

Submission
No 12

INQUIRY INTO HUMAN TRAFFICKING

Organisation: Australian Catholic Religious Against Trafficking in Humans
(ACRATH)

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Submission from:

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(ACRATH)**

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INQUIRY INTO HUMAN TRAFFICKING

From Australian Catholic Religious Against Trafficking in Humans (ACRATH)

Thank you for this opportunity to contribute to this Inquiry into the Exploitation of Women through Trafficking.

ABOUT ACRATH

Who we are:

Australian Catholic Religious Against Trafficking in Humans, (ACRATH) is committed to working together towards the elimination of human trafficking in Australia, the Asia Pacific and internationally.

We are endorsed by Catholic Religious Australia - the peak body for approximately 160 religious orders in Australia, representing more than 6000 religious sisters, brothers and priests.

ACRATH is currently one of four NGOs receiving Federal Government funding to raise awareness about human trafficking, to advocate on behalf of victims and to provide support to victims of human trafficking.

We carry out our vision by:

Working towards the elimination of human trafficking in Australia, the Asia Pacific region, and globally. In our current strategic plan we have four objectives:

Objective 1: Raise awareness of human trafficking, its causes and the scope for action. We do this by developing educational resources for schools and for *Culturally and Linguistically Diverse (CALD)* communities in Australia. We have a strong website with at least fortnightly uploads, and a social media presence. We encourage all to take action locally and more widely.

Objective 2: Work to ensure that the rights and complex needs of people trafficked into Australia are met. These needs may include: retraining, employment assistance, access to financial compensation, accompaniment, repatriation assistance, if desired, and meeting medical, dental, psychological & other health needs. We do this by working with client service NGOs to provide pastoral support to people who have been trafficked. We also campaign to ensure people trafficked into Australia can access their rights.

Objective 3: Collaborate with like-minded organisations in Australia, in the Asia Pacific region, and globally to advocate for measures to address human trafficking. We do this by working in networks to ensure slavery-free supply chains of goods such as chocolate, cotton, clothing, seafood. We use the language of addressing the demand for cheap goods produced by trafficked labour, forced labour and child labour. We work in networks to advocate for systemic change to eliminate human trafficking.

Objective 4: Build a sustainable future for ACRATH. We do this by developing our archives to preserve the story, by working to achieve financial sustainability for ACRATH and by expanding ACRATH membership into new demographics.

Terms of Reference

Inquiry Into Human Trafficking

- a) the role and effectiveness of New South Wales law enforcement agencies in responding to human trafficking including:
 - (i) how New South Wales law enforcement agencies respond to human trafficking, including slavery, slavery like practices such as servitude, forced labour, and people trafficking,
 - (ii) the influence of organised crime in human trafficking in New South Wales,
- b) the prevalence of human trafficking in New South Wales,
- c) the effectiveness of relevant legislation and policies,
- d) the practical measures and policies including security measures to protect New South Wales identity documents that would address human trafficking in New South Wales, and
- e) other related issues

a) the role and effectiveness of New South Wales law enforcement agencies in responding to human trafficking including:

(i) how New South Wales law enforcement agencies respond to human trafficking, including slavery, slavery like practices such as servitude, forced labour, and people trafficking,

Human Trafficking is a Federal crime and as such is the jurisdiction of the Australian Federal Police. However, it is extremely important that Federal and State police can work together on these cases. It is highly likely that State police come across cases of human trafficking and then need to work with their Federal counterparts in order to investigate the case. It is therefore important that not just the sex crimes team in the NSW Police be trained on the indicators of human trafficking but that all police are made aware of these indicators during their initial training and that this training is updated at various stages during their career.

