW): UNSW Press, 1994, 191 at 191.

<sup>26</sup> AFP, *Annual Report 2005-06* (2006) 3; cf Mark Phillips, “Sex slave shame unveiled” (24 Mar 2004) *The Mercury* (Hobart).

<sup>27</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.15.

<sup>28</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the

The picture that emerges from law enforcement reports and other official information is that most victims of human trafficking are or “might be” aware of the nature of work they would be performing in Australia, including the fact that they would be employed in the sex industry.<sup>29</sup> This has also been confirmed by other government reports.<sup>30</sup> Reports that portray Asian women as “victims of a ruthless slave market” have largely been dismissed as “too simplistic and ignoring the rational choices women have made.”<sup>31</sup>

On the other hand, the victims generally do not know details about the exploitative working conditions:

What they do not know, however, is that they might be held in captivity, be subject to physical and sexual violence and intimidation, be forced to engage in unsafe sexual practices, be unable to refuse clients or certain services, and be obliged to pay off huge debts to their traffickers. These women are victims of trafficking, even if they consented to work in the sex industry.<sup>32</sup>

### 2.2.2 Entry into Australia

There appear to be two main avenues in which trafficked persons initially enter Australia. A 2004 inquiry found that “the most common basis for entry is either a student or tourist visa”.<sup>33</sup> This has also been confirmed by an analysis of trafficking in Filipina women into Australia,<sup>34</sup> and by reports from non-government organisations.<sup>35</sup> On the other hand, there are also reports about the use of fraudulent documents or, in some cases, arranged marriages. In some instances the trafficked women have been accompanied by escorts or mules on their journey to Australia to ensure they do not abscond.<sup>36</sup> Reports about corruption of immigration officers at embarkation and disembarkation points are very isolated.<sup>37</sup>

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Commonwealth of Australia, June 2004, paras 2.10, 2.13.

<sup>29</sup> AFP, *Annual Report 2006-07 (2007)* 25; AFP, *Annual Report 2005-06 (2006)* 35–36; *Annual Report 2003-04 (2004)* 37.

<sup>30</sup> Rebecca Tailby, “Organised Crime and People Smuggling/Trafficking to Australia” (2001) 208 *Australian Institute of Criminology, Trends & Issues*; Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.18; Rebecca Tailby, *A Cross-Analysis Report into Smuggling and Trafficking between the Philippines and Australia*, Canberra (ACT): Australian Institute of Criminology, 2003, 6.

<sup>31</sup> Linda Brockett & Alison Murray, “Thai Sex Workers in Sydney” in R Perkins et al (eds), *Sex Work and sex Workers in Australia*, Sydney (NSW): UNSW Press, 1994, 191 at 195.

<sup>32</sup> Australian Government, *Australian Government’s Action Plan to Eradicate Trafficking in Persons (2004)* available at [www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_AustralianGovernmentsActionPlantoEradicateTraffickinginPersons-June2004](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernmentsActionPlantoEradicateTraffickinginPersons-June2004) (accessed July 4, 2008) 7.

<sup>33</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.22.

<sup>34</sup> Rebecca Tailby, *A Cross-Analysis Report into Smuggling and Trafficking between the Philippines and Australia*, Canberra (ACT): Australian Institute of Criminology, 2003, 3.

<sup>35</sup> Elaine Pearson, “Australia” in, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance against Trafficking in Women, 2007, 28 at 28, available at [www.gaatw.net/index.php?option=com\\_content&task=blogcategory&id=0&Itemid=179](http://www.gaatw.net/index.php?option=com_content&task=blogcategory&id=0&Itemid=179) (accessed July 21, 2008).

<sup>36</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, paras 2.22-2.24.

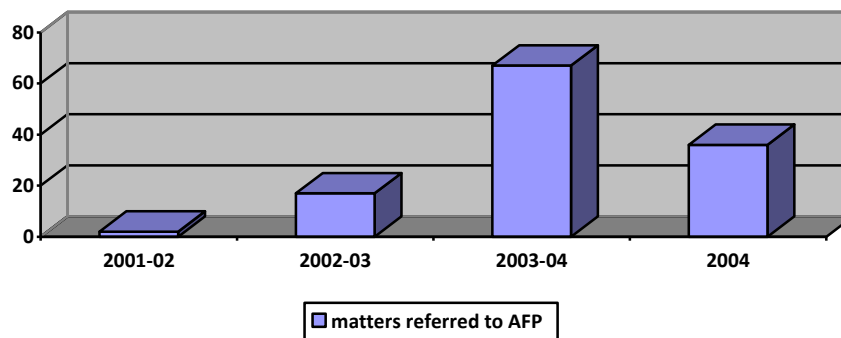
<sup>37</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the

DIAC, the Department of Immigration and Citizenship, collects some figures on the number of non-citizens found working in Australia without a valid visa. These figures were last published in 2003 when the Department confirmed that between July 2002 and May 2003 it had identified 149 persons working in the sex industry unlawfully. Other figures released by DIAC (formerly DIMIA, the Department of Immigration, Multicultural and Indigenous affairs) show that in the 2002-03 financial year 257 non-citizens were found working illegally in the sex industry. 100 of these persons (all women) were from Thailand. 49 women were from Malaysia, 42 from China, and 39 from the Republic of Korea (South Korea).<sup>38</sup> The figures, however, do not reflect the conditions of their entry and stay and thus do not reveal whether these persons are victims of trafficking.

DIAC also keeps records about the number of trafficking “matters” referred to the AFP for further investigation. According to a report published by the Australian Institute of Criminology (AIC) in 2008, 221 ‘matters’ were referred to the AFP by DIAC between July 1, 1999 and December 31, 2007, including “196 referrals relating specifically to the sex industry, involving 174 suspected trafficked persons.”<sup>39</sup>

Figure 2: Trafficking matters referred to the AFP, DIAC 2001-04<sup>40</sup>

Financial year	Cases referred to AFP
2004	36
2003-04	67
2002-03	17
2001-02	2



Estimates from the 1990s may indicate that Australian Government agencies believed the scale of the trafficking problem to be greater at that time. In 1995, for example, the Joint Standing Committee on Foreign Affairs, Defence and Trade, received submissions that “at any one time there might be 200 Asian prostitutes working in Australia who had been trafficked here by organised criminals suspected

Commonwealth of Australia, June 2004, para 2.25.

<sup>38</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.8 (citing a DIMIA submission to the Committee).

<sup>39</sup> Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 27.

<sup>40</sup> AFP, *Annual Report 2006-07* (2007) 25–26; AFP, *Annual Report 2005-06* (2006) 35; AFP, *Annual Report 2004-05* (2005) 32; AFP, *Annual Report 2003-04* (2004) 37; AFP, *Annual Report 2002-03* (2003) 94.

of being linked to drug trafficking.”<sup>41</sup> On the other hand, according to Senator Macdonald, the former National Crime Authority (NCA, now Australian Crime Commission, ACC)) was aware of only 25 women being trafficked to Australia between 1992 and 1996.<sup>42</sup>

### 2.2.3 Employment and working conditions

The majority of victims of human trafficking in Australia are found working in the sex industry. This includes legal brothels, as well as illegal brothels and escort agencies.<sup>43</sup> There is no evidence linking trafficking with street prostitution and there are only isolated reports about trafficked women working in gambling houses or as drug couriers.<sup>44</sup> There is also no significant evidence of persons being brought into Australia for forced labour in sweat shops or other forced employment.<sup>45</sup>

While Sydney and Melbourne have been identified as the main points of entry of trafficked persons into Australia,<sup>46</sup> police investigations reveal that victims are frequently moved around the country, especially between the mainland state capitals.<sup>47</sup>

There are ample reports about the hard and unsafe working conditions for trafficked women, the risk of infection with sexually transmitted diseases, poor and unsanitary accommodation, instances of imprisonment, physical and sexual violence, and forced drug use.<sup>48</sup>

Trafficked women are usually bound to the traffickers by a verbal agreements frequently referred to as debt-bondage. This ‘contract’ obliges women to work for the brothel-owner until the debt for the journey to Australia and their accommodation have been paid off. The so-called ‘contract girls’ usually enter into the agreement with the traffickers prior to their arrival in Australia, though the contract and the associated debt are sometimes transferred between different traffickers.<sup>49</sup> Research

<sup>41</sup> Cited in Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Current Issues Brief No 28 2002-03 (Department of the Parliamentary Library, 2003) 4.

<sup>42</sup> Australia, Senate,

<sup>43</sup> Queensland, Crime and Misconduct Commission, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)*, Brisbane (Qld): CMC, December 2004, 26.

<sup>44</sup> Australian Government, *Australian Government's Action Plan to Eradicate Trafficking in Persons* (2004) available at [www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_AustralianGovernmentsActionPlantoEradicateTraffickinginPersons-June2004](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernmentsActionPlantoEradicateTraffickinginPersons-June2004) (accessed July 4, 2008) 7; Rebecca Tailby, “Organised Crime and People Smuggling/Trafficking to Australia” (2001) 208 *Australian Institute of Criminology, Trends & Issues*.

