

**Submission
No 5**

INQUIRY INTO HUMAN TRAFFICKING

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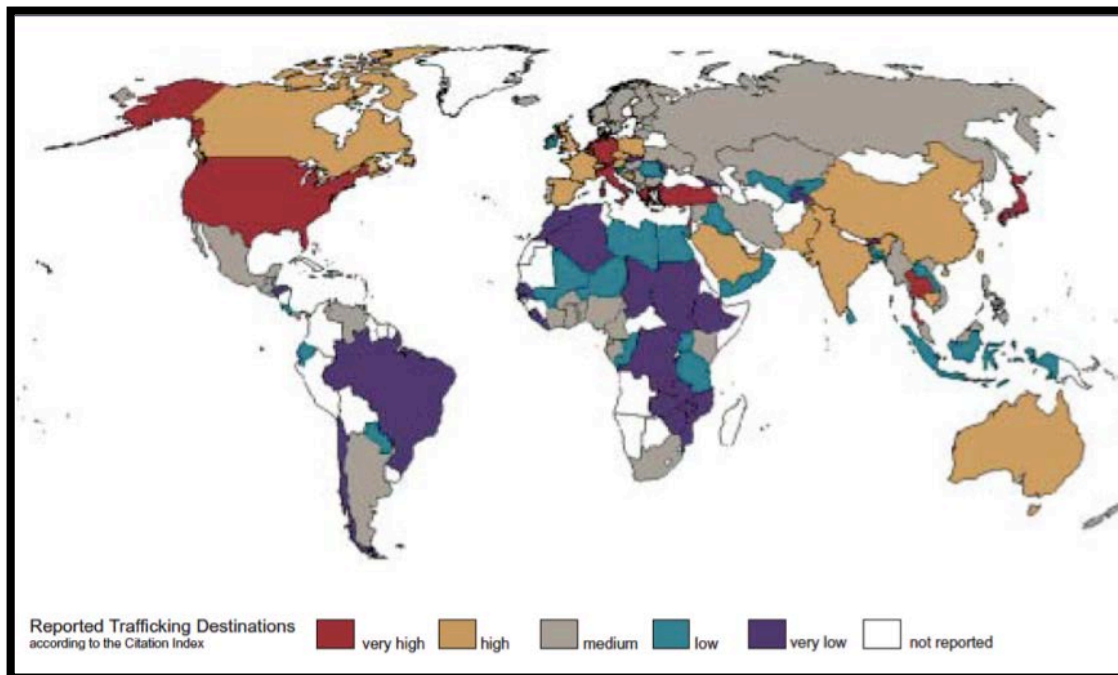
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Inquiry into Human Trafficking - NSW – Parliamentary Submission

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Australia continues to remain a high flow destination for Human Trafficking. Despite lack of accurate data on the number of trafficked persons or the type of and the type of servitude, available data from various research and case studies indicates that the bulk of these known numbers are trafficked to NSW followed by Victoria.

Global Human Trafficking - Destinations as measured by the extent of reporting



Source: <https://proverbsbyefua.files.wordpress.com/2013/11/destination-countries.jpg>

A large proportion of trafficked persons are in sexual servitude enslaved in sex industry or forced marriages; domestic servitude; agriculture; forced labour; hospitality and often invisible to the public. Australia has a reasonable legal and institutional framework to address human trafficking yet the global picture of trafficking destination continues to report Australia as one of the favored destinations, which should be a cause of concern for policy makers. One must be cognizant of the fact that trafficking is a global phenomenon and organized crimes involved in drugs and weapons and contrabands are traffickers, facilitators or collaborators in such criminality against humanity.

The following tables indicate some trends in Australian human trafficking over the last decade, alerting on the lower number of reported cases and referrals for trafficked persons.

Trafficking in persons investigations and assessments, Australia 2002–2015

Financial year	New referrals for assessment during the period ^[2]	Total number	
		Since Jan 2004	Since 1999
2014-15	119	588	
2013-14	70	469	
2012-13	52	398	
2011-12	41	346	
2010-11	35	305	
2009-10	38	270 +	
2008-09	not available	not available	
2007-08	17	150	
2006-07	15	125	
2005-06	20	110	
2004-05	29		105
2003-04	not available		79
2002-03	20		32

Source: <https://law.uq.edu.au/research/research-activities/human-trafficking/statistics#ref4>

Number of clients in and referred to the Support for Trafficked People Program, 2005 to 2015

