

For Official Use Only

Additional questions following the public hearing of the NSW Parliament Legislative Assembly Select Committee on the Regulation of Brothels, held on Friday 11 September

Mr ALEX GREENWICH: Specifically in New South Wales in what industries, in your experience, is sex trafficking most common? What industries or in what scenarios is it the most common? Is it sex services premises, is it people who marry someone overseas, is it hospitality—is there a sector which you feel stands out more than others?

The short answer is the commercial sex industry. Trafficking in domestic relationships, while having a sexual element, is more about domestic servitude which may include state offences of sexual assault.

1. What does the AFP sex trafficking data show about numbers of women trafficked and over what time period, including numbers of women in NSW?

- Between 1 July 2012 and 31 August 2015, the AFP received 90 referrals for suspected sexual servitude matters, 68 of which were accepted for further investigation. The significant majority of the victims in these matters have been women, as reflected in our response to question four. Please note given the Committee's focus these figures do not include forced marriage referrals.
 - Thirty-one of these referrals relate to New South Wales (NSW), of which 19 were accepted for further investigation.
- To compare with other states, of the 90 referrals received:
 - Twenty-five referrals relate to Victoria (VIC), of which 23 were accepted for further investigation;
 - Eighteen referrals relate to Western Australia (WA), of which 14 were accepted for further investigation;
 - Eight referrals relate to Queensland (QLD), of which seven were accepted for further investigation;
 - Three referrals relate to South Australia, of which one was accepted for further investigation;
 - Three referrals relate to the Australian Capital Territory (ACT), of which two were accepted for further investigation;
 - One referral relates to the Northern Territory and it was accepted for further investigation; and
 - One referral relates to Tasmania and it was accepted for further investigation.
- Referrals may not be accepted for further investigation for reasons including:
 - A victim is unable to be identified;

For Official Use Only

For Official Use Only

- The victim does not wish to speak with police or have police take any action; and
- The AFP evaluation reveals insufficient evidence that a human trafficking offence has occurred.
- AFP responses to human trafficking referrals are often undertaken jointly with Commonwealth, State or Territory partner agencies. Matters not accepted for investigation by the AFP may be more appropriately referred to these agencies for their attention and/or investigation. These matters can include instances of domestic drug supply, domestic violence, labour contractual disputes or welfare support referrals.

2. Given that sex trafficking and sex slavery are by definition organised concealed criminal conduct, how reliable is the data that the Australian Federal Police (AFP) hold as to the actual incidence of this conduct in our community, as opposed to only the cases of that concealed conduct that have come to light?

Historically the AFP has not seen sex trafficking and sex slavery as being run by large criminal syndicates, but rather small crime groups. However, intelligence suggests, and the AFP acknowledges, that Asian Organised Crime syndicates and Outlaw Motorcycle Gangs continue to pose an evolving threat to the lawful sex industry. Human Trafficking is by its very nature a clandestine activity and we believe our data does not reflect the levels and impacts on sexual trafficking and sexual slavery in the Australian community.

2a. Are there any barometers or yardsticks for extrapolating the cases discovered in this area leading to a charge compared to the actual undiscovered cases in the community?

The AFP stresses the importance of factual evidence. We would not want to extrapolate information without a factual basis. The AFP continues to work with government and non-government organisations (NGO's) to raise public awareness on human trafficking and the promote reporting of this crime type.

2b. Does the AFP have any estimates as to the extent of the problem of sex trafficking and sexual servitude in the community?

Human Trafficking is by its very nature a clandestine activity and we believe that it is under reported across the Australian community. All State and Territories jurisdictions have a range of legislation that relates to sexual servitude and that would allow for the prosecution of sexual exploitation cases and we would expect some matters, rather than being referred to the AFP for investigation, are being dealt with in this manner. Australia is fortunate compared to many of our regional neighbours we have strong

For Official Use Only

For Official Use Only

migration controls, our geographic isolation, and high degree of regulation, compliance and enforcement do make us a hostile environment. Saying this there is a significant demand for women to work in the sex industry in Australia. This demand and the significant profits that can be made will continue to make us a destination country for sex trafficking. The following studies may be useful for the Committee in forming an opinion on this subject:

- *'Inquiry into People Trafficking for Sex Work'* (June 2010) by the Victorian Parliamentary Drugs and Crime Prevention Committee.
- *'Trading Lives: Modern Day Human Trafficking'* (June 2013) by the Commonwealth's Joint Standing Committee on Foreign Affairs, Defence and Trade.
- *'Human trafficking and slavery offenders in Australia'* (November 2013) by the Australian Institute of Criminology.
- When released, *'The Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries'* by the Victoria Law Reform Commission.

2c. Does the AFP consider that sex trafficking or sexual servitude cases that have come to light show only a "trivial problem" in this area?

The AFP does not consider sex trafficking and sexual servitude to be trivial problems. These crimes are grave human rights violations and their impact on individuals and communities cannot be understated. The Australian Government's approach to sex trafficking and sexual servitude is outlined in the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan). The National Action Plan sets out the key initiatives in place to prevent, detect, investigate and prosecute cases of human trafficking, slavery and slavery like offences, as well as to support victims. The Government has committed more than \$150 million towards these initiatives.

3. How does this data compare to other Australian jurisdictions, and what trends has the AFP observed?

Please see the answer to Question One for a comparison of NSW with other Australian jurisdictions. Traditionally, the majority of referrals and investigations have been in relation to women being trafficked for the purposes of exploitation in the sex industry. However, figures indicate that there has been an upward trend in the number of referrals and investigations relating to forced marriage since its criminalisation in March 2013.

