

Submission
No 13

INQUIRY INTO HUMAN TRAFFICKING

Organisation: The Border Crossing Observatory and Monash University
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BORDER CROSSING
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Submission to NSW Legislative Council Select Committee on Human Trafficking

We welcome the opportunity to contribute to the NSW Legislative Council Select Committee on Human Trafficking Committee (the Committee).

We are criminologists specialising in human trafficking, irregular labour and migration with over 20 years of experience in this area. The Border Observatory is a leading international research centre producing high quality independent research on irregular migration and borders. This submission brings together our extensive published and ongoing research in the area of human trafficking, unlawful migrant labour exploitation, and the impact of border control in Australia and internationally.

We would welcome the opportunity to discuss this submission further with the Committee.

Kind regards,

Associate Professor Marie Segrave, Monash University & The Border Crossing Observatory.
Professor Sharon Pickering, Monash University & The Border Crossing Observatory.
Dr Sanja Milivojevic, La Trobe University & The Border Crossing Observatory.

Our position & recommendations

1. **National consolidation:** It is essential that the response to human trafficking is national, and that state-level efforts are in alignment with the national approach. Having NSW undertake their counter-trafficking strategy without having a formalised, clear system for working with the AFP and other State and Territory police and agencies is likely to adversely impact case progression and the building of investigative and other skills. It also impacts the collection of data. There is a pressing need to develop a national database of cases that are coming to State, Territory and Federal authorities so that key trends can be identified and better understood.
2. **Accountability and transparency:** Independent research into the complexity of human trafficking is critical. We urge the Inquiry to identify ways that independent research can inform the shape and evaluation of anti-trafficking efforts.
3. **Remuneration and compensation:** There is no formal mechanism for remuneration of unpaid wages, and/or for compensation for victims of human trafficking. A national system and a clear process for accessing needs to be established. This might be achieved via a more formalised relationship with the Fair Work Ombudsman, but not all cases will be relevant to FWO (for example, women working in a criminalised aspect of the sex industry).
4. **Protection via minimising migration status as leverage:** Currently unlawful non-citizens who have worked in breach of their visa conditions and/or who are no longer lawfully in the country (for example, overstayers) have no platform for protection to come forward to authorities. This was recently reasserted in the progress report from the Federal Migrant Workers' Taskforce, chaired by Alan Fels (see [Public Statement](#)). The victim support system offers no financial remuneration and no long term stay in Australia, unless there is a strong case for investigation. In Segrave's current research it is clear that unlawful non-citizens are unlikely to access any support and that their unlawfulness is used as leverage for exploitation.
5. **Accountability of agencies:** There is a need for federal reform. Currently a multi-agency strategy with no agency *responsible* for implementation as a whole. This is leading to gaps in knowledge, failure to respond and inability to respond quickly to emerging issues.
6. **Definitional clarity:** We urge NSW along with all States and Territories in Australia to adopt the same language to identify human trafficking, to ensure consistency of meaning.

Our submission

We note that “this House establish a select committee to inquire into and report on human trafficking in New South Wales, and in particular:

(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 and 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.”

We address each of these below.

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

There is no formal data publicly available to identify the breadth and depth of NSW enforcement agencies response to this issue, nor is there any measure of effectiveness of law enforcement in any jurisdiction in Australia (see Segrave & Milivojevic 2010). Primarily, as we have identified elsewhere, process data (i.e. number of investigations, number of victims involved, number of victims referred to the victim support service, number of prosecutions etcetera) is utilised to report on Australia’s counter-trafficking efforts (See Interdepartmental Committee on Human trafficking report 2016). The reliance on process data rather than evaluative data is an international concern in this crime area (see Segrave 2013, Segrave et al 2009, Segrave et al *forthcoming* 2017).

We strongly urge careful consideration of how to best focus NSW resources on this issue in a way that aligns with and supports the Federal legislation and the work of the Australian Federal Police [AFP]. Human trafficking is a complex, often cross-border phenomenon, and a response to trafficking needs to be holistic, not fragmented. Consolidation and co-ordination of efforts on all levels is a paramount in order to understand, and counter this phenomenon.

