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Foreword | *The clandestine nature of trafficking in persons means that there is little reliable data about the nature and extent of the crime; however, a picture is emerging of the nature of people trafficking as the number of prosecutions grows.*

Few of the cases identified in Australia to date fit the traditional stereotypes of the forced movement and confinement of trafficked persons by traffickers. This paper summarises what is currently known about the nature of people trafficking in Australia. It includes an examination of how the reality of people trafficking compares with community perceptions of the crime. The authors note the need to establish reliable data-driven monitoring systems to better assess the nature and extent of trafficking into Australia, and the need to educate the Australian community to improve their understanding, given the important role they play in identifying and supporting trafficking victims.

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People trafficking in Australia

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People trafficking is a modern day form of slavery that involves the recruiting, harbouring or the movement of people using coercion, deception or force for the purpose of exploitation (see Box 1 for the UN definition). There is general acknowledgement internationally and domestically that a lack of reliable data exists on people trafficking largely due to the clandestine nature of the crime. It has been suggested that victims are trafficked from 127 different countries and undergo exploitation in 135 countries around the world (UNODC 2006). Worldwide estimates of the number of trafficked persons, ranging from 500,000 to four million, are impossible to verify (US GAO 2006; Joudo Larsen, Lindley & Putt 2009); however, it is known that men, women and children are trafficked for a wide range of purposes such as sexual exploitation, as well as labour in a range of industries including hospitality, construction, forestry, mining and agriculture. Other forms of exploitation include illicit adoption, forced recruitment into armed forces or militia, street begging and the harvesting of organs.

While an exact figure on the number of people trafficked into Australia remains elusive, a clearer picture is emerging of the nature of people trafficking since the introduction of criminal offences relating to sexual servitude and slavery in 1999 (*Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* (Cth)). This paper draws on AIC research, academic literature, prosecutions and reports by government and non-government and international organisations to examine what is known about the nature of people trafficking in Australia from known cases and how this fits with prevailing stereotypes/myths within the community.

Legislation on people trafficking in Australia

Trafficking-related legislation was first introduced in Australia in 1999 through amendments to the *Criminal Code Act 1995*. The *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* (Cth) created the offences of slavery, sexual servitude and deceptive recruiting but failed to define trafficking in persons.

In August 2005, the relevant trafficking legislation underwent significant reform and a range of new offences were created under the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth). Offences of trafficking in persons, trafficking in children, domestic trafficking in persons and debt bondage were created under this legislation (see Joudo Larsen, Lindley & Putt 2009)

Extent of people trafficking in Australia

As with most crimes, an exact figure for the number of persons trafficked into Australia is impossible to obtain. There exists a wide discrepancy between officially detected cases

and estimates on the number of victims. This discrepancy, in part, reflects high levels of under-reporting, with trafficked persons often fearful of authorities and the possible repercussions for themselves and their families should they be detected. Further, trafficking matters may not be identified as such; instead, offenders may be charged with a range of other offences including kidnap/abduction, assault and domestic violence among others. This discrepancy has also raised concerns for the validity and reliability of the methodologies used to calculate reported estimates (US GAO 2006).

The available aggregate statistics from Australian Government agencies indicate that between January 2004 and June 2011:

- 305 investigations and assessments of trafficking-related offences were conducted by the AFP's Transnational Sexual Exploitation and Trafficking Teams;
- 184 victims of trafficking had been provided with assistance through the government funded Office for Women's Support for Trafficked Persons (STP) Program; and
- 13 people convicted for people trafficking-related offences (9 of the 13 defendants were convicted of slavery offences, 3 of sexual servitude and 1 of people trafficking).

Statistics collected by non-government agencies (NGOs) that provide direct support for trafficked persons, or who come across cases of trafficking through the provision of support to vulnerable groups (eg migrant sex workers, victims of domestic violence) are extremely varied in quantity and comparability. In Australia, NGOs have reported coming into contact with as few as 10 victims in 2003 (Scarlet Alliance 2003) and as many as 300 during research conducted between February and March 2004 (Project Respect 2004). This difference in number reflects varying definitions of a 'victim' and the varied work focus of the NGOs concerned.

Notwithstanding these challenges and the relatively small number of trafficked persons detected in Australia by immigration and law enforcement authorities, much can be learned from the investigation and prosecution of these cases regarding the nature of and trends in trafficking. Sources such as case files, interview transcripts, court transcripts and administrative/

Box 1 UN definition of trafficking in persons

Trafficking in persons is defined in Article 3a of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Source: UN 2000

operational data can be used to build a picture of the trafficking process from recruitment in the country of origin through to arrival in the destination country, including identifying characteristics of trafficked persons and offenders.