4. What proportion of sex trafficked women has the AFP identified that is linked to brothels in NSW?

For Official Use Only

For Official Use Only

Of the 19 sexual servitude matters accepted in NSW for further investigation:

- 17 relate to women engaged in work at brothels or massage parlours.
- 2 do not.

It is irrelevant to the prosecution of these Commonwealth offences what premises the offences are alleged to have occurred in. As such AFP records do not provide further information on the legal status of the premises or their adherence to local planning or zoning legislation. Given that this relates to State laws and as the AFP routinely conducts operations alongside NSW Police, they may be able to provide this information.

5. What proportion of sex trafficked women has the AFP identified that is linked to massage parlours where sex work is occurring in unauthorised context in NSW, and is the data of the AFP concerned with whether the premises are approved under NSW planning laws to operate sex work?

Please refer to our answer for question 4 noting AFP data does not differentiate between authorised and unauthorised brothels or massage parlours.

6. What is the AFP's success rate for prosecution of sex trafficking, including numbers of cases prosecuted and outcomes?

Prosecutions and their outcomes are a matter for the Commonwealth Director of Public Prosecutions.

7. What assessment has the AFP made about the impact of difference regulation regimes, including comparing NSW with Queensland and Victoria?

The AFP has not made an assessment of the impact and effectiveness of different regulatory regimes around Australia. AFP supports regulatory regimes that enable and protect ready access to employees by agencies (both government and non-government) and vice versa; ensuring workers have access to support and information when required. Multi agency bodies such as the VSISMG which brings together Commonwealth, State and Local Government agencies are a demonstration of best practice; combining enforcement agencies with those involved in licencing, tax and health. Our participation in bodies such as these enables a coordinated approach to what are complex issues which cannot be solved by law enforcement agencies alone.

Regulatory regimes should also have a robust 'fit and proper person' test for those involved in the ownership and management of brothels. This should be

For Official Use Only

For Official Use Only

done at the at the point of entry and then there must be ongoing monitoring (for example, regular renewal of licences at which point the fit and proper person testing is repeated). However, if a licence is issued and then the ongoing monitoring is not done, a vulnerability is created. Also, it is too easy for someone to use a front person with no criminal record to get a licence. Regulators will rely on law enforcement intelligence and even then law enforcement may have no information about the organised crime connections of someone with a clean record. With fit and proper person tests, the threshold is often an applicant's criminal record and that is too low. It should be based on criminal intelligence. We must also ensure that State and Territory agencies charged with the regulation of this industry have the capacity to share this information with each other to ensure that individuals refused or banned in one jurisdiction are not permitted move and take up a licence in another jurisdiction.

8. What recommendations has the AFP made about law reform to improve victim identification, case preparation and prosecution rates?

AFP advice based on operational experience influenced the decision to amend the *Criminal Code Act 1995* (Criminal Code) in 2013. AFP investigations had revealed that human trafficking syndicates were changing their mode of operation to avoid detection, and if detected, to make elements of the offence harder to prove to the standard that satisfies the court and a jury. In addition to this shift in mode of operation, Australian authorities including the AFP had identified a diversification of the industries into which victims are trafficked, such as the hospitality, agriculture and domestic work industries.

As a result, the Australian Government sought to amend the Criminal Code to improve the operational effectiveness of the existing Commonwealth human trafficking and slavery related offences and ensure that law enforcement agencies have the best tools available to investigate and prosecute perpetrators.

Following extensive consultation, the Criminal Code was amended on 8 March 2013 to ensure that the broadest range of exploitative behaviour was captured and criminalised, including by introducing new offences of forced labour, forced marriage, and harbouring a victim, and by clarifying existing offences and their definitions to enhance operational effectiveness.

A key measure under the National Action Plan is to continue to monitor of the impact of the 2013 legislative amendments to the Criminal Code, including on investigations and prosecutions and victim support.

The Interdepartmental Committee on Human Trafficking and Slavery (IDC) is

For Official Use Only

For Official Use Only

responsible for monitoring the overall implementation of the National Action Plan. The IDC is chaired by the Attorney-General's Department (AGD) and includes membership from ten other Australian Government agencies, including the AFP. The primary mechanism for assessing progress under the National Action Plan is through the Australian Government's annual IDC report to the Australian Parliament. The AFP contributes to the drafting of the IDC Report each year.

An Operational Working Group comprising AGD, AFP, Commonwealth Director of Public Prosecutions, Department of Immigration and Border Protection and Department of Social Services has been established as a subcommittee of the IDC. The OWG is responsible for monitoring the implementation and effectiveness the whole-of-government strategy to combat human trafficking and slavery, including both legislative and policy measures, and to review and resolve operational issues that arise through the management of individual cases. The OWG also has an important role in referring emerging policy issues for the IDC's consideration. As appropriate, this is done in consultation with relevant Australian Government and State and Territory colleagues. The OWG is chaired by the AGD and meets every six weeks, or more frequently as required by operational matters.

9. Of the 6 identified sex-trafficking investigations in NSW how many involved a conviction; and how many convictions were related to brothels or massage parlours?

None of the six matters resulted in a conviction. In five of the matters, no human trafficking offence was identified or disclosed. The sixth matter was a foreign law enforcement request for assistance in relation to an international matter.

10. Of the remaining 18 sex-trafficking referred to in your evidence, in which states or territories did these occur?

- Ten matters related to VIC;
- Five matters related to WA;
- Two matters related to QLD; and
- One matter related to the ACT.

For Official Use Only