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# **TRAFFICKING IN PERSONS AND THE EXPLOITATION OF FOREIGN WORKERS IN THE SEX INDUSTRY IN AUSTRALIA**

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## Topic & Nature of the Project

This project provides the first comprehensive analysis of the phenomenon of trafficking in persons, especially women and children, and their exploitation in the sex industry and other forms of forced labour in Australia. It identifies and analyses reported and suspected cases of human trafficking and sexual exploitation of foreign workers where Australia has been a destination, transit, and/or source country. Based on these findings, the response by national, state, and territory governments will be critically evaluated. Global initiatives and best practices to confront trafficking in persons, especially those developed by the United Nations, will be drawn upon to propose recommendations for policy change and law reform.

This project is carried out jointly between The University of Queensland, Brisbane, Australia, and The University of British Columbia, Vancouver, Canada. This Australian component of the project is accompanied by research focusing on the phenomenon of human trafficking in Canada. This project is a pilot initiative to foster collaborative academic research on contemporary issues of criminal justice involving students and academic staff in Australia and Canada. The project uses a working group model to encourage and enhance cooperation between staff and students at the Faculty of Law at The University of British Columbia and the TC Beirne School of Law at The University of Queensland. It is anticipated that the research model developed by this project will be used in future projects on issues of contemporary criminal justice and transnational crime.

## Background & Significance

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. Exploitation may involve prostitution or other forms of sexual exploitation, forced labour, practices similar to slavery, or the removal of organs.

Despite greater public awareness and acknowledgement of the problem by government agencies, trafficking in persons and the exploitation of foreign workers in the sex industry remain phenomena 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 both countries every year while non-governmental organisations and advocacy groups argues that this trade involves several thousand people. Recent cases in Australia demonstrate the vulnerability of non-citizens to sexual exploitation and forced labour. Recent 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, program development by non-governmental organisations, and public awareness about trafficking in persons is the lack of any reliable and comprehensive account of the nature and extent of this problem. Anecdotal

evidence, and statistical estimates without a sufficient evidentiary basis, are the only sources of information currently available about Australia's involvement in trafficking in persons. This is in contrast to other countries where comprehensive accounts of human trafficking are published annually by government agencies.

This project examines the pattern and criminology of trafficking in persons, relevant criminal offences relating to trafficking in persons and sexual servitude, the immigration status and legal protection provided to both lawful and unlawful foreign sex workers, and the effectiveness of Government regulation of the sex industry in Australia in this context.

In international law, the *Protocol against the Trafficking in Persons, especially Women and Children* became a reality in 2000. This protocol, together with the *Convention against Transnational Organised* has created a new platform and new opportunity to prevent and suppress the problem of trafficking in persons more effectively around the world. Under Canadian and Australian law, trafficking in persons was made a criminal offence in 2004. The project will outline and analyse the background, scope, and application of international treaties on this topic and the role of relevant international and regional organisations in this field.

## Objectives

The specific objectives of this project are to:

- 1) Understand the level, patterns, and characteristics of trafficking in persons, especially women and children, in Australia and examine the exploitation of foreign workers in the Australian sex industry and in other forms of forced labour;
- 2) Critically evaluate the legislative, regulatory, and policy responses of Australian governments at federal and state/territory levels in preventing human trafficking, protecting trafficked persons, and prosecuting traffickers;
- 3) Examine the impact of the legalisation of the sex industry and (where applicable) the licensing of brothels on the status of foreign sex workers in Australia;
- 4) Explore and analyse international and regional initiatives relating to the prevention, protection, and prosecution of trafficking in persons;
- 5) Propose recommendations to enable Australia to more effectively prevent trafficking in persons and the exploitation of foreign sex workers, protect trafficked persons, and prosecute traffickers.

## Analytical Framework

Trafficking in persons is a complex transnational crime and a systematic affront to many fundamental human rights. It involves the movement of individuals through force, threats, trickery or deception for the purpose of exploitation. The involvement of a given country in this global phenomenon can be broken down into three components, which reflect the different stages in which trafficked persons are moved and subject to exploitation. This framework is generally applicable to examine any jurisdiction and is applied here to focus on Australia's

involvement in trafficking in persons, especially women and children. It will be used throughout this research project.