<sup>45</sup> Elaine Pearson, “Australia” in, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance against Trafficking in Women, 2007, 28 at 29, available at [www.gaatw.net/index.php?option=com\\_content&task=blogcategory&id=0&Itemid=179](http://www.gaatw.net/index.php?option=com_content&task=blogcategory&id=0&Itemid=179) (accessed July 21, 2008).

<sup>46</sup> Australia, Attorney-General's Department, *Australia's Strategy to Combat People Trafficking*, March 2007, 3 (copy held with author).

<sup>47</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.32.

<sup>48</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, paras 2.40-2.46; Linda Brockett & Alison Murray, “Thai Sex Workers in Sydney” in R Perkins et al (eds), *Sex Work and sex Workers in Australia*, Sydney (NSW): UNSW Press, 1994, 191 at 197.

<sup>49</sup> Marnie Ford, *Sex slaves and legal loopholes* (2001) 15.

conducted in 1993 in Sydney suggested that over 90 percent of Thai women in Sydney's sex industry initially arrived under these conditions.<sup>50</sup>

There is to date no reliable information about the debts incurred by women who have been trafficked to Australia. Given the experience in other jurisdictions, it is likely that traffickers demand several thousand dollars from their victims and that this 'fee' is generally higher than originally advertised to the victims. From the available information, the fees charged by traffickers range between \$12,000<sup>51</sup> and \$50,000.<sup>52</sup> Several reports confirm that women are required to pay off their debt by working a set number of jobs (up to 500). On average it takes the women between 6 and 18 months to pay off that debt, usually by working six or seven days a week and more than ten hours per day.<sup>53</sup> This lends support to the observation that there is often a rapid "turnover" of women.<sup>54</sup>

From the limited reports available it is not possible to identify a common pattern about the way in which law enforcement or other government agencies become aware of trafficking cases. An analysis published in 2008 suggests that in most instances the victims themselves contacted the authorities by contacting police directly or calling 000, contacting their foreign embassies in Australia, or by seeking assistance from brothel clients. The report only points to two cases in which the victims were detected following police or immigration compliance raids.<sup>55</sup>

Those persons who are found to be victims of trafficking do have access to some government support services. In Australia, this system is referred to as VoTCare, the Victims of Trafficking Care, which assists those victims who are willing and able to assist government agencies in criminal investigations of trafficking cases. Between May 20, 2004 and January 31, 2008, 88 persons were referred to VoTCare. 87 of the victims were female and the great majority, 62 women, were Thai nationals. The remaining women were from other Asian or European countries.<sup>56</sup>

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<sup>50</sup> Linda Brockett & Alison Murray, "Thai Sex Workers in Sydney" in R Perkins et al (eds), *Sex Work and sex Workers in Australia*, Sydney (NSW): UNSW Press, 1994, 191 at 191.

<sup>51</sup> Linda Brockett & Alison Murray, "Thai Sex Workers in Sydney" in R Perkins et al (eds), *Sex Work and sex Workers in Australia*, Sydney (NSW): UNSW Press, 1994, 191 at 192.

<sup>52</sup> Australia, Senate, Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.17; cf Project Respect, "About Trafficking", available at [www.projectrespect.org.au](http://www.projectrespect.org.au) (accessed July 4, 2008).

<sup>53</sup> Marnie Ford, *Sex slaves and legal loopholes* (2001) 15.

<sup>54</sup> Linda Brockett & Alison Murray, "Thai Sex Workers in Sydney" in R Perkins et al (eds), *Sex Work and sex Workers in Australia*, Sydney (NSW): UNSW Press, 1994, 191 at 192.

<sup>55</sup> Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 24–26 with reference to relevant case law (see also Section 6 below).

<sup>56</sup> Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 17.

Figure 3: Persons supported by Victims of Trafficking Care (VoTCare), Australian Federal Police, 2004-08<sup>57</sup>

Financial year	New referrals during period	Total (since 2004)
2007-08		88 <sup>58</sup>
2006-07	35	78
2005-06	13	66

### 3 Non-government organisations

The low number of cases and victims reported in official government documents stands in sharp contrast to estimates made by advocacy groups, community organisations, and other non-government associations.

For example, Project Respect, an Australian human trafficking advocacy group, has for several years suggested that about 1000 trafficked women reside in Australia at any one time:

Project Respect estimates that there are typically up to 1,000 women in Australia under contract at any one time. This refers to women still paying off a 'debt' and does not include women who have finished their 'debt' but remain in Australia. [...] Project Respect has made estimates based on a range of other information, including statistics from the Refugee Review Tribunal, Department of Immigration removal statistics, sex industry estimates, observations in brothels etc.<sup>59</sup>

Project Respect's figure of 1000 women trafficked into Australia has been frequently cited in many media reports<sup>60</sup> and the organisation has made multiple presentations and submissions to government agencies in which it repeats this figure. Other NGOs, such as the Scarlet Alliance, an organisation that represents persons working (voluntarily) in the sex industry, submits that there are around 400 sex workers entering Australia each year.<sup>61</sup> It is not possible to establish the accuracy of these estimates.

These high estimates were rejected by the previous federal Government as exaggerated and unreliable. On April 1, 2003, the then Minister for Immigration and Multicultural and Indigenous Affairs, Mr Philip Ruddock, issued a media release stating that since July 2002 only four women had made complaints of trafficking. Thus, he remarked:

<sup>57</sup> AFP, *Annual Report 2006-07* (2007) 26; AFP, *Annual Report 2005-06* (2006) 35; AFP, *Annual Report 2004-05* (2005) 32; AFP, *Annual Report 2003-04* (2004) 37; AFP, *Annual Report 2002-03* (2003) 94.

<sup>58</sup> Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 6.

<sup>59</sup> Project Respect, "About Trafficking", available at [www.projectrespect.org.au](http://www.projectrespect.org.au) (accessed July 4, 2008).

<sup>60</sup> See, for example, Cath McAloon, "Vic: At least 1000 illegally trafficked prostitute in Australia" (23 Oct 2003) *AAP National News Wire*; "Illegal Prostitution Rife" (24 Oct 2003) *Herald Sun*; Mark Phillips, "Sex slave shame unveiled" (24 Mar 2004) *The Mercury* (Hobart).

<sup>61</sup> Cited in Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, para 2.65. See also Nicola Piper, "A Problem by a Different Name? A Review of Research on Trafficking in South-East Asia and Oceania" in, Frank Laczko & Elzbieta Godziak, *Data and Research on Human Trafficking: A Global Survey*, Geneva: IOM, 2003, 203 at 219.

It is not a credible suggestion that hundreds or thousands of people are being trafficked unwillingly into the industry and have escaped detection over many years ... While I do not diminish the concerns on trafficking, the actual complaints from individuals do not match the level of claims being made ... the claims being made about the wide extent of trafficking cannot be substantiated.<sup>62</sup>

A parliamentary briefing paper has also been critical about the methods used by advocacy groups and NGOs to estimate the number of persons trafficked to Australia, suggesting that “[s]ome of these methods may inflate the extent of the problem”.<sup>63</sup> But the same paper also notes that “it is probable that the Government’s reliance on the actual number of complaints significantly understates the problem.”<sup>64</sup> Another newspaper article remarked: “Whether there are 500 or 1500 sex slaves (as some zealots claim) is impossible to guess and the task is made more difficult by activists with other agendas.”<sup>65</sup>

Non-government organisations generally confirm official reports about the source countries of trafficked persons in Australia, suggesting that most women are of Thai nationality or from other East and Southeast Asian countries, while reports about women trafficked to Australia from Europe and Latin America are more isolated.<sup>66</sup>

NGOs disagree about the level of knowledge that women have about the nature of their prospective employment when they are brought to Australia. The Scarlett Alliance believes that most women arrive in Australia legitimately and take up sexual activities as a “secondary activity”, while Project Respect is of the view that most women have been deceived or tricked into sexual servitude.<sup>67</sup>

There is general consensus about the employment conditions and debt bondage situation many trafficked women encounter when they arrive in Australia. Some NGOs suggest that the debts incurred by women can be as high as \$80,000.<sup>68</sup> Project Respect and, in particular, its Director, Ms Kathleen Maltzahn, have been among the most prolific writers on the topic of human trafficking in Australia. The organisation, which works closely with many victims of trafficking, has published countless accounts of women who have been brought to Australia and worked in harsh conditions in illegal brothels. In its reports, Project Respect describes the conditions that trafficked women face when they first arrive in Australia and the

<sup>62</sup> As cited in Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Current Issues Brief No 28 2002-03 (Department of the Parliamentary Library, 2003) 5; primary source no longer available.

<sup>63</sup> Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Current Issues Brief No 28 2002-03 (Department of the Parliamentary Library, 2003) 6.

<sup>64</sup> Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Current Issues Brief No 28 2002-03 (Department of the Parliamentary Library, 2003) 6.

<sup>65</sup> Piers Akerman, “When the truth spoils a good slavery story” (3 June 2003) *The Daily Telegraph*.

<sup>66</sup> Project Respect, “About Trafficking”, available at [www.projectrespect.org.au](http://www.projectrespect.org.au) (accessed July 4, 2008).

<sup>67</sup> Australia, Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the trafficking of women for sexual servitude*, Canberra (ACT): Parliament of the Commonwealth of Australia, June 2004, paras 2.20–2.21; Project Respect, “About Trafficking”, available at [www.projectrespect.org.au](http://www.projectrespect.org.au) (accessed July 4, 2008).