Further, information from NGOs provide an important insight into trafficking that is not limited by current legislative or administrative frameworks. Vital qualitative information gathered from these sources can add depth to existing official statistics and data.

Nature of people trafficking in Australia

People trafficking does not have to be transnational in nature as it can occur within a country; however, global trends show that it most often occurs within the context of high levels of migration, driven primarily by the desire for greater economic opportunity and a better quality of life.

This fits with the Australian experience; all people trafficking cases detected in Australia have involved the movement of people across international borders, with most trafficked persons consenting to the initial movement in order to work in Australia. It is not until they arrive at the destination that it becomes clear they were deceived and are being exploited.

Further, the majority of cases identified in Australia do not fit the traditional stereotypes of the forced movement and confinement of trafficked persons by traffickers; there are no known cases involving men, women or children having been abducted and brought to Australia by force (Schloenhardt, Beirne & Corsbie 2009). In addition, only some of the persons known to have been trafficked into Australia were physically restrained through detention in brothels and safe houses. In several cases, the trafficked persons were given certain degrees of freedom, including access to mobile phones (David 2008).

In all cases to date, coercion and control was achieved through 'threats of violence, obligations to repay debt, isolation, manipulation of tenuous or illegal migration situations and a general sense of obligation' (David 2008: 39). In the slavery case, *Wei Tang (The Queen v Wei Tang [2006] VCC 637)*, Justice McInerney found that although the victims were not locked inside the premises, they had been 'effectively restrained by the insidious nature of their contract'.

Characteristics of trafficking offenders

As stated above, a number of people have been charged with trafficking-related offences as at 30 June 2012. This includes:

- 13 matters resulting in convictions;
- four defendants currently facing charges before the courts; and
- 15 matters that were finalised without resulting in a conviction.

The most reliable information regarding offenders is available from prosecutions that have resulted in an offender being convicted. Among the 13 defendants convicted for people trafficking-related offences to date, ages have ranged from mid 30s to 60 years, with most over 40 years of age. On the available information, at least nine of the 13 people convicted were brothel owners/managers or arranged the placement of women in brothels.

Interestingly, seven of the 13 persons convicted were female. The UNODC Global Report on Trafficking in Persons presented data suggesting that women play a more prominent role in people trafficking offences when comparing conviction rates of female offenders for other crime types (UNODC 2009).

While it is frequently assumed that international organised crime groups are heavily involved in trafficking in persons,

Table 1 Clients on support for trafficked persons program by country of origin/citizenship (n)

Country of origin/citizenship	2009–10	2010–11	Total since 2004
Thailand	31	32	78
Malaysia	16	17	32
South Korea	9	7	31
Philippines	a	9	10
Other ^a	9	15	33
Total ^b	65	80	184

a: Number included in 'Other' category as <5 clients

b: Includes all countries with less than 5 clients in any given financial year

Source: Office for Women personal communication June 2011

the actual extent of this involvement remains unclear (David 2012). The existing literature is far from comprehensive and the information obtained through AIC consultations in southeast Asia and the Pacific provided a mixed picture (Joudo Larsen, Lindley & Putt 2009). Key actors in people trafficking can be highly organised criminal groups, loosely connected networks, individuals, or family and friends of the victim (UNODC 2010).

A parliamentary inquiry into the trafficking of women for sexual servitude found no strong involvement of organised crime in people trafficking in Australia (PJC 2004). Furthermore, the groups that have been identified as trafficking people into Australia have been relatively small, with many using family or business contacts to 'facilitate recruitment, movement and visa fraud' (IDC 2009: 26) and they appear to lack 'the same high levels of organisation and sophistication as drug traffickers' (IDC 2009: 27).

Characteristics of trafficked persons

The picture that emerges of the experiences and characteristics of trafficked persons is somewhat varied. Detected trafficked persons come from a range of occupations (eg sex workers, mothers, students) and while a number of victims were aware of the nature of the work from the outset, others were deceived. Some actively sought work in Australia, while others had been approached by recruiters, friends or acquaintances. A recurring characteristic, however, is that most come from low socioeconomic circumstances, sometimes bordering on extreme poverty.