- Australia as a destination for trafficked persons:
  - International trafficked persons: moved from a foreign country into Australia where the individual is then subject to exploitation;
  - Domestic trafficked persons: Australian citizens or permanent residents moved from one location to another within Australia where the individual is then subject to exploitation.
- Australia as a transit country for trafficked persons: international trafficked persons are moved from a foreign country through Australia and on to a third country where the individual is then subject to exploitation.
- Australia as a source country for trafficked persons: a trafficked person is moved from Australia to a foreign country, where the individual is then subject to exploitation.

## Methodology

This research into trafficking in persons and the exploitation of foreign workers in the sex industry in Australia involves the study of open source material, collaboration and personal interviews with policy and lawmakers, law enforcement agencies, and community groups, and case examinations. The project involves a comprehensive review of existing academic scholarship, analysis of legislative material, official publications by government sources and international organisations, close examination of reported case law, as well as systematic consultation with justice and attorneys-general departments, law enforcement agencies, and regional and international organisations in this field.

Research consultation for this project include, inter alia:

- Australian Institute of Criminology, Canberra (ACT) ;
- United Nations Office on Drugs and Crime (UNODC) Regional Centre for East Asia and the Pacific, Bangkok, Thailand;
- UNODC, Vienna International Centre, Vienna, Austria;
- High Commission of Australia, Ottawa (Ont); Consulate of Australia, Vancouver (BC);
- Royal Canadian Mounted Police, Vancouver (BC), Ottawa (Ont);
- Attorney-General's Department, Canberra (ACT)
- Privy Council, Ottawa (Ont)
- Justice and Attorney-General Departments (state/territory)
- State and Territory Police Forces.

## Structure

### 1. Levels and patterns of Australia's involvement in trafficking in persons for sexual exploitation

#### 1.1 Data collection

This research project collects relevant data and other information on the levels and pattern of trafficking in persons in Australia and the exploitation of foreign workers in the sex industry.

Open sources, including electronic database searches of media stories, Migration and Refugee Tribunal decisions, Federal Court cases, criminal prosecutions, news and media coverage, database and Internet searches of non-governmental and governmental reports are used to identify known and suspected cases of trafficking.

## **1.2 Data and case analysis**

The data and case analysis produces insight into the levels and patterns of trafficking in persons and the exploitation of foreign sex workers in Australia. The research reveals the extent to which Australia is a source, transit, and destination country. It identifies the key countries that are sending countries of trafficking victims to Australia, demographic information about victims, treatment of discovered victims, common modalities employed by traffickers, outcome of immigration decisions and criminal prosecutions dealing with alleged traffickers, et cetera.

## **2. Legislative, regulatory & policy responses**

### **2.1 Criminal sanctions against traffickers and other offender**

In 1999 and 2005 the Australian Government introduced new offences into the federal *Criminal Code* to curb the problem of sexual slavery and trafficking in persons. Some State governments followed suit by enacting similar offences. This research project explores the legislative history, rationale, scope, and application of these offences, and examines relevant prosecutions and jurisprudence. Scholarly literature and other documentation assist in identifying the key features of these laws and exploring their key strengths and weaknesses.

### **2.2 Regulation and control of the sex industry**

Starting in 1986, Australian governments at State and Territory level began to gradually decriminalise prostitution and — in some jurisdictions — legalise the brothel industries. Some States, such as Queensland, introduced comprehensive prostitution licensing schemes to increase regulation and monitoring of the sex industry and also limit the exploitation of sex workers. Recent reports, however, reveal that many persons, including non-citizens, involved in the sex industry are exploited and often work in sub-human conditions, especially if they are found working in clandestine premises or in private homes. This risk is exacerbated if sex workers have been trafficked into Australia and lack access to support services. This project involves research into Australia's sex industry to determine the extent of sexual exploitation involving lawful and unlawful non-citizens. This will encapsulate both frontline research with government agencies and community groups, and secondary research involving the review of case reports, literature, statistics, and government reports.

### **2.3 Visa system for victims of trafficking**

In order to enhance the status of victims of trafficking in persons the Australian Government introduced a suite of visa-classes designed to encourage victims to cooperate with law enforcement agencies and to offer victims temporary authorisation to remain in Australia. These visas include the 30-day Bridging Visa F, the Criminal Justice Stay Visa, and the Witness Protection (Trafficking) Visa. This research project examines the available visa classes and

discusses their effectiveness in protecting victims of trafficking and preventing trafficking in persons and the exploitation of foreign sex workers in Australia.