<sup>68</sup> Elaine Pearson, “Australia” in, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance against Trafficking in Women, 2007, 28 at 28, available at [www.gaatw.net/index.php?option=com\\_content&task=blogcategory&id=0&Itemid=179](http://www.gaatw.net/index.php?option=com_content&task=blogcategory&id=0&Itemid=179) (accessed July 21, 2008); Kathleen Maltzahn, coordinator of Project Respect, cited in Cath McAloon, “Vic: At least 1000 illegally trafficked prostitute in Australia” (23 Oct 2003) *AAP National News Wire*.

violence they are subjected to in order to intimidate, “break”, and control them and prepare them for prostitution. These methods also frequently involve rape and threats to the victims’ family.<sup>69</sup>

#### 4. International Reports

Trafficking in persons to Australia does not feature prominently in international reports on this phenomenon. Many of the key global surveys on human trafficking, such as UN.GIFT, the United Nations Global Initiative to Fight Human Trafficking, and the reports by leading international organisations in this field, such as the International Organisation for Migration (IOM), UNICEF, International Labor Organisation (ILO), and UNHCR (the UN High Commissioner for Refugees) have no specific information on trafficking in persons to Australia.

Among the most comprehensive analyses of trafficking in persons is the work of the UN Office on Drugs and Crime, UNODC, which has a far-reaching mandate on human trafficking and maintains regional and country offices around the world to monitor the levels and patterns of trafficking in persons and assist countries in their suppression and prevention efforts. UNODC’s *Trafficking in Persons: Global Patterns Report*, last published in 2006, identifies Australia (along with other countries in Oceania) “mainly” as a destination for trafficking. The report classifies Australia as “high” (4/5) on its citation index.<sup>70</sup>

The report confirms official findings that the majority of victims trafficked to Australia are from Southeast Asia, South Korea, and China.<sup>71</sup> Trafficking almost exclusively includes women who are brought Australia to work in the sex industry, including legal and illegal brothels; there are no reported cases of trafficking in men or boys. The reports also confirm that most women initially enter Australia voluntarily and with knowledge about the sexual nature of their work, but that many of them are subjected to debt bondage and involuntary servitude.<sup>72</sup> The UNODC report contains no further information about the actual levels and modi operandi of trafficking in persons to Australia. The methodology used to compile the *Trafficking in Persons: Global Patterns Report* has also been criticised for “relying on secondary sources and providing a limited and inaccurate picture of global patterns.”<sup>73</sup>

UNESCO, the United Nations Educational, Scientific, and Cultural Organisation, has carried out a Trafficking Statistics Project through its Bangkok Office which includes

a literature review and meta-analysis of existing statements on trafficking. UNESCO is tracing the origin of numbers cited by various sources, attempting to ascertain the methodology by which these numbers were calculated, and evaluating their validity. The

<sup>69</sup> See further, Kathleen Maltzahn, *Trafficked*, Sydney (NSW): University of NSW Press, 2008.

<sup>70</sup> “The index indicates the number of sources reporting an information variable concerning a particular country according to a 5-point scale, from very low to very high, in comparison to all other countries (eg information indicating that a specific country or territory is an origin, transit or destination of trafficking in persons).” UNODC, *Trafficking in Persons: Global Patterns*, Vienna: UNODC, April 2006, 6, 100.

<sup>71</sup> UNODC, *Trafficking in Persons: Global Patterns*, Vienna: UNODC, April 2006, 101.

<sup>72</sup> UNODC, *Trafficking in Persons: Global Patterns*, Vienna: UNODC, April 2006, 101; US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 61.

<sup>73</sup> Judy Putt, “Human trafficking to Australia: a research challenge” (2007) 228 *Trends & Issues in Crime and Criminal Justice* 1.

aim is to clarify the bases on which estimates of the numbers of trafficked persons are derived, and to separate trafficking myths from trafficking realities.<sup>74</sup>

The online database contains some information concerning Australia originating from Australian Government agencies, Australian media outlets, and non-government organisations. The UNESCO project does not independently collect or review the available data. Moreover, the information on Australia has not been updated since 2004.

The US State Department's 2008 *Trafficking in Persons Report* — an annual review of worldwide anti-trafficking efforts — is the first significant publication documenting instances of trafficking involving male victims, though these instances do not relate to sex trafficking. The report notes cases

of several men and women from India, the PRC, South Korea, the Philippines, and Ireland migrating to Australia for work, but subsequently subjected to forced labour, including fraudulent recruitment, confiscation of travel documents, confinement, and debt bondage.<sup>75</sup>

The report is among the very few available sources on trafficking for forced labour outside the sex industry. It claims that Australian agencies, including the Immigration Department (DIAC), the Workplace Ombudsman, and Labor unions “continue to discover instances in which migrant workers are in situations of debt bondage, and other conditions leading to labor trafficking.”<sup>76</sup> Specifically, the State Department's report outlines a case involving a group of “Indian nationals who arrived in Australia on tourist visas [and] were sent to a tomato farm in Jerilderie, New South Wales, where they were held in virtual confinement and forced labour.”<sup>77</sup>

## 5. Human Trafficking in the Media

News media publications in Australia have reported extensively on the topic of human trafficking in recent years. An investigation of media coverage of the issue in Australia uncovers reporting of trafficking and the accounts of trafficking victims in a variety of publications, both tabloid and broadsheet, and in a small number of transcripts from radio programs. While it is difficult to generalise the content of the large number of articles considered, some trends become evident in examining these reports. The media items display a general transition from the often sensationalist and simplistic coverage in the early years of media coverage, to a more detailed discussion of the issue, with reference made to legal considerations and contextual details, rather than mere stereotypes. This is arguably a reflection of the increased level of governmental reporting on, and public discussion of the issue, which has rendered trafficking in persons somewhat less confronting for an Australian audience than when first revealed in 1998 and 1999.

### 5.1 External considerations

Several major triggers for newspaper reports and opinion pieces are evident. The frequency of articles published increases in number around the time of major arrests,

<sup>74</sup> UNESCO Bangkok, *Trafficking Statistics Project*, available at [www.unescobkk.org/index.php?id=1022](http://www.unescobkk.org/index.php?id=1022) (accessed July 16, 2008).

<sup>75</sup> US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 61.

<sup>76</sup> US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 62.

<sup>77</sup> US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 62.

government reports or other newsworthy events involving victims of trafficking, such as the death of a Thai trafficking victim in detention in 2001 and the subsequent New South Wales coronial inquest.<sup>78</sup>

In terms of content, the majority of reports merely restate information provided by police or in court and do not enter into aspects of investigative journalism with respect to trafficking in persons.<sup>79</sup> In addition, many feature articles provide only surface-level condemnation of trafficking, without any analysis or specific evidence of numbers or trends. This lack of clarity is somewhat understandable given the covert nature of trafficking, and the lack of detailed government reporting on the issue. The death of Thai national Puongthong Simaplee has been the most commonly discussed victim, and the source of the largest amount of investigative reporting. Some reports also dealt with criticism of Australia's limited action on human trafficking by NGOs and the US Government, as well as reporting on general information on the issue published by NGOs, the United Nations and Australian sex industry groups such as Scarlet Alliance.<sup>80</sup>

Many articles tie the issue of trafficking to the release of films or broadcast of documentaries without providing any specific facts about trafficking, or merely repeating generalised details disseminated by NGOs. In particular, the release and subsequent critical acclaim for the Australian movie 'The Jammed' in 2007, which was based on the accounts of victims of trafficking, was the source of a number of news articles discussing this issue in general terms.<sup>81</sup> In 2008, news reports have thus far reflected a growing awareness of the legal significance of the issue of trafficking in persons, with many articles considering the impact of the landmark High Court case of *Wei Tang* and its distinction between sexual servitude and slavery.<sup>82</sup>

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<sup>78</sup> See, for example: Leonie Lamont, "Sold at 12: nightmare ends in death" (13 Mar 2003) *The Sydney Morning Herald* 7; Elisabeth Wynhausen & Natalie O'Brien, "Death exposes agony of sex slaves" (15 Mar 2003) *The Australian* 3; Elisabeth Wynhausen, "Coroner in call for action on sex slaves" (25 Apr 2003) *The Australian* 5; "Villawood death highlights people smuggling perils: commissioner" (25 Mar 2003) *ABC News*. See further Section 6.2 below.

<sup>79</sup> With the exception of the majority of articles by Elisabeth Wynhausen and Natalie O'Brien, which included a greater incidence of investigation and reporting of primary sources such as interviews with victims than was otherwise evident in the articles.

<sup>80</sup> See, for example, the reports detailing criticism by the United States of Australia's response to trafficking in persons: "NSW: Australia named in sex slave report" (16 Apr 2004) *AAP Australian National News Wire*; "Australia 'doing the minimum' on sex slavery: US" (16 June 2004) *ABC PM*; "Sex slave tag hits Australia" (16 June 2004) *The Daily Telegraph* (Sydney) 28; Natalie O'Brien, "Sex slave fight rests with new laws to stop trafficking" (9 Mar 2005) *The West Australian* (Perth) 9; , Jamie Walker, "Minister raps US over visa criticism" (14 June 2007) *The Australian* 4.