The Asia region (southeast Asia in particular) is the primary source for persons trafficked into Australia. It is also a common source region for trafficking globally and has high

rates of intra-regional trafficking. Of the persons receiving support through the STP program between January 2004 and June 2011, 70 percent (n=129) originated from southeast Asia. Over 40 percent of all clients on the STP Program during this time originated from Thailand (n=78), with smaller numbers of persons from Malaysia, South Korea and the Philippines, among other countries (see Table 1).

Detected cases have primarily involved women being trafficked for the purpose of sexual exploitation. This is reflected in the STP Program, where the majority of clients were employed in the sex industry. In 2009–10, over 95 percent (n=62) were female, while a small decline was seen in 2010–11, with 89 percent (n=71) of STP Program clients being female (see Table 2). All 12 male clients of the STP program were trafficked into industries for exploitation including hospitality, agriculture/horticulture and construction, and sport (Office of Women personal communication November 2010).

There have been no prosecutions relating to child trafficking in Australia to date. However, in recent years, cases involving young Thai girls trafficked into Australia for sexual exploitation have emerged (see Joudo Larsen et al. forthcoming). Four young people were referred to the STP Program between January 2004 and June 2011 as suspected victims of people trafficking.

Process of recruitment and entry

Persons trafficked into Australia are often recruited with the promise of employment, either by spotters or friends/relatives (PJC 2004). In some cases, the trafficked person knew of someone who had come to work in Australia and seeking the same opportunity, is put in touch with recruiters by a friend or relative. For example, in the trafficking case of Johan Sieders and Somsri Yotchomchin

(*R v Sieders & Yotchomchin* [2006] NSWDC 184), one of the victims received help from her cousin, who had previously worked in Australia, to contact recruiters.

Regardless of the method of recruitment, many trafficked persons decide to travel to Australia for the opportunity to earn a larger income than is possible in their country of origin. It is common for 'agents' to be involved in arranging travel and contracts are commonly signed between employer and employee; the conditions of which may or may not be met. It is common for trafficked persons to then acquire debts with the agents/traffickers that must be repaid before the individual can earn money to send to their home country.

In terms of entry, unlike many destination countries for trafficking, Australia is largely protected through the absence of land borders and its geographic isolation. Australia's extensive border protection measures, particularly those aimed at securing air and seaports and regulating people movement, further shields the country from the high levels of trafficking that is seen throughout southeast Asia and Europe (Putt 2007).

Of those persons trafficked into Australia, most are known to enter on a valid visa, although in some cases, a false passport is used to obtain the visa. Most persons trafficked into Australia enter on visitor, student or working holiday visas.

Intelligence indicates that student visas are preferred by traffickers due to the extended time of residence (5 years) compared with the limited time available under a working holiday visa (12 months). Student visas are also preferred as it is difficult to identify breaches of the 20 hour per week work conditions (IDC 2010).

The majority of trafficked persons identified to date have primarily entered through Sydney or Melbourne, although there is evidence that some groups prefer to bring people into Australia through Perth and Brisbane (IDC 2010). Once in Australia, trafficked persons are frequently moved between state capitals (PJC 2004).

Type and nature of exploitation

Cases of people trafficking have been detected predominantly in the context of sexual exploitation. It is difficult to ascertain whether this is due to this form of people

Table 2 Support program clients by type of exploitation and sex (n)

	Non-sexual exploitation ^a		Sexual exploitation		Total	
	2009–10	2010–11	2009–10	2010–11	2009–10	2010–11
Male	3	9	0	0	3	9
Female	7	8	55	63	62	71
Total	10	17	55	63	65	80

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

Source: Office for Women personal communication June 2011

trafficking being more likely to occur than other forms or the higher visibility of trafficked persons in the sex industry compared with other labour sectors.

Exploitation via the sex industry has been the most commonly prosecuted form of trafficking in Australia, with only three cases of alleged trafficking for forced labour; two of these cases resulting in a conviction and in the third, the defendant was acquitted at trial. The majority of matters since January 2004 have utilised s 270 of the Code, which sets out offences involving slavery, sexual servitude and deceptive recruiting (IDC 2011). Of the finalised convictions:

- nine were convicted of slavery offences under s 270.3 of the Criminal Code;
- three were convicted of sexual servitude offences under s 270.6 of the Criminal Code; and
- one was convicted of people trafficking offences under s 271.2 of the Criminal Code.

In some of the cases involving sexual exploitation, women have had to work under poor conditions to pay off artificial debts enforced by the offenders, ranging from \$18,000 to \$53,000 (see summary of prosecutions to date in IDC 2011, 2010). In many cases, the offenders confiscated passports from the women and they were forced to work up to 12 hours per day, seven days per week, with some made to work while menstruating or ill (IDC 2011, 2010).