Financial year	New clients entering the Support Program	Number of clients on the Support Program		
		Total	Male	Female
2014-15	38	88	18	70
2013-14	21	76	11	65
2012-13	21	83	11	72
2011-12	9	77	9	68
2010-11	29	80	9	71
2009-10	24 ^[10]	65	3	62
2008-09	not available	59	not available	not available
2007-08	not available	60	not available	not available
2006-07	not available	48	not available	not available
2005-06	not available	41	not available	not available

Source: <https://law.uq.edu.au/research/research-activities/human-trafficking/statistics#ref4>

Available information from CDP¹ also indicates that victims to trafficking in Australia come from our region, particularly Thailand, Philippines, Malaysia and Korea. Some of the significant cases that made it to the court are listed below:

- McIvor & Anor v R [2009] NSWCCA 264²
- R v Foad Ali Solaiman [2008] NSWDC 53³
- R v Kovacs [2008] QCA 417⁴
- R v Trivedi NSWDC (08 05 2012)⁵
- Ho v The Queen; Leech v The Queen⁶ [2011] VSCA 344
- R v Sieders & Yotchomchin – 2007 4 DCLR (NSW) 255⁷
- Sieders & Somsri v R [2008] NSWCCA 187⁸
- R v Watcharaporn Nantahkhum (SCC149 of 2010)⁹
- R v Netthip [2010] NSWDC 159¹⁰
- R v Tang [2008] HCA 39¹¹

Keeping in line with the global trends, majority of the above noted cases indicated women brought to Australia for sexual servitude, in brothels or in the home and did involve considerable planning and resources, deception and deprivation of freedom and control over person. What is interesting in these cases is that in all these cases, these are individual acts of criminality against others as none of the people responsible for trafficking belonged to any organized regional or global criminal network. Another notable factor is that courts consider sexual servitude as serious offence and forced labour in not so serious category, as is apparent in R v Trivedi NSWDC (08 05 2012) case where a \$1000 fine and 250 hours of community service was considered appropriate. It needs to be noted that many cases are never brought before the courts as people are deported for illegal/overstay in the country and trafficked women are not willing to testify or trafficked men consider it a shame to bring their ordeal in the public space. The available research suggests that women who have previously worked as sex workers are not treated with empathy by the institutional framework despite support from civil society organisations. Collaboration between various institutions will be greatly helpful, especially because of the public offices involvement - border security, or immigration etc. A notable trend is the involvement of ethnic communities in exploiting people from the countries of their origin hence some form of familiarity between the traffickers and the trafficked, both for sexual slavery and forced labour, though there are cases

¹ <https://www.cdpp.gov.au/crimes-we-prosecute/human-trafficking-and-slavery>

² <http://www.austlii.edu.au/au/journals/UNSWLawJl/2012/6.pdf>

³ http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp124/05_introduction.html

⁴ <http://archive.sclqld.org.au/qjudgment/2008/QCA08-417.pdf>

⁵ https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/aus/2012/r_v_divye_kumar_trivedi.html

⁶ https://www.unodc.org/cld/case-law-doc/criminalgroupcrimetype/aus/2011/ho_v_the_queen_leech_v_the_queen_2011_vsca_344_as_related_to_dpp_cth_v_ho_ho_2009_vsc_437.html

⁷ https://www.unodc.org/res/cld/case-law-doc/traffickingpersonscrimetype/aus/2008/r_v_sieders_yotchomchin_html/R_v_Sieders_R_v_Yotchomchin_2007_NSWDC_101.pdf

⁸ https://www.unodc.org/res/cld/case-law-doc/traffickingpersonscrimetype/aus/2008/r_v_sieders_yotchomchin_html/Sieders_v_R_Somsri_v_R_2008_NSWC_CA_187.pdf

⁹ https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/aus/2012/r_v_watcharaporn_nantahkhum_scc149_of_2010.html

¹⁰ https://www.unodc.org/res/cld/case-law/aus/2010/r_v_netthip_2010_nswdc_159_html/R_v_NETTHIP_2010_NSWDC_159_30_July_2010.pdf

¹¹ <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2008/hca39-2008-08-28.pdf>

where Australians have brought people from overseas with the intent of enslaving them.¹² Considering that sexual servitudes remains a key motivation for trafficking, it would be useful to look at the legal status of regulated sex industry in Australia.

