

# PERSPECTIVES FROM WORKING WITH VICTIMS OF HUMAN TRAFFICKING IN AUSTRALIA

LAURA VIDAL

**H**uman trafficking is a wide-spread global problem. It is a gross violation of human rights and strips individuals of their freedom. The United Nations estimates that 2.5 million people worldwide are trafficked on an annual basis generating some 31.6 billion dollars of annual profit.<sup>1</sup>

Human trafficking is defined by the United Nations in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: Supplement to United Nations Convention Against Transnational Organised Crime* (2000). It involves the elements of recruitment and transport for the purpose of exploitation through deceptive and/or coercive means.<sup>2</sup>

The Australian legislation deals with trafficking

related offences in the *Criminal Code Act 1995*. Offences including slavery, sexual servitude, deceptive recruiting for sexual services<sup>3</sup> and trafficking in persons and debt bondage are included in the legislation.<sup>4</sup> Slavery for the purpose of the legislation is defined as ‘the condition of a person over whom any or all of the powers attaching to the right of ownership are excised, including where such a condition results for a debt or contract made by the person.’<sup>5</sup> The Commonwealth takes a very narrow approach with most part of the emphasis on trafficking for the purpose of commercial sexual exploitation.

Australia is not excluded from this insidious crime, and it is considered a destination country for traffickers to bring people for the purpose of exploiting their labour. The Australian Federal Police have conducted 270 investigations since

2004 and the Australian Government has spent nearly \$100 million to combat trafficking through prevention of the crime, prosecution of the criminals and protections of its victims.

## **WHAT DOES HUMAN TRAFFICKING LOOK LIKE IN AUSTRALIA?**

Australia is a destination country for human trafficking. Women, men and children from Thailand, Malaysia, South Korea, Taiwan, Vietnam, China, and, to a lesser extent, Eastern Europe, migrate to Australia voluntarily intending to work legally or illegally in a number of employment sectors. Due to the complex nature of measuring human trafficking the exact numbers of people trafficked to Australia each year is unknown.<sup>6</sup>

Australia is unique in terms of its geographical location, because it lacks permeable borders. This coupled with the Australian Government's stringent approach to immigration makes it difficult for individuals to enter Australia illegally.

Women and men overseas are often presented with opportunities of employment in Australia. Victims enter Australia with valid documentation under the promise that they are going to be offered a fair work opportunity. Pearson<sup>7</sup> states that "the majority of trafficked people have tended to enter Australia legally on tourist, student or work visas, but ended up in situations of exploitation akin to debt bondage or forced labour."

People trafficked to Australia commonly experience a loss of control over their own lives. They are subjected to poor working conditions, providing labour without pay, being forced to live at their workplace, unsafe living/working conditions, excessive hours, sexual, physical and verbal abuse, restricted movement and confiscation of identity and travel documents. Traffickers also commonly impose an illegal debt that must be "worked off". It can be argued that the problem of trafficking in persons is in fact a symptom of globalised poverty and a lack of access to viable education and work opportunities.

## **BEYOND SEX TRAFFICKING: LABOUR TRAFFICKING AND OTHER FORMS OF TRAFFICKING**

Trafficking for the purposes of sexual exploitation is widely reported both in Australia and globally. Recently, Australia has begun to gather anecdotal evidence that trafficking in persons in Australia is present in more contexts. Previously the policy and legislative approach taken by Australia has targeted trafficking for the purposes of commercial sexual exploitation. The focus has now begun to shift and recognise the existence of trafficking in industries such as agriculture, construction, mining, maritime services, manufacturing, health care, restaurants, domestic services and forced and slave-like marriages.

The International Labour Organisation (ILO) define labour exploitation as: "forms of trafficking where the intended exploitation involves work or services that is extracted under

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menace of penalty and this work or service is undertaken involuntarily”.<sup>8</sup> Australia is yet to acknowledge and/or legislate a formal definition of labour trafficking, however Fiona David of the Australian Institute of Criminology states that “whilst there is no accepted definition of labour trafficking, debates about terminology, whilst important, should not be permitted to lead to inaction.”

There is recognition and inclusion of the definition of “deceptive recruiting” in the criminal offences, however this only applicable within the context of commercial sexual exploitation, making it difficult to prosecute cases of alleged labour exploitation not involving commercial sexual exploitation.

Both David and the ILO acknowledge that there is a distinct grey area around the practical situations and legal concepts regarding labour trafficking. Nonetheless, there is still significant literature and evidence to suggest that labour trafficking and labour exploitation is present in Australia.

The Salvation Army’s experience is that a greater percentage of people accessing their services are exploited in industries other than the commercial sex industry. The Minister for Home Affairs and Justice, Hon. Brendan O’Connor acknowledged in November 2010 that: “While women working in the sex industry are over-represented among statistics on identified victims of trafficking in Australia and internationally, it is likely that this is because other forms of exploitation are under-reported and under-researched.”<sup>9</sup>

## AUSTRALIA’S RESPONSE TO VICTIMS OF HUMAN TRAFFICKING

The Australian Government has implemented a comprehensive ‘whole of government’ response to people trafficking and slavery for several years and has been a leader in the region. Resources have funded initiatives in countries of origin of victims, specialist police to investigate trafficking and slavery crimes, visas and a support program for people who give information to the police.

The process of victim support involves a victim being identified by the Australian Federal Police (AFP) as a potential witness. Victims come to the attention of the police through several different pathways; most commonly The Department of Immigration and Citizenship (DIAC) detects the individual for a breach of their visa conditions. Should the victim choose to engage in a criminal investigation, a comprehensive support package is offered in an effort protect the victim’s health, welfare and legal status.