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

While early research on trafficking (in the 1990s and early 2000s; see Shelley 1995; Stoecker 2000; Fickenauer 2001) suggested that organised crime might play significant role in human trafficking, more recent national and international studies consistently demonstrate that trafficking is less often a crime brought about via transnational organised crime (see Goodey 2008; Zhang 2009; Lee 2010, Segrave 2013; Weitzer 2014). The focus on transnational organised crime is misplaced and unsubstantiated. It does not recognise the impact of limited labour migration options and the way in which this creates opportunities for exploitation where there is a significant number of people who are willing to migrate (both across national borders and internally) and where the organisation of that migration and exploitation is more diffuse, individualised and difficult to cluster.

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

We have three key points to make in relation to the question of 'prevalence':

- *Prevalence is very difficult to assess and we urge caution at the use of estimates.* It is internationally recognised that estimates of human trafficking are some of the least reliable figures in both crime and migration debates (Segrave 2013, Segrave et al forthcoming 2017). For the Inquiry we believe the first question is how NSW seeks to define human trafficking. Nationally and internationally there is a shift towards the use of the terms 'migrant labour exploitation', 'modern slavery' and 'human trafficking' to be used interchangeably. This is creating confusion and resulting in a range of issues and crimes to be merged together, which has implications for the focus and effectiveness of the response.
- *Identifying valid data sources and measures of 'prevalence':* It is only possible to estimate prevalence and it is well documented that this is an inexact science. Local and international agencies, such as Walk Free, ILO, produce estimates of 'modern slavery' and 'forced labour'- these estimates need to be considered with caution as the methodology for estimation results have been subject to international criticism (for more on issues in measuring trafficking see Zhang 2009; Feingold 2009; Steinfatt 2011 and others). Further, various NGOs will offer estimates and/or their numbers of 'victims' that they support and/or come into contact with. It is notable that in our research there are clear points of difference between how, for example, the AFP recognise potential victims of trafficking and how NGO define victims of trafficking. This is the case not only in Australia, but in other countries we conducted our research, namely Thailand and Serbia (see Segrave et al. 2009). There is no consistent, transparent process undertaken across Australia to identify victims.
- *Relying on police and victim support data as indicators of prevalence:* We reiterate our point that referrals to the AFP or the NSW Police are not 'prevalence' indicators.
- *Legal definitions versus international indicators:* A final consideration in relation to prevalence is the important distinction between how human trafficking is defined as per Commonwealth legislation in Australia (and other Australian jurisdictions), compared to international indicators such as those published by agencies such as the [International Labour Office](#). It is important to be clear about the important differences between these definitions as well as how these indicators are utilised, for example at what point is an individual questioned to ascertain whether they meet the legal or ILO definition of trafficking, and in what way are they questioned. These are critical issues of measurement that must be addressed.

c) the effectiveness and of relevant legislation and policies

The effectiveness of anti-trafficking legislation has never been measured, and we are wary of any submissions that claim to evidence effectiveness without independent evaluation. The first question is how effectiveness is defined: is it effectiveness in terms of cost (highly questionable: significant federal resources are channelled into the crime type including very significant funds to support victims, despite very few prosecutions), effectiveness in terms of prosecution or convictions, or effectiveness in terms of identification of victims (a very difficult measure of effectiveness)?

In Segrave's current ARC DECRA research it is clear that the Federal legislation is limited, largely because cases that are being investigated are not progressing through to prosecution (in Segrave et al forthcoming 2007). This is a matter to consider at the Federal level- It requires very careful analysis of a range of issues including, but not limited to, the cases that have been investigated

and the reasoning for the CDPP's decision not to accept the brief and/or the CDPP's evidentiary requirements being set too high for the investigative team to meet.

Effectiveness in terms of the role of state and territory law is also a very broad question. It is not clear whether the intention of the Committee is to focus on whether NSW legislation is effective, or whether NSW legislation supports and is aligned with Federal offences. Our submission is that there needs to be a clear articulation and demarcation of state and federal law. In particular, in Segrave's current research, there have been indications that while cases are not being prosecuted under s270/271, due to evidentiary or other issues, in some cases they are being pursued under state or territory laws- not necessarily directly related to trafficking and exploitation per se. It would be most ideal to be able to capture cases that are not prosecutable under the federal offences but which are then prosecuted under state law. The pathway from the pursuit of Commonwealth to State and Territory offences is currently unknown and is not made public. The consequence is that we do not have either comprehensive state and territory data or national data on legislation and policy, which means we cannot measure effectiveness of law or policy.