## **2.4 Support schemes for victims of trafficking**

The Australian Federal Government's *Support for Victims of People Trafficking Program* is designed to assist persons who have been trafficked into Australia and who are assisting with the investigation or prosecution of trafficking and sexual servitude. Eligibility for this program is tied to Australia's People Trafficking Visa Framework, with levels of available services varying depending on the type of visa held by the applicant.

## **3. International and regional measures to prevent and suppress trafficking in persons**

International cooperation to prevent trafficking in persons and suppress the illicit sex trade dates back to the late 19<sup>th</sup> century. Throughout the 20<sup>th</sup> century, several international conventions were developed to combat the exploitation of persons, especially women and children, in the sex industry. In 2000, the United Nations opened for signature a new *Protocol against Trafficking in Persons, especially Women and Children* aimed specifically at (1) criminalising those organisations that seek to benefit from international trafficking whilst (2) also protecting the rights of trafficked persons. Secondary research will be used to assess existing measures to combat trafficking in persons at regional and international levels. Specific attention will be drawn to the activities of the UN, and the initiatives taken by the UN Office on Drugs and Crime including the UN Global Initiative to Fight Trafficking (UN.GIFT).

## **4. Recommendations to combat trafficking in persons more effectively**

Any strategy against trafficking in persons and the exploitation of foreign sex workers must balance the criminal justice and security interests of the countries involved against the rights of victims. A comprehensive response to trafficking in persons must combine achievable long-term goals, which offer real solutions to the political, demographic and socioeconomic dimensions of this phenomenon, with short-term measures that address the immediate needs of trafficked victims and the current threat posed by ruthless criminals. This project develops a range of proposals that, in combination, seek to provide a comprehensive approach to the control of trafficking in persons and the exploitation of foreign sex workers. These proposals are intended to serve as a general framework for future law reform and policy change, providing a set of best practice guidelines. The recommendations identify the general objectives of any anti-trafficking strategy, and also include specific proposals relating to criminal law and law enforcement measures, migration law and policy, and victims' rights at domestic and international levels.

## **Projected Outcomes**

This project aims to bring the problem of trafficking in persons and the exploitation of foreign sex workers in Australia to greater public attention and encourage policy makers to adopt measures to confront this problem more effectively. Research outcomes for this project include a number of publications in leading peer-reviewed journals and monographs, presentations in

Australia, Canada, and elsewhere, and the creation of a network of scholars, officials, agencies, organisations and other entities working in this field of study. Research findings and policy recommendations will be presented to several groups of stakeholders. These include, inter alia, government, policy makers, international organisations, law enforcement and immigration authorities, academic scholars and students from a variety of backgrounds. Moreover, a specific website will be designed to create a public forum for research findings, and offer an entry point for further reading and research.

### *Publications*

- “Trafficking in Persons in Australia: Myths and Realities” (2009) *Global Crime* (Routledge, London) (with G Beirne & T Corsbie)
- “Trafficking in Persons and Sexual Servitude in Australia: The Case Law Thus Far”, *Research and Public Policy Series*, Canberra, ACT: Australian Institute of Criminology, c2009 (with Toby Corsbie & Jordan Welke) (under review)
- “Happy Birthday Brothels! Ten Years of Prostitution Licensing in Queensland” (2009) *The Queensland Lawyer* (with Lachlan Cameron) (under review)
- “R v Tang (2008)”, case note (2009) *Melbourne University Law Review* (under review) (with Genevieve Beirne)
- “Too Little, Too Late: Visas for Victims of Human Trafficking” (2009) *Monash University Law Review* (under review) (with G Beirne)
- “Human trafficking still lurking in the shadows” (2008) 409 *Lawyer’s Weekly* 24–25