<sup>81</sup> Kilmeny Adie, "Fiction from fact" (18 Oct 2007) *Illawarra Mercury* (Wollongong) 33; James Joyce, "Our seedy sex-slave underbelly" (25 Oct 2007) *The Newcastle Herald* 26. "Movie reveals the horror of human trafficking" (21 Feb 2008) *Townsville Bulletin* 7.

<sup>82</sup> "Slavery in the 21<sup>st</sup> Century" (13 May 2008) *The Law Report: ABC Radio National*; "Calling a slave a slave" (14 May 2008) *Canberra Times* 19; Karen Kissane, "Judge warns many could be snared by slavery laws" (14 May 2008) *The Age* (Melbourne) 5; Victor Violante, "High Court Reserves Sex Slave Decision" (15 May 2008) *Canberra Times* 3; Anne Gallagher, "A question of bondage" (15 May 2008) *The Age* (Melbourne) 17; Natalie O'Brien & Elisabeth Wyhausen, "DPP to test laws in sex slavery case" (15 May 2008) *The Australian* 4. See further Section 6.2 below.

## 5.2 Limitations

In examining news reports, a lack of information in relation to several matters can be noted. For example, there is a distinct lack of reporting on trafficking in persons for purposes other than prostitution.<sup>83</sup>

In terms of the general discussion of human trafficking, most articles cite statistics provided by NGOs such as Project Respect, but fail to engage in any deeper investigation or critique of these figures. In particular, the use of the estimate that '1000 women' have been trafficked into Australia is repeated verbatim in the majority of articles,<sup>84</sup> with very few reports questioning this figure or providing other statistics on this point.<sup>85</sup>

A general educative function is served by the articles, but the absence of concrete data is troubling. As a means of providing the public with information on this complex issue, Australia's news media often lack the consideration of detail necessary to present a balanced and factually accurate view of trafficking. In general terms, many articles are highly sensationalist in their discussion of the issue, with an emphasis on the lurid nature of the sex industry, organised crime and slavery, rather than a balanced consideration of factors such as the driving forces behind trafficking in persons. However, this type of news coverage becomes understandable, given the aforementioned lack of reliable published data or detailed government reporting on the issue.

The coverage of specific cases of trafficking victims is relatively accurate because many reports are based on primary sources such as interviews with victims.<sup>86</sup> Articles which cite secondary sources such as reports by the Australian Crime Commission,<sup>87</sup> or Federal Government press releases are evidently based on more accurate data than some of the earlier news reporting which was largely founded on conjecture.

## 5.3 Terminology

The use of the term 'sex slaves' in headlines to describe victims of trafficking is particularly notable and is arguably an inappropriate use of the term in failing to

<sup>83</sup> With the exception of the report "Crime experts warn of untold story of human trafficking" (30 Apr 2004) *ABC AM*, in which former AFP agent Brian Iselin noted that "we know that men are trafficked into circumstances of slave-like labour in kitchens and restaurants around Australia."

<sup>84</sup> See, for example: Natalie O'Brien & Elisabeth Wynhausen, "Sex slaves may get witness protection" (26 Mar 2003) *The Australian* 6; Natalie O'Brien & Elisabeth Wynhausen, "Canberra to review sex slave policing" (4 Apr 2003) *The Australian* 6; "Shame of sordid sex rings – Thousands duped into misery" (22 Apr 2003) *The Daily Telegraph* (Sydney) 7; Kimina Lyall, "Police lay first sex traffic charges" (19 June 2003) *The Australian* 1; Meagan Shaw, "Police team to tackle sex slavery" (14 Oct 2003) *The Age* (Melbourne) 4; "Sex slaves overworked" (25 June 2004) *The Herald Sun* (Melbourne) 11.

<sup>85</sup> With the exception of doubts expressed by the then Minister for Immigration Philip Ruddock: "Mismatches, false claims plague fight on sex traffickers" (20 May 2003) *The Australian* 11; or in opinion pieces questioning the veracity of the estimate as a figure disseminated by 'zealots', such as Piers Akerman, "When the truth spoils a good slavery story" (3 June 2003) *The Daily Telegraph* (Sydney) 16.

<sup>86</sup> For example: Mark Forbes, "Honey and her \$35,000 contract: the human face of an inhumane trade" (5 June 2001) *The Sydney Morning Herald* 1; Elisabeth Wynhausen, "No visa for sex slave whistleblower" (21 Apr 2003) *The Australian* 3.

<sup>87</sup> Such as "Key forces take aim at sex slavers" (20 Dec 2003) *The Australian*.

reflect the complexity of the employment, debt bondage, and consent issues involved in trafficking.<sup>88</sup> This is symptomatic of the general trend to stereotype trafficked women as naïve victims tricked into working in the sex industry – a portrayal which conflicts with the accounts of those women who actively pursue a career in this field in Australia, but are exploited by their employers. Earlier articles also feature a lack of distinction between smuggling and trafficking,<sup>89</sup> a trend which was altered as more cases were reported.

## 6. Case Law since 1999

### 6.1 Criminal prosecutions

To this date, there has not been a single conviction under Australia's trafficking offences. This is due in part to the fact that the relevant offences were only introduced into the federal *Criminal Code* in 2005.<sup>90</sup> Prior to their enactment, a number of trafficking and trafficking-related cases were prosecuted under sexual slavery and servitude offences which came into operation in 1999.<sup>91</sup> The 'success' of these prosecutions has been, at best, mixed as a considerable number of cases have been dismissed due to lack of evidence or have been appealed to higher courts. As on September 1, 2008, there have only been three convictions, all involving offences relating to slavery and sexual servitude.<sup>92</sup>

The following sections examine relevant cases in chronological order and in reference to the charges laid against the defendants.

#### 6.1.1 Pre 1999 (before introduction of sexual slavery laws)

Prior to 1999, Australia had no offences dealing specifically with trafficking in persons, debt bondage, or sexual servitude. Australia was not a signatory to the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*,<sup>93</sup> and accordingly did not implement the obligations stemming from this Convention into domestic law. The lack of adequate offences, however, does not mean that trafficking in persons did not occur in Australia. There are a small number of reported cases that give reason to think that prior to the reform of 1999, situations similar to trafficking might have been prosecuted under prostitution-related charges or for offences such as rape, sexual assault, false imprisonment or kidnapping.

<sup>88</sup> See, for example: Charles Miranda, "\$1m trade in sex slaves – Girls as young as 13 smuggled in" (23 Feb 1998) *The Daily Telegraph* (Sydney) 9; "Thais pledge to stop sex slavery" (14 June 1999) *The Courier Mail* (Brisbane); Debra Way, "Fed: Numbers of sex slaves in Australia quadruples" (9 Dec 1999) *AAP*; "Sex slaves auctioned in Australia" (27 Dec 1999) *Mercury* (Hobart) 4.

<sup>89</sup> Charles Miranda, "\$1m trade in sex slaves Girls as young as 13 smuggled in" (23 Feb 1998) *The Daily Telegraph* (Sydney) 9; Peter Clack, "Smugglers 'being paid with Australian benefits'" (9 Sep 2001) *The Canberra Times* 12; "Human trafficking- Thailand a transit point for smugglers" (20 Nov 2001) *Bangkok Post*.

<sup>90</sup> Division 271—Trafficking in persons and debt bondage; introduced by the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth), No 96 of 2005.

<sup>91</sup> Division 270—Slavery, sexual servitude and deceptive recruiting; introduced by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* (Cth), No 104 of 1996.

<sup>92</sup> For an earlier summary of the case law, see Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 7, 49.

<sup>93</sup> 96 UNTS 271.

### *R v Nguyen and Tran*

The case of *R v Nguyen and Tran* [1998] 4 VR 394, for instance, illustrates the situation of two Thai women who were brought into Australia to work in an illegal prostitution racket run by a man called Le Van Chau — who was not an accused in this case. Chau employed illegal prostitutes in his private home and in a number of brothels in Melbourne in the mid 1990s. The two victims that were later kidnapped by Nguyen and Tran both arrived in Australia from Thailand on tourist visas in 1995. Chau was involved in organising their journey to Australia and was responsible for their accommodation and prostitution. The Thai women working for Chau gave substantial parts of their earnings to Chau and were in fear of threats and violence,<sup>94</sup> but there are no further details on the conditions of their employment and any debt-bondage situation.