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

We have no specific comment regarding this. We are uncertain to what degree security measures in relation to NSW identity documents will achieve any significant impact on human trafficking.

e) other related issues.

We would like to raised three other important issues.

1. **Federal legislation includes Forced Marriage:** this is a growing area and as the community becomes increasingly aware of the AFP's role the numbers of these cases coming to the attention of the AFP are increasing. However, this is a qualitatively different crime type to any other offence under the legislation. It requires proactive, pre-crime measures: the AFPs role is to intercept and prevent most often, therefore effectiveness should not (and cannot) be measure via prosecutions. Very few young women (who this crime almost exclusively impacts) want anything other than not to have to be married. They are unwilling to be involved as witnesses in cases against their family members.
2. **Family violence and human-trafficking offences:** Segrave is undertaking pilot research in Victoria examining situations of family violence that involve women whose migration status is temporary and situations of exploitation and abuse that may meet the Federal legal definition of human trafficking (for exit) or servitude. We are happy to share with interested parties in NSW the outcomes of this research in the forthcoming report in June 2017.
3. **National accountability:** There is no single Minister with responsibility for implementation of Australia's counter-trafficking strategy. This is a significant deficit and results in legislation and policy developed with good intentions, and with feedback from some NGOs, but which has no evidence base to support the foundations of the response or to give any indication of implementation and/or success.

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APPENDIX

About us

The Border Crossing Observatory is an innovative virtual research centre that connects Australian and international stakeholders to high quality, independent and cutting edge research on border crossings. Our strong empirical research foundation is comprised largely of projects on irregular migration and border control (<http://artsonline.monash.edu.au/thebordercrossingobservatory/>).

Current and recent related projects

Unlawful migrant labour, exploitation and regulation (ARC DECRA 2014-2018, Status: current)

This project examines the experiences of migrant workers, employers, NGOs and other key stakeholders in regional Australia with a specific focus on the impact of migration and labour regulation enforcement. This is an emerging area of research in Australia and will be the subject of Marie Segrave's forthcoming book, *Trafficking, Migration and Labour Exploitation* (Routledge).

Building on the findings from a pilot project, Marie Segrave's current DECRA research will investigate experiences, knowledge and understandings of labour exploitation of unlawful migrant workers in New South Wales and Victoria.

Unlawful migrant labour has been identified as a significant issue for Australia, with estimates that between 50-100,000 non-citizens are working illegally in Australia (Howell 2011). While increasingly immigration and labour regulatory responses are merging to respond to this issue, the impact of these practices upon the level and nature of victimisation and conditions of exploitation requires investigation.

Through examining experiences across the agricultural, construction and hospitality industries this research will identify whether and how regulatory systems impact on exploitative conditions experienced by unlawful migration labourers. The proposed program of research will investigate, map and analyse exploitation and regulation as experienced by unlawful migrant labourers.

The three applied aims of the research are:

- (1) Map the regulatory framework and identify regulatory practice;
- (2) Identify unlawful migrant labour experiences, including experiences of exploitation and awareness of regulatory practices, and;
- (3) Analyse the connection between regulatory practices and exploitative experiences.

Temporary migration and family violence: An analysis of victimisation, support and vulnerability (Status: Current)

Chief Investigator: Marie Segrave, Criminology, Monash University.

Partner Investigator/s: Maya Avdibegovic, CEO, InTouch Multicultural Centre Against Family Violence.

The aim of this project is to undertake a comprehensive review of family violence cases managed by inTouch that involve women (victims) who have or are experiencing family violence whose migration status is temporary. The project will document the ways in which migration status is connected to and impacts both vulnerabilities to family violence and access to support. The project will also document the breadth of situations of violence and exploitation, identifying, for example, the extent to which some cases may better be identified as cases of human trafficking and in so doing contribute towards the development of a risk assessment tool to enhance both data gathering and improved access to the appropriate legal and welfare-related support.