Legal Status of Sex Industry in Australia

	NSW	Vic	Qld	WA*	SA	Tas	ACT	NT
Street-based work	Soliciting is illegal in certain areas (near or within view of a dwelling, school, church or hospital) (<i>Summary Offences Act</i> , ss 19, 19A)	Illegal (<i>Sex Work Act 1994</i> , s 13(2))	Illegal (<i>Prostitution Act 1999</i> , s 73(1))	Illegal (<i>Prostitution Act 2000</i> , ss 5, 6)	Illegal (<i>Summary Offences Act 1953</i> , s 25)	Illegal (Sex Industry Offences Act 2005, s 8(1))	Illegal (<i>Prostitution Act 1992</i> , s 19(1))	Illegal (<i>Prostitution Regulation Act 2004</i>)
Brothel work	Legal to run a brothel with appropriate planning permission. Act does not state that it is a crime to work as a sex worker in a brothel without planning permissionb (<i>Restricted Premises Act 1943</i> , s 7(1))	Brothels must be licensed and working within the licence conditions to operate legally (<i>Sex Work Act 1994</i> , s 22(1)). It is a crime to live partially or wholly off the earnings of sex work unless working for legal premises (ie licensed, or exempt from requiring a licence but registered) (<i>Sex Work Act 1994</i> , s 10)	Brothels must be licensed and in accordance with planning laws (<i>Prostitution Act 1999</i> , s 66). It is unlawful to work as a sex worker in premises other than a licensed brothel or contrary to brothel licence, unless exempt from needing a licence (see private work below) (<i>Criminal Code 1899</i> , s 229C)	Illegal to run a brothel (<i>Criminal Code Compilation Act 1913</i> , Division 190, s 1(a)). Also illegal to live partially or wholly off the earnings that the person knows are the earnings of prostitution (<i>Criminal Code Act Compilation 1913</i> , s 190(3))	It is a crime to manage or keep a brothel, or to receive payment in a brothel for sex work (<i>Summary Offences Act 1953</i> , s 28). Illegal to live partially or wholly off the earnings of the prostitution of another person (<i>Summary Offences Act 1953</i> , s 26)	Illegal to run a brothel. Act does not state that it is illegal to work as a sex worker in a brothel (Sex Industry Offences Act, s 4)	Legal to run a brothel, but must be registered and based in prescribed locations. Act does not state that it is a crime to work as a sex worker in a brothel that is not registered or outside the prescribed locations of Mitchell and Fyshwick (<i>Prostitution Act 1992</i> , s 18(1); <i>Prostitution Act Regulation 1993</i> , s 1(4); see also <i>Prostitution Act</i> , s 12(1))	Illegal to run a brothel. Act does not state that it is a crime to work as a sex worker in a brothel (<i>Prostitution Regulation Act 2004</i> , s 4)
Escort agency work	Not mentioned within the <i>Summary Offences Act 1988</i> or <i>Restricted Premises Act 1943</i>	Escort agencies must also be licensed to operate legally (<i>Sex Work Act 1994</i> , s 22(1))	Clients of a social escort service must be informed that the service does not include prostitution (<i>Prostitution Act 1999</i> , s 96B). In addition, escort services cannot be advertised as including sexual services (<i>Prostitution Act 1999</i> , s 96A)	Not illegal to conduct an escort service but illegal to live off the earnings. See (<i>Criminal Code Act Compilation 1913</i> , s 190(3)) above	See above. Act does not state that it is illegal to work as a sex worker in an escort agency (<i>Summary Offences Act 1953</i> , s 26)	Illegal to run an escort agency. Act does not state that it is a crime to work as a sex worker in an escort agency (<i>Sex Industry Offences Act</i> , s 4)	Legal to run an escort agency, but must be registered. Act does not state that it is a crime to work as a sex worker in an unregistered escort agency (<i>Prostitution Act 1994</i> , s 12(1))	It is an offence to carry on an escort agency business unless they hold an operator's licence (<i>Prostitution Regulation Act 2004</i> , s 6(1)). Act does not state that it is a crime to work as a sex worker in an unlicensed escort agency
Private work/sole operators	Not mentioned within <i>Summary Offences Act 1988</i>	Small business operators (two people working separately or jointly) and solo workers are exempt from requiring a licence to operate legally but still need to register their service. Small business operators also need a planning permit for their premises if they are providing services there (<i>Sex Work Act 1994</i> , ss 23, 24)	Legal for a person to work solely from a premise without a licence	Nothing in the Act specifically about private workers but see (<i>Criminal Code Act Compilation 1913</i> , s 190(3)) above	Nothing in the Act specific to private workers	Up to two sex workers can work together but cannot manage or employ each other (<i>Sex Industry Offences Act 2005</i> , s 3(1))	Legal but private workers still need to register (<i>Prostitution Act 1994</i> , s 12(1))	Individual workers cannot work from the same premises from which they organise their business; however, an individual 'escort' who is working on their own does not need to have a licence or be registered with police (<i>Prostitution Regulation Act 2004</i> , s 6(4))
Regulatory authority	Local councils approve business applications (see <i>Restricted Premises Act 1943</i> , s 17(1) above)	Business Licensing Authority grants licences for brothels and escort services and maintains the register of private workers	Prostitution Licensing Authority grants licences to brothels	WA Police	SA Police	Tasmania Police	The Office of Regulatory Services is responsible for registering brothels, escort agencies and sole operators	Director-General of Licensing (formerly the Northern Territory Licensing Commission) grants licences to escort agencies. All staff of escort agencies must be registered with NT Police and receive a certificate from the Police Commissioner
Principal legislation	<i>Summary Offences Act 1988</i> , <i>Restricted Premises Act 1943</i>	<i>Sex Work Act 1994</i>	<i>Prostitution Act 1999</i> , <i>Criminal Code 1899</i>	<i>Prostitution Act 2000</i> , <i>Criminal Code Act Compilation 1913</i>	<i>Summary Offences Act 1953</i>	<i>Sex Industry Offences Act 2005</i>	<i>Prostitution Act 1992</i>	<i>Prostitution Regulation Act 2004</i>