### *Presentations*

- The University of Queensland, School of Geography, Brisbane (Qld), April 28, 2008;
- *Research and data on trafficking in persons roundtable*, Australian Institute of Criminology, Canberra (ACT), June 24, 2008;
- Department of Foreign Affairs and International Trade, Ottawa (Ont), July 30, 2008;
- “Trafficking in Persons in Australia: Myths and Realities”, The University of Queensland, Brisbane (Qld), September 22, 2008
- “Human Trafficking in Canada and Australia: Latest Developments + Future Challenges”, presentation at the Liu Institute for Global Issues, The University of British Columbia, 20 Oct 2008 (with B Perrin)
- “Global Perspectives: Australia”, paper presented at the conference *Combating Human Trafficking*, Ministry of Public Safety and Solicitor General, Vancouver (BC), 29-30 Oct 2008;
- “Trafficking in Persons in Australia”, UN Office on Drugs and Crime, Vienna International Centre, Vienna, December 18, 2008;
- “Trafficking in Persons in Australia: Myths and Realities”, Townsville Community Legal Centre, Townsville (Qld), February 4, 2009;
- “Trafficking in Persons in Australia: Myths and Realities”, MacDonnells Law, Cairns (Qld), February 6, 2009.
- “Trafficking in Persons in Australia”, presentation at the 11<sup>th</sup> *National Metropolis Conference*, Calgary (AB), March 20, 2009
- “Trafficking in Persons in Australia: Myths and Realities” presentation at the University of Washington School of Law, Seattle, WA, April 9, 2009
- The University of Queensland, School of Geography, Brisbane (Qld), May 6, 2009.

The project is a pilot initiative to foster collaborative academic research on contemporary issues of criminal justice between Australia and Canada. It greatly enhances cooperation between staff and students at The University of British Columbia and The University of Queensland and contributes to the dialogue and information exchange between both countries. It is anticipated that the collaborative research model developed by this project will be used in future projects on issues of contemporary criminal justice and transnational crime.

## Human Trafficking Website

In December 2008, a special website for this project was launched at [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking). This website contains links to publications and presentations produced by the working group and case reports on relevant prosecutions and immigration cases in Australia. There are also files with relevant legislation, including trafficking offences, visa regulations, and prostitution laws, and useful links to other organisations and websites.

## Project Team

### Chief Investigator

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Andreas' principal areas of research include criminal law, organised crime, narcotrafficking, terrorism, international criminal law, and immigration and refugee law. He has published and presented extensively on the topic of trafficking in persons and migrant smuggling. His recent works focus on organised crime legislation, the illicit trade in timber and timber products, the illicit market for amphetamine-type stimulants (ATS), and the plight of North Korean Refugees in China. His work is frequently cited by other scholars, in government publications, and judicial decisions, including the High Court of Australia. Andreas teaches Criminal Law, Transnational Organised Crime, and Immigration and Refugee Law. He is closely associated with the Australian Institute of Criminology (AIC), the United Nations Office on Drugs and Crime (UNODC) and the Australian Federal Police (AFP). Prior to his position at The University of Queensland, he was a lecturer at The University of Adelaide Law School where he also obtained his PhD.

## Senior research assistant

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## Human Trafficking Working Group

This project is supported by a group of law students at The University of Queensland and The University of British Columbia to work on this research project under the direction of the chief investigator and the senior research assistant. The Working Group provides research, writing and other support to the project. Participation in the working group is not for academic credit, but rather to gain research experience and exposure to different research methodologies, while contributing to Faculty research on important contemporary issues.

Name	Area of research
Genevieve Beirne	News and media reports, government agencies, victim support
Lachlan Cameron	News and media reports; regulation of sex industry
Yatarla Clarke (to May 2008)	International + non-governmental organisations
Toby Corsbie	Reported case law, regulation of sex industry
Christopher Deitch	t.b.a.
Isabel Dowe	Trafficking Protocol, UNODC. UN.GIFT
Thanu Gunewardena	Statistics, prostitution offences, child trafficking
Katie Hegarty (to Dec 2008)	International organisations, visa system
Jarrold Jolly	Criminal offences
Kristy Lennox	Regulation of the sex industry in Canada
Jesse Lindeman	Criminal offences
Mazlifah Mansoor	Statistics, government agencies, regional initiatives
Nina Mennacher (to Dec 2008)	International organisations, criminal offences
Emile McPhee	Statistics, government agencies
Tim Murray (to Dec 2008)	Reported case law
Jennifer Skippington (to 2008)	Int'l organisations, NGOs, visa system
Sally Stubbington	Slavery in international law
Meghan Tait	Regulation of the sex industry, labour trafficking
Luke Trimarchi	Trafficking in Persons in international law
Jordan Welke	Regulation of the sex industry
Lisa Yang Zhong	Trafficking Protocol, UNODC, UN.GIFT

## Notes