(Non-sex industry) labour trafficking

Recently, a shift has been seen in both research and policy towards a greater focus on trafficking for the purpose of exploitation in industries other than the sex industry (which, for the purposes of this paper, will be referred to as *labour trafficking*).

In 2009–10, approximately 30 percent of the AFP's investigations into people trafficking

did not involve trafficking for sexual exploitation (IDC 2011, 2010). In March 2011, the AFP began investigating Australia's first case of alleged organ trafficking (AFP personal communication June 2011)—an indication that this form of trafficking may also be occurring in Australia.

Since 2009, the AIC has been undertaking research to ascertain the vulnerabilities for trafficking and exploitation that exist in Australia for labour trafficking beyond the sex industry (see David 2010). This shift in focus is, in part, a response to the complexities of the detected cases brought before the courts under Australia's relatively new trafficking legislation, in addition to reported cases of extreme exploitation of migrants in the workplace. However, cases involving exploitation outside the sex industry have the potential to be conflated with breaches of migration and labour laws. Yet, although the scale of the problem is yet to be determined, recent AIC research and a small increase in detected labour trafficking cases has confirmed that labour trafficking is an issue across several Australian industries and warrants further attention.

Of the three cases of alleged trafficking for forced labour prosecuted in Australia to date, one case involved an Indian man who was allegedly offered employment in restaurants owned by an Australian citizen on the condition he would not be paid for a full year but that the restaurant owner would provide money for the victim's family each time he returned to India (David 2010, IDC 2009). On arrival, the victim's passport, tickets and other documents were taken by the restaurant owner and he was forced to work long hours, seven days per week. There was no evidence presented during trial that indicated that the man had ever received payment or that money had been sent to his family (IDC 2009).

The second case, *R v Kovacs* [2008] QCA 417, involved the forced labour of a woman from the Philippines who was brought into Australia under the pretence of marriage. There was an agreement that she would work in the defendant's takeaway shop and as a child minder for their children in order to repay the debt associated with her travel to Australia. Once the victim arrived in Australia, she was forced to work in the shop for 12 hours per day, five and a half days each week. Once she had finished her shift at the shop, the victim was required to look after three children and perform household duties. The victim was also found to have been sexually assaulted multiple times by the male defendant.

The most recent case involves the charging of the owner of an Indian restaurant in Sydney with people trafficking contrary to s 271.2(1B) of the Criminal Code. In *R v Trivedi*, the defendant pleaded guilty to having facilitated the entry of the victim into Australia and being reckless as to whether the victim would be subject to labour exploitation. The offender is currently awaiting sentence.

Exploitation as a precursor for trafficking

The AIC's recent report on labour trafficking concluded that labour trafficking exists in the broader context of exploitation of migrant workers, particularly those in low-skilled occupations (David 2010).

Those working under 457 visas are regarded as particularly vulnerable to exploitation. There have been official and unofficial reports of severe exploitation experienced by those brought into Australia on 457 visas to work as nurses, chefs and cooks, in the meat industry and in the manufacturing industry (David 2010). For example, one case involved approximately 10 nurses who had been recruited in the Philippines to work as nurses on 457 visas. Once in Australia, they were confined to a house and forced to work as unpaid cleaners (David 2010). This information was provided by the NGO who offered support to the persons involved. Such cases highlight the fact that exploitation exists on a continuum in the workplace, from relatively minor workplace breaches to severe exploitation that may at times lead to trafficking.

Other groups regarded as at higher risk for exploitation (and potentially trafficking) include migrants working in the agricultural sector, domestic workers, international students and those working in the maritime/seafarer sector (David 2010).

Officially and unofficially documented cases of migrant worker exploitation highlighted several key factors that contribute to, and can increase, an individual's risk of being exploited in the workplace (see Box 2).

Community awareness

Examining the level of community awareness of trafficking and expectations of who are perceived to be victims is valuable for informing policy and practice. It is important to assess how current knowledge of the extent and nature of people trafficking in Australia translates to community awareness of the issue in order to challenge accepted myths and stereotypes. This information is particularly important as members of the community are more likely than the authorities to come into contact with trafficked persons and the juries (before which such cases are likely to be tried) are drawn from the wider community.

To this end, the AIC developed an online survey that asked respondents for their understanding of trafficking and sought to examine attitudes towards issues including key labour sectors, migrants and victim status. The survey was piloted in the Australian Capital Territory in December 2008 and was run nationally in mid 2009.