The Australian Policing Strategy to Combat Trafficking in Persons (Australian Policing Strategy) was endorsed by the AFP and all state and territory police in 2011. We understand that this Strategy is currently under review with the AFP having drafted a new agreement entitled the National Policing Protocol to Combat Human Trafficking, Slavery and Slavery-like Practices (National Policing Protocol). Over the years ACRATH has become more and more convinced that NGOs need to network in order to address the problem of human trafficking and slavery. The same would apply to law enforcement agencies. There needs to be consistency with regard to the implementation of the criminal practices of human trafficking, forced labour and servitude. While it is important that offenders be prosecuted, this attitude should not overshadow the human rights and dignity of the person who has been offended. ACRATH believes that protection of victims should be the first priority. Once a person has experienced protection and has been able to build up a relationship of trust they are more able to talk about their experience with law enforcement. Our concern is that, particularly in raids concerning exploitative labour practices, the person being exploited is referred to and treated as “an illegal”. This exacerbates the trauma a person experiences leaving the person afraid and vulnerable to further exploitation and definitely too timid to share their story with law enforcement. To investigate an incident through the lens of possible human trafficking is to adopt a sensitive, human rights centred approach.

(ii) the influence of organised crime in human trafficking in New South Wales,

Human traffickers work in international networks. Their dealings normally cross borders. This adds to the complexity of the situation when investigations into alleged cases of human trafficking need to be undertaken. Often there are recruiters in the source country, perhaps people who harbour victims in a transit country and another group of people who receive and exploit victims in the country of destination. In March 2011 police investigated the case of a young woman from the Philippines who had been brought to Australia so her kidney could be harvested for an older woman in Sydney who needed a kidney transplant.¹ The younger woman had not consented to the procedure. The situation came to light during a live donor

¹ <http://www.smh.com.au/national/police-investigate-first-case-of-organ-trafficking-20110727-1i0d7.html> accessed 8th February 2017

screening process at a Sydney hospital. When the woman who was to have received the kidney died some weeks later the CDPP said the case would be dropped as there was no possibility of a conviction. However, it is highly unlikely that a sick woman in Sydney would have been able to recruit this woman in the Philippines and then organise for her to come to Australia. There would have been people in the Philippines acting on behalf of the sick woman. In fact the Sydney Morning Herald of 25th March 2012 reported an AFP spokeswoman disputed this decision saying "This type of investigation is complex and involves gathering evidence both here and overseas, which requires liaison in a number of jurisdictions."² This situation highlights one case where organised crime has been involved in human trafficking in New South Wales but probably most cases of human trafficking would also involve organised crime.

There is a growing awareness of the extent of overseas workers being exploited in Australia. These workers may be on building sites or in agricultural work or in boxing rings, in abattoirs or in convenience stores or in domestic work in diplomatic households or private homes. They may be in massage parlours or brothels. Forced and exploited overseas workers in these settings have a common story: they arrive in Australia with high hopes of working for an Australian wage, but then they experience severe exploitation. Some have their passports taken, some are tricked into visa fraud, some are intimidated; some receive no wages and some are grossly underpaid. Of course, this is not the experience of all overseas workers in Australia; this is the experience of people who have had a crime committed against them.

One example of this in NSW was 7-Eleven's dramatic and systematic underpayment of workers. Some workers who came forward face deportation for breaking their visa conditions. A western Sydney 7-eleven operator was fined more than \$200,000 because of his under payment of two migrant workers and his falsification of employment records. In the court proceeding the judge commented that "deliberately flouted his legal obligations and engaged in a sustained and deliberate process of deception aimed at maximising financial return."³

Another example is the group of Malaysian workers Task Force Cadena discovered when they raided a property in Woolgoolga, near Coffs Harbour. Task Force Cadena found that 14 unlawful non-citizens and 20 lawful non-citizens who were working in breach of their visa conditions. All but two of the workers were taken to Villawood Immigration Detention Centre. The other two were minors and so were taken to "an alternative place of detention."⁴ The Australian National Action Plan to Combat Human Trafficking and Slavery reads: 'Ensure trafficked people are not detained, charged or prosecuted for status-related offences, or held

² <http://www.smh.com.au/national/organ-traffickers-death-closes-case-20120324-1vqvn.html> accessed 8th February 2017.