### *Gary Glazner*

Among the first high-profile cases in Australia was the prosecution of Gary Glazner in Melbourne. The case was initially brought to the attention of the authorities by an informant in 1997 and it resulted in the arrest of Mr Glazner 14 months later in 1999. The investigations revealed that Mr Glazner brought several Thai women to Australia who he had obtained for about \$18,000-\$20,000 each from an agent in Thailand.<sup>95</sup> The women were aware that they would be working in the sex industry, but were kept in slavery-like conditions once they arrived in Melbourne. The women initially entered Australia on tourist visas. At that time, they were accompanied by a Thai 'minder' who escorted them and carried their passports. Some of the documents were forged while some women travelled on genuine documents. Glazner then took away their passports and was able to obtain work rights for the women by lodging forged refugee protection visa applications on their behalf. He accommodated them in small hotel rooms in Kew, Melbourne where he sealed the windows and installed iron gates and bars to restrict the women's movement. Glazner verbally abused the women and kept a firearm in clear view of them; there was, however, no evidence of any physical abuse of the women by Glazner. The women were forced to work 12-hours a day, seven days a week in an unlicensed brothel in South Melbourne, and would not receive any payment for their first 500 jobs. Some women had also been moved to premises in Sydney. It has been estimated that Glazner made at least \$1.2 million from these women, though it has been suspected that he was associated with at least 40 other 'contract girls'. Those, however, were unwilling to testify against him.<sup>96</sup>

While the case fits many characteristics of trafficking in persons, at the time the Glazner case came to light, Australia did not have any criminal offences relating to trafficking or sexual servitude. Accordingly, he was only charged and convicted for offences under the *Prostitution Control Act 1994* (Victoria), including being an unlicensed prostitution provider (s 22) and living of the earnings of prostitution (s 10). He received a suspended 30-months sentence and a \$30,000 fine: *DPP v Glazner* [2001] VSCA 204.<sup>97</sup> Charges of false imprisonment remained unsuccessful as there

<sup>94</sup> *R v Nguyen and Tran* [1998] 4 VR 394 at 395–398 per Kenny JA.

<sup>95</sup> *DPP v Glazner* [2001] VSCA 204 [6].

<sup>96</sup> Lara Fergus, "Trafficking in women for sexual exploitation" (June 2005) 5 *Briefing, Australian Centre for the Study of Sexual Assault* (Australian Institute of Family Studies) 18-19 with reference to the unpublished court reports; Marnie Ford, *Sex slaves and legal loopholes* (2001) 17–26.

<sup>97</sup> Lara Fergus, "Trafficking in women for sexual exploitation" (June 2005) 5 *Briefing, Australian Centre for the Study of Sexual Assault* (Australian Institute of Family Studies) 18–19.

was insufficient evidence of any violence or immediate threats of violence to the women.<sup>98</sup>

### 6.1.2 Prosecutions under sexual slavery laws

In 1999, the Australian Government introduced a range of new offences relating to slavery and sexual servitude into the *Criminal Code* (Cth). While not directly aimed at human trafficking,<sup>99</sup> the new provisions created criminal liability for a range of activities frequently associated with trafficking in persons including slavery,<sup>100</sup> sexual servitude,<sup>101</sup> and deceptive recruitment for sexual services.<sup>102</sup> Since the introduction of these laws, there have been six reported cases, including the recent High Court case involving Ms Wei Tang. As on September 1, 2008, two cases had been dismissed due to insufficient evidence; three cases were followed by convictions. One new case is still ongoing.

#### *R v Kwok*

The prosecution of Mr Daniel Sweeseang Kwok commenced as a result of three Indonesian women reporting to the New South Wales Police and the Australian Federal Police that they had been deceptively recruited to travel to Australia to work in the catering or public relations industries. Upon arrival in Australia, however, they learned that they were in fact to be engaged in sex work, specifically the performance of 800 sexual acts, for no payment and pursuant to a "contract debt" of which they had no prior knowledge. The case was, however, later dismissed due to lack of evidence: *R v Kwok* [2005] NSWCCA 245.

The case initially involved further accused Hosea Prayudi Saputra Yoe, Jenny Lai Chin Ong (sometimes known as "Mummy Jenny"), and her son Raymond Aik Tong Tan, but the cases against them also had to be dismissed due to lack of evidence

#### *R v Tran, Xu & Qi*

The case against Sydney brothel owners Ms Sally Ciu Mian Xu, Ms Ngoc Lan Tran, and their co-accused, brothel manager Mr Lin Qi involved charges of sexual servitude for bringing women from Thailand to Australia. One of the victims, 22-year old Thai woman Rattanan Kachenchart had called 000 to notify the authorities of her situation. She testified that she was promised waitressing work in Australia but when she arrived in Australia in 2002 she was forced to work in Ms Xu's and Ms Tran's brothels. To pay off her \$200,000 debt she had to engage in sex acts with up to twenty different men a day and was not allowed to leave the premises. In April 2005, the District Court of New South Wales found Ms Xu not guilty of trading a sex slave and the jury was not able to reach a verdict on the other two accused.<sup>103</sup>

<sup>98</sup> Marnie Ford, *Sex slaves and legal loopholes* (2001) 17.

<sup>99</sup> The *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* (Cth) was primarily designed to implement anti-slavery conventions into domestic law, including the *International Convention to Suppress the Slave Trade and Slavery* (the *Slavery Convention*) of 1926 (60 LNTS 253; 1927 ATS 11), the *Protocol amending the Slavery Convention* of 1953, (182 UNTS 21; 1953 ATS 8) and the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery* of 1956 (166 UNTS 40; 1958 ATS 3).

<sup>100</sup> Section 270.3 *Criminal Code* (Cth).

<sup>101</sup> Section 270.6 *Criminal Code* (Cth).

<sup>102</sup> Section 270.7 *Criminal Code* (Cth).

<sup>103</sup> Natasha Robinson, "Second sex slave jury fails to deliver verdict" (28 May 2005) *The Australian* 8; *DPP (Cth) v Cui Mian Xu* [2005] (10, 17 mat 2005) Supreme Court of New South Wales, unreported, BC200501399; Fiona David, *Trafficking of Women for Sexual*

*Kanakporn Tanuchit & Trevor McIver*

Among the very few convictions for sexual servitude offences is the case against Trevor McIver and his wife Kanakporn Tanuchit, who were each convicted in 2007 of five counts of possessing a slave and five counts of using a slave (20 counts in total) following a jury trial in New South Wales. The pair was accused of bringing six women from Thailand to Australia. They were assisted by a third Thai woman who was paid \$15,000 to arrange the transfer of the victims, using false documents and return airline tickets to secure their entry into Australia. Upon arrival, their documents were taken from them and they were accommodated in the couple's home or their brothel, where they were forced to work seven days a week to repay a debt of \$45,000.<sup>104</sup>

*R v Wei Tang*

The case against the Chinese brothel owner Wei Tang was the first jury conviction under the *Criminal Code* slavery offences. Ms Tang was accused of having purchased five women from Thailand to work in debt-bondage conditions in a legal brothel called Club 417 in Fitzroy, Melbourne.<sup>105</sup> The women had previously worked in the sex industry in Thailand and were aware that they would be working in brothels in Australia. The women arrived in Australia separately between August 2002 and May 2003 on fraudulently obtained tourist visas. After their arrival, applications for protection visas were made on their behalf, thus enabling them to work legally. It is unclear how much of this process was understood by the victims.

When they testified against the defendant, the women explained that they had voluntarily entered into an agreement with a broker in Thailand, and owed \$40,000-\$45,000 to the owner of their 'contract'. Wei Tang had purchased these contracts from the Thai recruiter for \$20,000. Repayments of the \$20,000 formed the basis for the charges of slave trading that were brought against Wei Tang and her employee, Ms Donoporm Srimonthon.

The debt owed to Wei Tang had to be repaid by working in a brothel six days a week over a period of seven to eight months. Ms Tang also withheld the women's passports and their return airplane tickets which had been used to gain entry to Australia. There was no other evidence of physical maltreatment by the accused.<sup>106</sup> It was conceded that two of the five women had indeed repaid their debts and had voluntarily stayed on to work as prostitutes.<sup>107</sup>

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*Purposes*, Canberra (ACT): AIC, 2008, 49 (with reference to the unpublished court transcripts); AAP, "Trio on trial accused of keeping student as sex slave" (22 Mar 2005) *Sydney Morning Herald* available at [www.smh.com.au/news/National/Trio-on-trial-accused-of-keeping-student-as-sex-slave/2005/03/22/1111254019070.html](http://www.smh.com.au/news/National/Trio-on-trial-accused-of-keeping-student-as-sex-slave/2005/03/22/1111254019070.html) (accessed 28 Aug 2008).

<sup>104</sup> Lisa Davies & Kim Arlington, "Couple kept sex slaves" (16 Nov 2007) *Courier Mail* (Brisbane), available at [www.news.com.au/couriermail/story/0,23739,22768397-953,00.html](http://www.news.com.au/couriermail/story/0,23739,22768397-953,00.html) (accessed 28 Aug 2008); Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 49.

<sup>105</sup> *R v Wei Tang* (2007) 16 VR 454, 457.

<sup>106</sup> Elaine Pearson, "Australia" in, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance against Trafficking in Women, 2007, 28 at 36, available at [www.gaatw.net/index.php?option=com\\_content&task=blogcategory&id=0&Itemid=179](http://www.gaatw.net/index.php?option=com_content&task=blogcategory&id=0&Itemid=179) (accessed July 21, 2008).

<sup>107</sup> *R v Wei Tang* (2007) 16 VR 454, 457.

Ms Wei Tang was initially convicted to ten years imprisonment on five counts of possessing a slave and five counts of utilising a slave contrary to s 270.3(1)(a) *Criminal Code* (Cth).<sup>108</sup> She successfully appealed against the conviction arguing that the judge misdirected the jury on the meaning of the term “slavery”. Specifically, she argued that it had to be established that she had acted with intent in dealing with the victims as though they were her property<sup>109</sup>. Her conviction was overturned in June 2007 and the Victorian Court of appeal ordered a retrial. In August 2008, the prosecution successfully appealed against that decision and Wei Tang’s initial conviction was upheld by the High Court: *R v Tang* [2008] HCA 39.