There were a total of 1,617 respondents to the national online survey, which was advertised in the major newspapers in each state and territory, as well as via online media, social networking sites and the AIC's website. The majority of respondents were female (63%; n=1,014), aged between 30 and 49 (46%; n=748), were born in Australia (76%; n=1,125), living in the eastern states of Australia (71%; n=1,154) and in full-time employment (50%; n=804).

Select findings from the survey

Only nine percent (n=148) of respondents correctly identified all three elements of trafficking in persons, as set out in the UN definition—the means, the action and the purpose; 20 percent (n=318) correctly identified two of the three elements (most often identifying the action and purpose but not the means); 10 percent (n=155) gave incorrect responses.

It was apparent that 61 percent (n=973) of respondents confused trafficking in persons with people smuggling. Smuggling refers to the procurement of the illegal entry or residence of another person for profit and does not involve exploitation of the person in the destination country (which is a necessary element of trafficking).

Half of the respondents (50%) believed international organised crime networks were primarily responsible for people trafficking, followed by brokers in the trafficked person's home country.

Forty-six percent (n=744) of respondents believed over 1,000 people are trafficked into Australia each year and a further 18 percent (n=290) believed the number was between 500 and 1,000 people per year.

The largest proportion of respondents listed Afghanistan as the country from which most trafficked persons originate (19%; n=311). Overall, respondents indicated a belief that most persons trafficked into Australia originated from a southeast Asian country (53%; n=857), with Indonesia (n=270) and Thailand (n=228) identified as the main two countries of origin in this region for trafficked persons.

Seventy-five percent of respondents believed they would not be able to identify a trafficked person, but of those who thought they could (22%; n=350), they identified characteristics such as poor English language skills, no freedom of movement, Asian background and not being in possession of personal documents such as passports as relevant

indicators. The majority of respondents indicated that their main source of information on people trafficking was film/television (n=1,398), followed by newspapers (n=1,208) and the radio (n=688).

These results reveal a high level of confusion between people trafficking and people smuggling. Given the continuing debate regarding the issue of people smuggling into Australia and the high level of media and political attention this receives, the confusion among members of the public in relation to the two concepts was not unexpected. This conflation is likely to have influenced other findings from the survey, including that international criminal organised networks are primarily responsible for people trafficking, that over 1,000 people are trafficked into Australia each year and that most trafficked persons originate from Afghanistan and Indonesia. From the evidence presented earlier, it is apparent that two of these three perceptions are incorrect.

Although the extent of people trafficking in Australia remains unclear, information collected by NGOs and through the Australian Government's STP Program suggests far fewer victims than survey respondents indicated (Joudo Larsen, Lindley & Putt 2009), nor do organised crime groups play a major role in trafficking (David 2012). It does appear, however, that respondents have a fairly accurate perception that a majority of trafficked persons originate from southeast Asia.

Conclusion

Using available official and unofficial information, four major points can be drawn. First, factors such as income disparity, poverty and migration status may contribute to the risk of an individual finding themselves trafficked for various types of exploitation.

Second, it is evident that people trafficking exists in a variety of labour sectors in Australia besides the sex industry. Although the majority of detected cases and investigations of trafficking-related crimes involve female victims in the sex industry, the recent focus on individuals working in other labour sectors may lead to the identification of more trafficking victims, which would be reflected in future investigations and prosecutions.

Box 2 Risk factors for exploitation

Below are factors that can work in combination to increase a migrant worker's vulnerability to exploitation (which may or may not include labour trafficking):

- migration situation and concern about deportation;
- physical and/or linguistic isolation from the broader community;
- the impact of contractual obligations such as payments of bonds back in their home country;
- the existence of family or community ties back in their home countries; and
- financial pressures.

Source: David 2010

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Further, detected cases of trafficking in persons do not conform to stereotypical perceptions of slavery and trafficking involving abduction and confinement—attitudes the online survey confirmed are held by the Australian public. Victims and offenders have largely heterogeneous profiles and this can create challenges for jurors and the general community in identifying cases of trafficking in persons.

The survey results also highlighted the general confusion between smuggling and trafficking. Further, it showed that the mainstream media play an important role in informing the public on the issue—whether it's cementing stereotypes or propagating facts.

Trafficking in persons is an elusive and complex crime and remains an area of research where tangible numbers and facts are challenging to collect. Therefore, it is important that official statistics are monitored and supplemented with qualitative information sourced from non-government actors involved in this area. The AIC is currently investigating the development of a national minimum dataset to improve knowledge of trafficking in Australia.

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