³ <http://www.abc.net.au/news/2016-05-02/7-eleven-franchisee-fined-over-underpaying-employees/7374946> accessed 12th February 2017

⁴ <http://www.minister.border.gov.au/peterdutton/Pages/Taskforce-Cadena-detain-thirty-four-individuals.aspx> accessed 12th February 2017

in immigration detention.’⁵ ACRATH believe these cases need to be investigated through the lens of human trafficking. Instead of the workers being viewed “as illegals” or “non-lawful” the reasons for this need to be investigated. As victims of human trafficking are often traumatised and afraid it is not possible for this investigation to be completed hastily. Time is required for the workers to have a sense of security and protection before they are able to speak openly and freely. It is also important that they be given every opportunity to understand their rights under Australian law. Hasty removal to immigration detention and deportation does not allow this to happen. Workers end up returning to their home country without the wages they are entitled to and the support they need to recover from their trauma.

ACRATH has viewed Malaysian Facebook pages that recruit workers to come to Australia. An Australian reading these pages can see the intent is for the workers to be exploited in Australia. They are deceived about the working conditions in Australia, especially with regard to the rate of pay and hours of work and are often forced to work beyond their visa conditions. In removing the workers to immigration detention it is the people who have had a crime committed against them that are being penalised.

Most human trafficking and forced labour cases in Australia are treated only as violations of employment law, the *Fair Work Act*, and thus those responsible for the trafficking and forced labour are only subject to civil penalties. They may have to repay wages that were illegally denied to the people working for them and may be subject to a fine, which increases in severity based on the number of times the employer is caught. This leads to a situation where human traffickers are able to continue in their abusive behavior, knowing fines are the only penalties they face.

Part of the reason for this is that the application of the human trafficking offences by the Australian Federal Police would appear to be reserved for the most severe cases, which in turn may be driven by an expectation on behalf of the police that the courts will only accept severe cases of human trafficking as being offences under the human trafficking and forced labour offences under the Criminal Code.

The Fair Work Ombudsman, which is the regulator to enforce the *Fair Work Act*, is grossly under-resourced compared to the number of cases of illegal exploitation of people who are working in Australia from overseas. One person working in Australia from overseas alleged that a Fair Work Ombudsman staff person actively discouraged them from making a complaint about a second employer who had grossly exploited them after they lodged a complaint against their current employer. This appeared to be due to the heavy workload of that Fair Work Ombudsman staff person.

⁵ Commonwealth of Australia, ‘National Action Plan to Combat Human Trafficking and Slavery 2015–2019’, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>, accessed 17 August 2016.

Labour hire businesses in some business sectors, such as agriculture and food processing, remain a significant risk of contributing to human trafficking and forced labour. In Australia there are no national licensing requirements for labour hire businesses, making it easy for a person to set up such a business to traffic people into Australia for the purposes of exploitation and then shut up the company and disappear if law enforcement starts to investigate. A new labour hire business then can be set up by a relative or an associate.

Such phoenix activity was pointed to in a 2012 report by PwC commissioned by the Fair Work Ombudsman, which noted that “Stakeholders highlighted that phoenix activity is a significant issue in the labour hire industry (where companies provide labour to other companies on a contract basis).”⁶ PwC was unable to investigate the level of phoenix activity by labour hire businesses as they found “there is no reliable data on the number of operators or employees in the industry.”⁷

The Victorian State Government has promised to introduce a licensing scheme for labour hire businesses operating in that state.⁸ It is clear that this needs to be a federal government initiative to cover the rights of overseas workers right across Australia. However, in the absence of federal government action ACRATH asks that the NSW government follow the example of Victoria and introduce a licensing scheme for labour hire businesses operating in NSW.