Donoporm Srimonthon, an employee of Wei Tang, pleaded guilty to two counts of slave trading and three counts of possessing a slave.<sup>110</sup> Perhaps suprisingly, Ms Srimonthon was herself a previous victim of Wei Tang who had chosen to stay with her trafficker and work for Wei Tang in a managerial capacity.

The brothel manager and driver of the victims, Paul Pick, was originally tried with Wei Tang, but was acquitted on eight charges, while the jury could not decide on a further two. He successfully applied for a nolle prosequi.<sup>111</sup>

#### *Somsri Yotchomchin and Joseph Sieders*

The two accused in this case, Mr Joseph Sieders and Ms Somsri Yotchomchin, were brothel owners in Sydney who were involved in the employment and sexual exploitation of several women from Thailand. The transfer of the victims was orchestrated by Montha Phuncharaen, a recruiter in Thailand, usually referred to as Pat. She arranged for a male escort and equipped him with a large sum of money in order to travel with the victims to Sydney where they fraudulently obtained tourist visas.<sup>112</sup> In Australia, the women were then taken to meet Somsri Yotchomchin, who took the loaned money from them whilst the male escort returned to Thailand. Ms Yotchomchin obtained fraudulent bridging and protection visas, that allowed the women to remain in Sydney, from a corrupt immigration official by the name of Mofazzal Haque Kazi.<sup>113</sup> The women were then shared between the four brothels operated by Yotchomchin and a the brothel operated by Johann Sieders and his wife Rapeparn Arpornrat.<sup>114</sup>

Police investigations<sup>115</sup> revealed that the cousin of one of the victims (referred to as LK) had previously travelled to Australia to pay off a family debt to another party, and that LK had joined her cousin for this purpose. After four weeks of sex work, LK became uncomfortable with the situation, and with the help of a customer, she contacted immigration authorities who then attended the premises, leading to the proceedings against the two defendants.

<sup>108</sup> *R v Wei Tang* [2006] VCC 637.

<sup>109</sup> *R v Wei Tang* (2007) 16 VR 454 at 471, 487.

<sup>110</sup> *R v DS* [2005] VSCA 99.

<sup>111</sup> *R v Wei Tang* (2007) 16 VR 454, 458. A nolle prosequi is an entry made on the record, by which the prosecution declares that it will not proceed against the defendant. Cf Natasha Robinson, “Second sex slave jury fails to deliver verdict” (28 May 2005) *The Australian* 8.

<sup>112</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [19].

<sup>113</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [21].

<sup>114</sup> At the time of the trial in Australia, Ms Arpornrat was under arrest in Thailand for seeking to procure Thai nationals to travel to Australia: *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [104].

<sup>115</sup> The case has been referred to by the AFP as Operation Turquoise; cf Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 44–47.

At the trial, the prosecution argued that the women were controlled by the accused who threatened them and their families with violence and with deportation to Thailand if they did not discharge their debts.<sup>116</sup> They did not receive any payment while they were under contract. Unlike many other trafficking cases, they were free to leave the brothels at any time as long as they continued to pay off their debt. Part of the money made from their prostitution was kept by the accused and some money was sent back to Thailand.

Some of the victims involved in this case continued to work in the brothels voluntarily even after their debts were paid back in full. A woman by the name of WS, for instance, stated that she accepted the debt as the cost for the opportunity to come to Australia to earn money. During her contract period she was required to earn between \$12,000 and \$13,000 per month. At this rate she paid off her debt in three months. Afterwards she worked at a rate of \$8,000 and then \$2,000 per month. This money was sent back to her family.<sup>117</sup> Another woman, PN, reportedly also stayed on after paying off her debt over three months, working seven days a week earning about \$15,000 - \$17,000 per month.<sup>118</sup> WP, a third woman, also stayed on after paying off her debt in two months and twenty days, earning around \$15,000 per month.<sup>119</sup> It was argued that all of the women involved were aware of the circumstances involved in the contract, and that they suffered no harm, mental or physical, from their time in Australia.

Although the two offenders in this case managed separate brothels and were charged with separate offences, they acted together in order to gain the sexual services of the trafficked women. Both were charged under s 270.6(2) *Criminal Code* (Cth) for conducting a business that involved the sexual servitude of persons, knowing about that servitude. It was claimed that the women were operating in the brothels in order to pay off debts of \$45,000, of which \$15,000 was remitted to Thailand, presumably for the recruiters, and \$30,000 representing the cost of their stay in Australia.<sup>120</sup>

John Sieders, his wife, and another co-accused were involved in the management of a brothel in Penrith. Evidence was adduced that he remitted sums of money back to Ms Phuncharaen in Thailand as part payment for the women. Those sums are \$9,595 for LK, \$8,625 for WS and \$8,155 for RS. His wife has also been arrested in Thailand for procuring people to travel to Australia. The conclusion was reached that there was a lesser degree of criminality in the behaviour of Sieders. This was reflected in the sentence of four years, with a non parole period of two years.<sup>121</sup> Somsri Yotchomchin, the other co-accused, was responsible for the management of four brothels in different parts of Sydney. There was evidence she had sent back amounts of \$8,625 for LK, \$8,000 for WP, and \$7,700 and \$6,800 on other occasions for other Thai women. Ms Yotchomchin was sentenced to five years imprisonment, with a non-parole period of two and a half years.<sup>122</sup>

Both convictions were unsuccessfully appealed in *R v Sieders* [2008] NSWCCA 187.

<sup>116</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [38].

<sup>117</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at paras [54]-[56].

<sup>118</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [64].

<sup>119</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [66].

<sup>120</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [160].

<sup>121</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [157].

<sup>122</sup> *R v Sieders and Yotchomchin* [2006] NSWDC 184 at para [160].

### *Kwang Su Ra et al*

One of the most recent cases in Australia involved a group of ten South Korean women who were found working in slavery-like conditions in a brothel in Sydney in March 2008.<sup>123</sup> Further investigations revealed that a criminal organisation had deceptively recruited the women in Korea, brought them to Australia under false pretences, confiscated their travel documents, and forced them to work for up to 20 hours a day in a legal brothel that was owned by the syndicate. On March 6, 2008, Australian authorities raided the Surry Hills brothel and charged five people with offences relating to deceptive recruitment for sexual services and debt bondage including the brothel owner and alleged ringleader Ms Kwang Su Ra, her receptionist Mr Ji Woo Lee, Ms Jin Hee Do who had lured the women to Australia, Ms Na Kyung Kim who was involved in moving the proceeds of the groups activity, and another man, Mr Gin Taek Choi. It has been alleged that the syndicate earned more than USD 2.3 million per year from the operation of the brothel.<sup>124</sup>

#### **6.1.3 Prosecutions under trafficking offences**

Offences specifically relating to trafficking in persons were added to the *Criminal Code* (Cth) in 2005 with the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth). The introduction of these offences reflects Australia's delayed implementation of provisions under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime*<sup>125</sup> which Australia has signed on December 11, 2000. The key offences include:

- trafficking in persons, ss 271.2, 271.3 *Criminal Code* (Cth);
- trafficking in children, s 271.4;
- domestic trafficking in persons, ss 271.5, 271.6;
- domestic trafficking in children, s 271.7; and
- debt-bondage, ss 271.8, 271.9.

### *Yogalingham Rasalingam*

The first person to be charged with trafficking offences under division 271 *Criminal Code* (Cth) was an Indian restaurant owner in Glenbrook in the Blue Mountains near Sydney by the name of Yogalingham Rasalingam. Mr Rasalingam was accused of bringing Anbalagan Rajendran — another man from his home town in southern India — to Australia and force him to work seven days a week, sometimes more than 15 hours a day.<sup>126</sup> During the trial, the victim testified that upon arrival in Australia, his passport and airline ticket were taken away from him, he was forced to sleep on the floor, and was told by Mr Rasalingam that he would be deported if he complained to the authorities.<sup>127</sup>

<sup>123</sup> Simon Kirby, "NSW: Brothel Madam Lied to Sex Slaves About Debts: Court" (7 Mar 2008) *AAP*.

<sup>124</sup> US Department of State, *Trafficking in Persons Report*, Washington (DC): Department of State, June 2008, 62; "Brothel madam lied to sex slaves: court" (7 Mar 2008) *The West Australian* (Perth), available at [www.thewest.com.au/aapstory.aspx?StoryName=465885](http://www.thewest.com.au/aapstory.aspx?StoryName=465885) (accessed 28 Aug 2008).

<sup>125</sup> 2335 UNTS 254; 2005 ATS 27.

<sup>126</sup> Kim Arlington, "Chef told: work like a machine" (11 Oct 2007) *Daily Telegraph* (Sydney) 13.

<sup>127</sup> James Madden, "Chef was 'forced labour'" (10 Oct 2007) *The Australian* 5; David King, "Cook made deal to work 365 days a year" (11 Oct 2007) *The Australian* 3.