Source: http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp131/05_aus_industry.html

¹² <http://www.smh.com.au/nsw/this-is-happening-in-australia-sydney-victim-of-slavery-speaks-out-20160407-go1bt7.html>

Despite the fact that it is legal to operate a brothel in NSW, VIC, Qld and ACT, sex workers are considered independent contractor hence not eligible for entitlements and legal protections guaranteed for other employees (superannuation; work cover, sick leave etc.).¹³ Sex industry remains concerned about the health of the sex workers without giving much consideration to their entitlements. It is also a known fact that illegal brothels and street based sex work is growing industry in itself in NSW and Victoria. Similarly sporadic news about the exploitation of workers on 457 visa as well as international student visa holders continue to make it to the headlines before fizzling out in the discussion around immigration and border security.

Considering that the number of people arriving in Australia on work visa in early 2016 was at 177,390¹⁴, and this number would continue to grow in the coming years, work visa holders are at potential risk of being in forced labour. Anecdotal evidence suggests that such exploitation occurs in invisible work, such as hospitality; retail; farming sector, and construction work, and workers often cited exploitation at the hands of their own ethnic communities.

Despite the fact that visa process is heavily regulated, criminals and rogue business operators find legal ways to bring people in the country with the intention of exploiting their labour or enslaving them to generate enormous amount of money. As the larger proportion of women trafficked in Australia end up in sexual slavery in legal or illegal brothels this area needs specific attention of policy makers and following are some recommendations specific to human trafficking in NSW but also in Australia.

1. Sex industry being legal in most States should be allowed to bring workers on a special category visa to work as sex workers or escorts, just like other 457 visa workers for construction companies, mining sector, retail, hospitality and farming.
2. Banning brothels to contract individuals and rent the premises for sex work, instead the brothels should be mandated to employ sex work with all entitlements such as superannuation, work cover, sick leave etc.
3. There is a strong case for States to argue for uniformity of laws regulating sex industry as different jurisdictions have different laws and sexual workers (potentially trafficked women) are moved across Australia to serve clients illegally.
4. Stringent vetting process and monitoring of work visa holders.
5. Information regarding Australian laws and worker's entitlements in various language available to all work visa holders.
6. Information available to all small business employers regarding employer obligations under the Australian laws
7. Information available at International airport at Sydney to people coming on work visas but also on tourist and short term sponsored visas
8. Immigration staff to be trained to identify potential trafficked persons

¹³ Donovan B, Harcourt C, Egger S, Watchirs-Smith L, Schneider K, Kaldor JM, Chen MY & Fairley CK 2012. *The sex industry in New South Wales: A report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales

¹⁴ <https://www.border.gov.au/about/reports-publications/research-statistics/statistics/work-in-australia>