b) the prevalence of human trafficking in New South Wales,

It is difficult to adequately describe the prevalence of human trafficking in New South Wales. The only accurate statistics we have of human trafficking in New South Wales, and indeed in Australia, come from investigations carried out by the Australian Federal Police (AFP) and their consequent referrals to the Support for Trafficked People programme. However human trafficking is an under reported crime. The reasons for this are numerous. Some people who have been trafficked do not know that help is available. Many others, for cultural reasons, are afraid of law enforcement agencies and so do not report what has happened to them here in Australia. Still others are reluctant to report the crime committed against them because of the trauma of having to re-live the events as they tell their story. They may also be afraid that if they speak to the police, their traffickers will carry out reprisals against them or their family back home. The most recent report from the Interdepartmental Committee on Human Trafficking and Slavery states that between 2003 and 30th June 2106 “the AFP received 691 referrals relating to human trafficking and slavery-related offences” and in the period 1st July 2015 to 30th June 2016 they received 169 new referrals.⁹ Of the 38 new clients referred to the Support for Trafficked People programme in the period 1st July 2015 – 30th June 2016, 12

⁶ PwC, ‘Phoenix activity. Sizing the problem and matching solutions’, June 2012, p. 17.

⁷ PwC, ‘Phoenix activity. Sizing the problem and matching solutions’, June 2012, p. 17.

⁸ <http://www.vic.gov.au/news/inquiry-into-the-labour-hire-industry-and-insecure-work-b.html>

⁹ IDR 30th June 2016 page 20

referrals occurred in NSW. While these numbers appear to be very small it is important to keep in mind that because of under reporting these numbers would in fact be much larger.¹⁰

Awareness of the existence of human trafficking in Australia began to grow with the death of a young Thai woman in Villawood Detention Centre in 2001. At the age of twelve she was trafficked from Thailand to Malaysia and then eventually to Australia. Following a police raid on a Sydney brothel she was taken to the detention centre where she died three days later. This case has been cited as one reason for the opening of the Parliamentary Joint Committee's Inquiry into Trafficking in Women for Sexual Servitude which was established in June 2003.¹¹

A common misconception is that human trafficking only involves sex trafficking. People can be sexually exploited, forced into marriage or enslaved and exploited as domestic workers. Others are trafficked into situations of forced labour in industries such as agriculture, hospitality, construction, mining and fishing. In some cases, people are made the victims of illegal organ harvesting.

A snapshot of some of the NSW cases are listed below:

- Silent victims of cut-price industry¹²
- Four Filipino boxers 'used as houseboys'¹³
- Students forced into sex acts, court told¹⁴
- Women lured with student visas forced into sex slavery¹⁵
- Indian cook kept as slave at Sydney restaurant¹⁶
- Child bride's marriage was permitted by father¹⁷

c) the effectiveness of relevant legislation and policies,

Since 1999 there have been a number of legislative amendments in order to ensure crimes of human trafficking and slavery are prosecutable offences in Australia. Having a law does not necessarily prevent a crime from occurring but it does send a message that these actions will not be tolerated in Australia. When a crime does occur, the person who has been offended has the possibility of seeking some level of justice and redress for what has happened to them.

Human trafficking, slavery and slavery like offences are federal crimes. They are criminalised under Divisions 270 and 271 of the Criminal Code Act 1995. The most recent amendments to

¹⁰ Ibid page 34

¹¹ <https://aifs.gov.au/publications/trafficking-women-sexual-exploitation/situation-australia> accessed 6/2/2017

¹² <http://www.smh.com.au/nsw/silent-victims-of-cutprice-industry-20100919-15hy1.html> accessed 6th February 2017

¹³ <http://www.smh.com.au/national/four-filipino-boxers-used-as-houseboys-20101019-16slk.html> accessed 6th

February 2017

¹⁴ <http://www.smh.com.au/nsw/students-forced-into-sex-acts-court-told-20130204-2dumq.html> accessed 6th February

2017

¹⁵ <http://www.smh.com.au/nsw/trafficking-women-lured-with-student-visas-forced-into-sex-slavery-20140329-35q88.html> accessed 12th February 2017

¹⁶ <http://www.theaustralian.com.au/national-affairs/immigration/indian-cook-wins-200000-kept-as-slave-at-sydney-restaurant/news-story/a3050bbe58ae5431c6a66170614a5797> accessed 12th February 2017

¹⁷ <http://www.smh.com.au/nsw/child-brides-marriage-was-permitted-by-father-say-police-20140208-328k7.html> accessed 10th February 2017

the code came into force in March 2013. New crimes inserted into the code as a result of these amendments included the offences of labour trafficking, forced marriage, organ trafficking and harbouring a person. Australia now has robust legislation but there still needs to be far more extensive education of law enforcement, judiciary and the general public concerning the existence of and indicators for these crimes.