Yogalingham Rasalingam was charged with trafficking a person under s 271.2(1B) *Criminal Code* (Cth)<sup>128</sup> and with intentionally exercising control over a slave, s 270.3(1)(d). The jury found him not guilty on both counts. Mr Rasalingam was, however, convicted of one count of dishonestly influencing a Commonwealth public official contrary to s 135.1(7) *Criminal Code* (Cth) for photocopying his victim's signature on an employment contract sent to the Immigration Department.<sup>129</sup>

### *R v Keith Dobie*

Keith William Dobie is a Gold Coast man who is currently awaiting trial for trafficking offences under the *Criminal Code*. Mr Dobie is a hairdresser from Broadbeach who allegedly started a prostitution racket after his hairsalon, KD Concepts in Currumbin, was destroyed by flooding and fire which left him in serious debt. The prosecution argues that between November 28, 2005 and April 17, 2006 he was directly involved in the deceptive recruitment of at least two Thai women, Kanista Aunthso and Sombun Hongthong, and was possibly preparing to bring further women from Thailand to Australia. Emails sent between the women and Dobie suggest that the women had previously worked in the sex industry in Thailand and were aware of the fact that they would be working as prostitutes in Australia, but were deceived about the conditions of their stay and employment.<sup>130</sup> It has been reported that Dobie used false information to organise visas for the women and that his victims were kept under lock in the rooms in Surfers Paradise and Broadbeach where they had to work nine hours a day, serving up to eight men per day. Dobie promised the women that they would be earning up to \$14,000 over three months, but the women only ever received a small fraction of that money.<sup>131</sup>

Keith Dobie was charged on July 19, 2006 with trafficking in persons, presenting false information to an immigration officer, and dealing in the proceeds of crime.<sup>132</sup> He is currently set to stand trial at the Southport District Court on October 20, 2008. It is widely anticipated that Mr Dobie will become the first person in Australia to be convicted for trafficking offences.

### *R v Kovacs*

The other Queensland case that may result in trafficking charges involves a pair from Weipa that was involved in bringing two Filipina women to Australia and then exploiting them. In November 2007, Zoltan John Kovacs was convicted of four counts of rape against a Philippine national who he and his wife, Melita Javier-Kovacs, arranged to come to Australia to work in the food store they operated in 2003.<sup>133</sup> He was also said to have raped the victim on a trip he and his wife made to the Philippines in 2000 to organise the victim's travel to Australia.

<sup>128</sup> Facilitating the entry of another person to Australia, being reckless as to the exploitation of that other person, s 271.2(1B) *Criminal Code* (Cth).

<sup>129</sup> Kim Arlington, "Chef told: work like a machine" (11 Oct 2007) *Daily Telegraph* (Sydney) 13; cf Fiona David, *Trafficking of Women for Sexual Purposes*, Canberra (ACT): AIC, 2008, 49.

<sup>130</sup> "Deception' lured sex worker to Australia" (9 May 2007) *Courier Mail* (Brisbane) 7.

<sup>131</sup> "I was paid \$20 a day: Thai prostitute tells court of work conditions with Gold Coast man" (11 May 2007) *Gold Coast Bulletin* B; "Deception' lured sex worker to Australia" (9 May 2007) *Courier Mail* (Brisbane) 7; Hairdresser exploited Thai sex workers, say police" (2 Aug 2006) *Gold Coast Bulletin* B.

<sup>132</sup> "Hairdresser exploited Thai sex workers, say police" (2 Aug 2006) *Gold Coast Bulletin* B; "Deception' lured sex worker to Australia" (9 May 2007) *Courier Mail* (Brisbane) 7.

<sup>133</sup> *R v Kovacs* [2007] QCA 143.

Mr Kovacs was also convicted of two counts of rape and a single count of sexual assault<sup>134</sup> against Aida Vicente, the niece of his wife, said to have occurred in 1997. Aida had been brought to Australia from the Philippines to act as a domestic cleaner for the couple.

Consideration has been given to laying trafficking offences against Kovacs, and their prosecution may depend on the outcome of the *Dobie* Case.

## 6.2 Immigration matters

In addition to the case law involving criminal charges, there is a small number of reported cases concerning immigration matters relating to trafficked women. These cases largely refer to the legal status of victims of trafficking in Australia. The reported case law is extremely limited and on some points very anecdotal. It is thus difficult to make further generalisations from these cases about the immigration status of trafficking victims in this country.

### *Puongthong Simaplee*

One of the earliest trafficking cases that made headlines around Australia and abroad is that of Puongthong Simaplee. Ms Simaplee was picked up by immigration officials following a raid on an illegal brothel at 359 Riley Street in Surry Hills, Sydney. She was a Thai national from Chiang Mai province who had originally entered Australia illegally in 1986. Aged 12 at the time, she had been trafficked to Australia on a false Malaysian passport and was forced to become a prostitute. After she was apprehended by the authorities in 2001, she was convicted for breaching her visa condition (s 236 *Migration Act 1958* (Cth)) and following an order for her deportation, she was moved to the Villawood Detention Centre in Sydney. After three days in this facility she was found dead in her room in a pool of vomit. A coronial inquest later found that she died an hour after being injected with the drug largactil (frequently used to treat heroin withdrawal symptoms), which should have been administered orally.

### *Chaowarit and Karalis*

Ms Benja Chaowarit originally worked in Thailand as a singer. She and a colleague were persuaded by another singer, Ms Nam, that singers were paid much more in Macau. When they arrived in Macau they were told they would be working in a brothel. They were kept under horrific conditions and after seven months, Ms Chaowarit was repatriated to Thailand.

After her return to Thailand, Ms Chaowarit followed the suggestion of Noi, an older prostitute from Macau, to work in the Australian sex industry. To this end she contacted a man, Bee, who assured her he could organise this completely legally. The Tribunal doubted that she ever questioned the legality of these arrangements.<sup>135</sup>

Benja Chaowarit entered Australia on May 6, 1999 on a tourist visa and two weeks later an application was made in her name for a protection visa. When this visa was denied, an appeal was lodged but this application was later abandoned. The Tribunal that later heard her case believed that Chaowarit signed the original application, ignorant of its actual contents.<sup>136</sup>

<sup>134</sup> *R v Kovacs* [2007] QCA 441.

<sup>135</sup> *Re Christos Karalis and MIMIA* [2003] AATA 483 at para [12].

<sup>136</sup> *Re Christos Karalis and MIMIA* [2003] AATA 483 at para [19].

After her arrival in Australia she was given into the care of a woman, also named Bee. Bee took her travel documents on the pretext she would need them to process Ms Chaowarit's visa. After a month of living in a crowded apartment with other female, she was given over to Tia, a Chinese lady, and was immediately put to work in a brothel. After work she was driven back to Tia's apartment by a man known as A-Tai. He informed Chaowarit that Bee had sold her to himself and A-Sam, another man. It was at this point that Chaowarit claimed she understood she had been deceived.<sup>137</sup>

In August 1999, she was sent to Melbourne where she worked at a brothel at 74 Brunswick Road. From here, Ms Chaowarit and two other women were able to escape. They sought refuge with a Thai woman and her husband. At this point she went to the police. She was initially allowed to remain in Australia on a criminal justice stay visa, though no action was taken against her 'owners'.<sup>138</sup>

She did not return to Thailand as she had been instructed by Australian authorities, but instead moved in with a client from Sydney that had followed her to Melbourne. After she had a miscarriage with the man, she broke off the relationship and moved back in with the Thai couple.<sup>139</sup> She then lost \$11,000 to a confidence fraudster named Peter Simos, a Greek who claimed he could get her a visa. At this time she was working illegally -- but independently -- in a brothel she refers to as 'Hallem 55' (but actually called 'Harem International Brothel').

Around this time, Ms Chaowarit met her future husband, Mr Karalis, at the Crown Casino in Melbourne. On July 5, 2001 Ms Chaowarit was found working illegally at Harem International Brothel and was detained. She married Karalis whilst on release from detention.<sup>140</sup> She was then deported to Thailand on August 13, 2001. Ms Chaowarit was refused a spousal visa on the ground that she failed the character test under s 501 *Migration Act 1958* (Cth) due to her continued subversion of Australia's immigration system. The decision at first instance was affirmed by the appeals tribunal.

#### VXAJ

The woman referred to as VXAJ was a 33 year old Thai female seeking a protection visa after being found as a sex slave in Australia. It is probable that she was one of the sex workers in the Wei Tang case. VXAJ arrived in Australia on May 15, 2003. On May 30, 2003 the brothel in which she worked was raided by officials from DIMA and the AFP.<sup>141</sup>

VXAJ claimed she had been brought to Australia by an international trafficking ring to work in the sex industry. She was aware of the nature of her work but was led to believe that her work would be legal. Also, she was unaware of the strict working conditions, such as a complete restriction on movement, which has been held to be tantamount to slavery. She was locked in an apartment with a number of other

<sup>137</sup> *Re Christos Karalis and MIMIA* [2003] AATA 483 at [13].

<sup>138</sup> *Re Christos Karalis and MIMIA* [2003] AATA 483 at [18].

<sup>139</sup> *Re Christos Karalis and MIMIA* [2003] AATA 483 at [20].

<sup>140</sup> *Re Christos Karalis and MIMIA* [2003] AATA 483 at [24].