The Commonwealth Office for Women has

oversight of the program, which is currently contracted to The Australian Red Cross which delivers the services to both men and women who are identified as victims. Under the program victims have access to financial support, access to medical assistance, support for study (including English language), and other health and welfare needs.

There are three streams of the Government program, which take place parallel with the stages of the criminal investigation. The first stream is known as the “Assessment Stream” and correlates with a Bridging Visa F (BVF) that can be offered to victims if needed. This stream lasts for 45 days with the discretionary option of a 45-day extension. During this period the victim has time to decide whether or not they are prepared to be a witness in a criminal investigation. The Australian Red Cross provides financial and case management support during this period.

Following the assessment stream, should a victim choose to engage with the investigation they are offered a Criminal Justice Stay Visa (CJSV), which lasts as long as a victims are needed for investigation and prosecution. Should a victim choose not to engage with a criminal investigation after the 45-day assessment stream, the support of The Australian Red Cross is withdrawn, as they are no longer eligible for the program.

If the victim does agree to be a witness, the Australian Federal Police take a comprehensive statement of events and collect evidence of any criminal offences. If necessary the victim may be required to appear in court to give evidence at trial. Victims who are the holder of a CJSV are given access to federal government financial

## **OFTEN WOMEN WHO HAVE BEEN VICTIMS OF TRAFFICKING HAVE A BROAD RANGE OF LEGAL PROBLEMS INCLUDING CRIMINAL, MIGRATION AND FAMILY MATTERS.**

support via Centrelink, Interim Medicare and casework support from the Australian Red Cross.

Post the investigation, victims can be offered a Permanent Witness Protection Trafficking Visa (WPTV). This visa cannot be applied for autonomously, it can be only offered by DIAC on direction of the AFP. The WPTV can be granted regardless of whether charges have been laid against the trafficker/s based on the following conditions: the individual must be present in Australia at the time of application, the individual has to have made a contribution to an investigation, and the minister has to be satisfied that the individual will face harm if they return to their home country.<sup>10</sup>

In Sydney, the Salvation Army established a Safe House for trafficked women at the beginning of 2008, a 10-bed refuge where victims can receive the support and services they need to pursue their human rights. Since then, the service has expanded to include a growing number of non-residential clients, men, women and young people who

are supported as they rebuild their lives.

The service is a rights-based service whereby clients are given adequate time and opportunity to explore all of their options before making a decision about how they wish to pursue their future goals. The services offered by the Salvation Army are outside of, and are not dependant on any involvement with a criminal justice process.

## **COHESIVENESS BETWEEN LEGAL SERVICES AND SOCIAL WELFARE SERVICES**

It is important to recognise that adequate responses to assist trafficked people requires co-operation across services. In particular, there needs to be a high level of cohesiveness between legal services and social welfare services offered to clients. Salvos Legal (a free legal service for people who cannot afford to pay) is the Safe House's main partner and offers a comprehensive legal service that compliments our social services. Often women who have been victims of trafficking have a broad range of legal problems including criminal, migration and family matters that need to be addressed with both in Australia and in the client's home country.

Direct practice experience shows that clients feel best supported when there is a high level of co-operation amongst such service providers. Given the level of trauma that people have experienced; it becomes overwhelming to independently manage

all of the services that come into play, and cooperation between social welfare services and legal practitioner is therefore of critical importance. Whilst it is understood that legal professionals hold professional legal privilege, it is important for all professionals to acknowledge key supports and work in a way that holistically addresses the individual's needs.

## **REFERENCES**

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9. Minister for Home Affairs and Justice, Hon. Brendan O'Connor, The Government's Response to People Trafficking, Ministerial Statement (2010) <[http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking\\_PeopleTrafficking](http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_PeopleTrafficking)>
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# IDENTIFY AND RESPOND

IF YOU SUSPECT SOMEBODY IS BEING ABUSED OR EXPLOITED CONSIDER IF YOU CAN SAFELY ASK THE FOLLOWING QUESTIONS:

- 1 DO YOU HAVE YOUR PASSPORT?
- 2 WHAT HOURS DO YOU WORK, WHAT ARE YOUR CONDITIONS AND PAY?
- 3 DO YOU OWE MONEY TO ANYONE?
- 4 ARE YOU AFRAID OF ANYONE? WHO? WHY?
- 5 IF YOU WANT TO LEAVE YOUR SITUATION, CAN YOU? WHY NOT?
- 6 DO YOU NEED HELP?

## FOR HELP OR ADVICE CONTACT

AUSTRALIAN FEDERAL POLICE  
HUMAN TRAFFICKING HELPLINE  
131 AFP [237]

THE SALVATION ARMY  
(02) 9266 9882

FOR URGENT  
ASSISTANCE  
CALL **000**  
FIRST AND  
THEN MAKE A  
SECOND REPORT  
TO THE HUMAN  
TRAFFICKING  
HELPLINE

## USEFUL WEBSITES

AUSTRALIAN FEDERAL POLICE [afp.gov.au/policing/human-trafficking](http://afp.gov.au/policing/human-trafficking)

THE SALVATION ARMY JUSTICE UNIT [salvos.org.au/justiceunit](http://salvos.org.au/justiceunit)

SALVOS LEGAL [salvos.org.au/salvoslegal](http://salvos.org.au/salvoslegal)

ANTI-SLAVERY PROJECT [antislavery.org.au](http://antislavery.org.au)

COMMONWEALTH ATTORNEY GENERAL'S DEPARTMENT [ag.gov.au/www/agd/agd.nsf/pagepeopletrafficking\\_peopletrafficking](http://ag.gov.au/www/agd/agd.nsf/pagepeopletrafficking_peopletrafficking)