One complication that arises for people who have been trafficked into Australia is the problems they face when seeking compensation for the harm they have suffered. While human trafficking is a federal crime there is no federal compensation scheme for victims of human trafficking. To seek compensation, people who have been trafficked into Australia need to apply through state and territory compensation schemes. These schemes are inadequate for the following reasons:

- The eight state and territory schemes vary with respect to the categories of harm, the time limits for applying and the levels of award. The maximum compensation is \$10,000 in NSW. In other jurisdictions the maximum amount varies from \$10,000 to \$100,000. However, the payments are still a long way from making restitution for the harm that has been inflicted on the victim. The psychological and physical injuries can take many years to repair, if they ever do. Medical and counselling services can exhaust compensation awards in a very short space of time resulting in a person once again experiencing financial hardship.
- Compensation must be applied for in the jurisdiction where the crime occurred. If a person has been moved across state and territory borders, they need to make multiple applications.
- State and territory offences do not correspond exactly to the Federal offences of human trafficking, slavery and slavery-like practices and so it is not possible for a person to obtain compensation for the full harm they have experienced.
- Not all federal offences have a relevant criminal offence in the State and Territory schemes. While a person who has experienced sexual exploitation can seek compensation for sexual abuse, people who have experienced the federal offences of slavery, servitude, forced labour, forced marriage and debt bondage are unable to access compensation in State and Territory jurisdictions and so they are denied an effective remedy.

It is also important to note that to remain on Centrelink Special Benefit (a payment made to a person deemed to be experiencing extreme financial hardship) a person's income must not exceed \$5,000. This means that in NSW the award of compensation automatically leads to the cancellation of a person's Special Benefit. This results in the compensation payment being used to enable a person to exist from day to day rather than using the payment to help them heal from their experience as a victim of crime.

ACRATH believes that it is important that there be a Federal compensation scheme so that People who have been trafficked into Australia can all have their claims assessed by a tribunal that is educated in the physical, emotional and cultural problems they have experienced. Perhaps the NSW Attorney General could assist in advocating for a National Compensation scheme as currently it is assumed that to set up such a scheme would step on the toes of state attorneys general.

d) the practical measures and policies including security measures to protect New South Wales identity documents that would address human trafficking in New South Wales, and

ACRATH has been engaged with other Anti-trafficking NGOs in advocating for an independent Australian Anti-Trafficking Commissioner.¹⁸ We maintain that to be effective, such an office must be independent from government and accountable to parliament.

We propose that an Australian Anti-Trafficking Commissioner would be similar to the United Kingdom's Independent Anti-Slavery Commissioner, which was established by an Act of Parliament to prevent, detect, investigate and prosecute slavery and human trafficking offences and to identify victims. Public authorities in the UK have a duty to cooperate with the Commissioner, who has an advisory panel which we believe includes the Chancellor of the Pontifical Academy of Sciences and Pontifical Academy of Social Sciences.

We envisage an Australian **Anti-Trafficking Commissioner** who would have statutory powers to collect and request data and information on trafficking and coordinate government departments on a national and state level. The Commissioner would monitor trends and assess the impact of policies and legislation relevant to trafficking and submit annual reports to parliament with findings and recommendations. These reports should be publicly available. In addition, the Commissioner would develop accredited training packages, advocate generally for victims of trafficking and, potentially, undertake inquiries into trafficking cases that raise issues of public policy. An independent Australian Anti-trafficking Commissioner could also have a role in enhancing coordination between federal and state parliaments, AFP & state police forces, judiciary, NGOs and civil society.

e) other related issues

Previous NSW Inquiry into the exploitation of people through trafficking, in all its forms in NSW