<sup>141</sup> *VXAJ v MIMIA* [2006] FMCA 234 states that the brothel where VXAJ was found was raided on 31 May 2003, while *R v Wei Tang* (2007) 16 VR 454 states at 458 that the brothel was raided on 30 May 2003. From the closeness of these dates and the lack of other incidents at the time, it can be assumed that VXAJ was one of the contract girls uncovered in the raid on Club 417, and there appears to be an error in one of the reports.

young women — presumably also sex workers — and controlled as to her hours of work.

After her brothel was searched, she was taken to an immigration detention centre. On June 6, 2003 she was transferred to police custody and was granted a Criminal Justice Stay Visa to assist in the prosecution of Wei Tang and her accomplices.

She applied for a protection visa on August 25, 2003. VXAJ feared return to Thailand on a number of grounds, which go some way towards showing the apparent capabilities of the criminal organisation with which she was involved. The visa was refused on May 13, 2004 and this decision was upheld by the Refugee Review Tribunal on March 21, 2005. On May 13, 2005, she applied for judicial review to the Federal Court. In his decision, Chief Federal Magistrate Pascoe found that the Refugee Review Tribunal failed to correctly apply the relevant principles in *Applicant S*<sup>142</sup> and thus fell into jurisdictional error. Pascoe further found that Thai 'sex workers' were a social group to which Australia may owe protection obligations under Art 1A(2) of the *Convention relating to the Status of Refugees*.<sup>143</sup> The issue was remitted to the Refugee Review Tribunal for further consideration.

#### 6.4 Observations

The available case law on trafficking in persons is still very limited. This may be reflective, on the one hand, of the low levels of trafficking into this country, but on the other hand there is reason to think that many cases (especially very sophisticated operations) remain undetected. Also, in many instances there may be insufficient evidence to launch further investigations and prosecutions. It has already been shown that even among those cases that go to trial, a significant number of cases are dismissed for evidential reasons. Given the very high threshold of the criminal offences under divisions 270 and 271 *Criminal Code* (Cth) it is also unlikely to see the number of prosecutions escalate in the near future.

Despite the small number of reported cases, it is possible to identify some common features and make some general observations about the patterns of trafficking in persons in Australia and about the experiences by trafficking victims. On the other hand, an analysis of the case law also shows that the literature has often made generalisation about trafficking that are based on isolated, anecdotal cases and that are not representative of the wider problem. Each of the case that has been prosecuted thus far is very unique and none of the cases – and none of the people involved in them -- fit into general stereotypes about trafficking, traffickers, and victims of trafficking.

From the outset, it is noteworthy that trafficking in persons for sexual purposes equally involves legal and illegal brothels in Australia. Despite the clandestine nature of this crime, trafficking in persons is not entirely an underground economy. There is, to date, no evidence linking trafficking with street prostitution and escort agencies. Trafficking for purposes relating to labour exploitation, for example as domestic servants, or for sexual exploitation in private homes (also involving sham marriages) appears to be extremely limited, if not non-existent.

The majority of cases detected thus far occurred in Sydney and Melbourne in addition to one recent incident on the Gold Coast. While this may be reflective of the population concentration in Australia's two main urban centres — and the size of

<sup>142</sup> *Applicant S v MIMA* (2004) 217 CLR 387.

<sup>143</sup> *VXAJ v MIMIA* [2006] FMCA 234 at para [26].

their local sex industry — it is likely that trafficking in persons also occurs in other parts of Australia, albeit on a smaller scale which, in turn, makes it more difficult to detect.

The case law confirms official statistics that the great majority of trafficking victims in Australia are women from Thailand, many of whom have previously worked in the sex industry. The women usually arrive in Australia on (valid) tourist visas though some visas were granted on the basis of false documents provided by the traffickers and their aides. Some victims were equipped with airline tickets and cash to make them appear as tourists. Those funds and tickets, together with their passports, are usually confiscated by the traffickers after arrival in Australia. Many cases involve the use of ‘agents’ in Thailand who are involved in the recruitment of women and who organise their travel to Australia. In some instances, the victims are escorted by another person during their travel who may pose as the victims’ partner or parent.

As suggested in other reports, a considerable number of victims arrive in Australia with the knowledge that they will be working in the sex industry. Although some women claim they were brought to Australia thinking they would be working in the hospitality or retail industries, cases in which women were tricked or otherwise deceived about the nature of their prospective work are infrequent. A large number of women stated that they thought they would be working legally in Australia when in fact they had no work rights. There are, to date, no reports of women that have been kidnapped and brought forcibly to Australia.

If the reported case law is indeed reflective of the general patterns of trafficking in persons, the victimisation of trafficked women seems to relate specifically to their working conditions and accommodation. All victims that have testified in trafficking proceedings complained about the inflated debt created by their journey, long working hours, threats of violence and deportation, the lack of adequate (or any) payment, poor accommodation, and the health risks associated with their work. Many situations are nothing short of slavery.

It is surprising then to learn of those — albeit isolated — cases in which women deliberately stay with their traffickers even after their debts had been discharged. In the absence of personal interviews with the victims it is not possible to speculate about their motivations. It is noteworthy however, that many victims were initially drawn into the Australian sex industry (legal and illegal) by the hope that they will earn enough money to support their families abroad. Some victims were in fact able to transfer some of their income to Thailand, and — given the lack of other employment opportunities in Australia — this fact may have contributed to their decision to remain with the brothel owners that exploited them.

The case law confirms that trafficking in persons in Australia is a very lucrative industry. It has been estimated that some traffickers earned more than one million dollars from this business. The operations are usually run by three to four people, including the manager or owner of the brothel, the residence minder, and sometimes receptionists and drivers. There are, however, also cases involving sole operators.

## **7. The Way Ahead**

There is a great divide between the myths and realities about trafficking in persons to Australia. An analysis of available, open-source reports, statistics, and cases, confirms that trafficking in persons to Australia remains a phenomenon poorly documented and not well understood. Many myths about human trafficking are not

supported by any evidence. The realities of human trafficking are not well researched and much of the available information is the result of guesswork rather than of thorough analysis. “The picture of trafficking remains very unclear with competing claims about the extent and nature of trafficking to Australia,” notes Judy Putt, Director of Research at the Australian Institute of Criminology.<sup>144</sup> Until this day, the reality of trafficking in persons — especially the more sophisticated trafficking operations — remains hidden from investigations, academic research, and the media spotlight.

The central problems in identifying, exploring, and ultimately solving the problem of trafficking in persons are the illegal and clandestine nature of this activity, the lack of cooperation of victims and witnesses with government authorities, and the shame and taboo stigma attached to prostitution and other aspects of human trafficking.<sup>145</sup> It is therefore important that any strategy designed to prevent, disrupt, and suppress trafficking in persons, actively assists victims and witnesses and removes common stereotypes, preconceptions, and prejudices.

Not only is it difficult to measure the current levels of trafficking in persons to Australia and count the number traffickers and their victims, it is equally difficult to measure the success of any action taken to prevent and suppress this type of crime. Greater numbers of arrests of traffickers alone, for instance, may demonstrate greater law enforcement activity, but they may also be indicative of more trafficking operations.

The need for further research and more in-depth investigations into the causes, circumstances, and consequences of human trafficking in Australia is obvious. The patterns and criminology of trafficking in persons, relevant criminal offences relating to trafficking and sexual servitude, and the immigration status and legal protection available to both lawful and unlawful foreign sex workers require further examination. More research into trafficking in persons is necessary to make better estimates about the dark figure of this crime and to document the level and nature of unreported cases more accurately. Such research will inform public debates and assist policy makers and law enforcement agencies in developing fair and effective prevention and suppression strategies.

Of particular interest is also the link between the legalisation of prostitution and the regulation of the brothel industry on the one hand, and the level of trafficking on the other. In Australia, Victoria was the first state to regulate brothels in the mid-1980s. Some States, such as Queensland, later introduced comprehensive prostitution licensing schemes to increase the regulation and monitoring of the sex industry and also limit the exploitation of sex workers. However, recent case law provides evidence that non-citizens working in brothels remain at particular risk of exploitation, and that the regulation of brothels has pushed other aspects of the sex industry further underground. The risk of exploitation is exacerbated if sex workers have been trafficked into Australia and lack access to support services. Other jurisdictions, especially in North America, remain fiercely opposed to any decriminalisation of prostitution, arguing that any liberalisation will inevitably open the floodgates to sex workers and be followed by increased levels of trafficking and sexual exploitation.

<sup>144</sup> Judy Putt, “Human trafficking to Australia: a research challenge” (2007) 228 *Trends & Issues in Crime and Criminal Justice* 5.

<sup>145</sup> See further Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Current Issues Brief No 28 2002-03 (Department of the Parliamentary Library, 2003) 5.

Comprehensive analysis of the patterns and levels of the exploitation of foreign workers in the sex industry and other forms of forced labour is long overdue. Future research work of this Working Group will involve inquiries into the sex industry in Australia and Canada to determine the extent of sexual exploitation involving lawful and unlawful non-citizens. This will encapsulate both frontline research within the community and secondary research involving the review of case reports, literature, statistics, and government reports. From this research, recommendations for law reform and policy direction will be provided.