In 2012 the Hon Victor Dominello MP, Minister for Citizenship and Communities, requested the Community Relations Commission conduct an inquiry into the trafficking and exploitation of women in the sex industry in NSW. ACRATH made a submission for this Inquiry. The

¹⁸ <http://www.antislavery.org.au/newsflash/275-the-case-for-an-anti-slavery-and-trafficking-commissioner-policy-paper-by-anti-slavery-australia.html> accessed 12th February 2017

Commission presented its report to the NSW Parliament in December 2013¹⁹. The report presented 5 findings which listed a total of fifteen recommendations. It is disappointing to see that these recommendations have not been responded to. ACRATH suggests that the NSW Government revisit the recommendations of this Inquiry. ACRATH would like to draw particular attention to the following recommendations:

4. That the Attorney General of NSW review provisions in the Victims Rights and Support Act 2013 to ensure that crimes related to human trafficking and slavery are included as an offence category in the recognition payment scheme and other avenues of support provided for in the legislation.
7. That Housing NSW examine accommodation provisions for victims of human trafficking and slavery to determine:
 - whether the Commonwealth provisions are sufficient to provide suitable housing for victims of human trafficking and slavery in NSW
 - what provisions ought to be consistent across jurisdictions
 - whether they should reconsider the policy of excluding 'non-residents' [meaning those who are not permanent residents or citizens] from their services, especially
 - trafficked people, recognising that the small numbers have little impact on budgetary constraints or service delivery.
9. That the NSW Government make representations to the Commonwealth Department of Social Services that monetary compensation made to victims of slavery, servitude, human trafficking and related crimes not be classified as income for the purposes of assessing eligibility for the Special Benefit payment.
10. That the NSW Government urge the Commonwealth, through Fair Work Australia, to ensure that there are sufficient resources devoted to assist victims of labour exploitation gain their correct entitlements under Australian law.
12. That the NSW Government, in consultation with the Commonwealth, develop and fund an education campaign to be delivered by the appropriate agencies and community organisations. This should target:
 - people in the NSW community who might be experiencing exploitation, be aware of exploitation, or might be either knowingly or unknowingly participating in exploitation

¹⁹ http://multicultural.nsw.gov.au/cfs-file/key/widgetcontainerfiles/b7ea489ec0da44e1abdf43e2153a1b20-g-rH_2D00_2Zt6FbEmpvvCOfGWGYg-page-1home/Inquiry_5F00_into_5F00_the_5F00_exploitation_5F00_of_5F00_people_5F00_through_5F00_trafficking_5F00_0_in_5F00_all_5F00_its_5F00_forms_5F00_in_5F00_NSW.pdf accessed 10th February 2017

- all members of the NSW community who may come in to contact with people who are experiencing trafficking and slavery, such as those in the service, construction or agricultural industries and students
- children and young people in the education system, related to forced marriage and family violence.

13. That relevant agencies, including NSW Police, the judiciary, frontline workers in government agencies, health and community service workers and community organisations undertake training to:

- identify victims trafficked and enslaved in any employment or intimate partner relationship
- protect the human rights and safety of exploited individuals.

Licensing of brothels in NSW

ACRATH notes that in 2011, in response to the AFP investigations linking two Sydney and three Melbourne brothels to a human trafficking and sex slavery ring, the NSW Parliament announced a proposal to introduce a brothel licensing system. ACRATH is aware that the NSW Government responded to the Legislative Assembly Inquiry into the Regulation of Brothels in May 2016. This response indicates that the introduction of a licensing system is not supported.

In the absence of brothel licensing ACRATH believes it is important that measures be put in place that might assist victims of human trafficking to become aware of their rights in Australia. One step taken in Victoria was to pass legislation that there be signage in brothels. The signage displayed in various languages indicates that it is an offence to have sex with a trafficked person. ACRATH believes it would be advantageous to introduce such a practice in NSW to assist victims of human trafficking in becoming aware of their rights.

Thank you again for this opportunity to present a submission.

Australian Catholic Religious Against Trafficking in Humans - ACRATH NSW