

**Submission
No 7**

INQUIRY INTO HUMAN TRAFFICKING

Organisation: A21
Date received: 16 February 2017



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**New South Wales Government - Legislative Council Select
Committee on human trafficking**

“Inquiry into Human Trafficking”

In response to the New South Wales (NSW) Government’s call for submission, for the inquiry into the prevalence of human trafficking in NSW and the effectiveness of NSW law enforcement agencies, legislation and policies in responding to this issue, international anti-trafficking nongovernmental organization (NGO) “The A21 Campaign,” submits the following comments in response to the questions noted 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,

(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

A21's General Observations:

As an international organisation, The A21 Campaign (A21) has a global presence in eleven nations. A21's anti-human trafficking efforts range from developing and providing holistic and sustainable prevention strategies to at-risk groups, training frontline officials on indicators of human trafficking, assisting in prosecution efforts, and providing aftercare and repatriation services to survivors of human trafficking. As a result of our efforts, our organisation has developed a broad range of experience in combating human trafficking. Given our expertise on the issue of human trafficking, we strongly believe a review of the current status of anti-trafficking effort in NSW, and indeed throughout Australia is needed.

Our research and expertise suggest that a review of anti-human trafficking efforts in NSW will highlight a significant deficiency in law enforcement agencies' direct response to human trafficking in Australia – namely the absence of a public reporting mechanism to report suspected human trafficking and the lack of public awareness about the reality of human trafficking in Australia.

The 2016 Global Slavery Index (GSI) estimates that there are 4,300 trafficked persons in Australia.¹ While it is impossible to provide an exact number of trafficked persons, we know that Australia is not immune to modern day forms of slavery. Despite this fact, the U.S. Department of State 2016 Trafficking in Persons Report (DoS TIP), found that “for the second year, the [Australian] government did not obtain any convictions under the trafficking provisions in the criminal code: it convicted six suspected traffickers under other laws which carry lesser penalties, prosecutors dropped trafficking charges against three suspects, and courts acquitted two

¹ Walk Free Foundation (2016). Global Slavery Index, 2016. Finding, Asia Pacific, <http://assets.walkfreefoundation.org/downloads/regional-analysis/Regional-Asia-Pacific.pdf>.

individuals on trafficking charges.”² The disparity between the GSI estimated number of trafficked persons and successful prosecutions for trafficking offense in Australia is enormous. Given that Australia has a Tier 1 ranking from the U.S. State Department, for fully meeting “the minimum standards for the elimination of trafficking,” the dearth of trafficking prosecutions is particularly concerning.³ While it appears that the Australian Government has embraced strong trafficking legislation and otherwise appears committed to eliminating human trafficking, the significant disparity between the number of trafficked individuals and lack of prosecutions clearly evidence a breakdown in the current system in the actual enforcement of existing human trafficking legislation. We believe that a huge contributing factor to this system fault, is a misunderstanding of the different appearances of “human trafficking.” As research demonstrates, “most victims of trafficking in persons in Australia do not align with pre-existing stereotypes, and do not ‘neatly fall within the paradigm of slavery or servitude.’”⁴ The existence of such a misunderstanding may account in part for the silence of both victims and onlookers.

In our experience, a reporting mechanism specific to trafficking and child exploitation offenses is vital to effectively identify and combat human trafficking. Many victims of human trafficking may be reticent to contact law enforcement based on their past experiences, distrust, or fear of law enforcement. Traffickers often threaten foreign victims with immigration consequences in an effort to control them. We know that is a very real threat, as highlighted through past cases and reports from the Australian Government themselves, stating that foreign trafficking victims have been

² U.S. Department of State, *Trafficking in Persons Report 2016*, at 81 (Washington, DC: Department of State 2016) (DoS TIP Australia), <https://www.state.gov/documents/organization/258876.pdf>.

³ *Id*

⁴ Andreas Schoenhardt & Hannah Bowcock, “Sex Slave” and Shrewd Business Women: The Role of Victim Consent in Trafficking in Persons in Australia, 39 *Mebourne U. L.R.* 592, 594 (2015).

brought to Australia on valid visas, only later establishing that immigration malpractice, fraud and falsified documents occurred.⁵ Many domestic victims of human trafficking may also have a criminal history or committed a chargeable offense while they were being trafficked. There is an international push, with European nations leading the way, setting trafficking standards to ensure criminalisation of trafficking victims is avoided⁶. Consequently, a non-law enforcement administered resource or hotline would provide an alternative method for victims to request assistance, knowing that speaking out will not place them at risk of criminalisation. In addition, we believe it would be beneficial to have an accompanying awareness campaign that accurately depicts the many different presentations of human trafficking and exploitation within Australia, that links back to a national hotline.

Hotlines as a general protocol are accessible twenty-four hours a day, seven days a week, in numerous languages to be accessible to any person at any time. Indeed, as Forbes Magazine expressed, hotlines have been seen as one of the “most salient technological advances augmenting the work of those fighting slavery.”⁷ That same article expressly highlighted The National Human Trafficking Resource Center hotline and the National Center for Missing and Exploited Children CyberTipline in the United States, as two of the seven most effective ways to use technology to combat human trafficking.⁸ These hotlines in turn determine which reports require law

⁵ Australian Gov't/Attorney General's Dep't, *Trafficking in Persons – The Australian Gov't Response (The Sixth Report of the Anti People Trafficking Interdepartmental Comm)* (Australian Gov't Response/Sixth Report) at 20 (July 1, 2013 – June 30, 2014), <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/TraffickingInPersonsTheAustralianGovernmentResponse2013-2014.pdf>; Australian Gov't/Attorney General's Dep't, *Trafficking in Persons – The Australian Gov't Response (The Third Report of the Anti People Trafficking Interdepartmental Comm)* (Australian Gov't Response/Third Report) at 19 (July 1, 2010 – June 30, 2011), <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/ReportoftheAntiPeopleTraffickingInterdepartmentalCommteeJuly10toJune11.pdf>.

⁶ As a Europe Found. (ASEF), *Human Rights & Trafficking in Persons: 15th Informal ASEM Seminar on Human Rights* (Nov. 24-26, 2015).

⁷ Rebecca Sadwick, *7 Ways Technology is Fighting Human Trafficking*, FORBES MAGAZINE (January 11, 2016), <http://www.forbes.com/sites/rebeccasadwick/2016/01/11/tech-fighting-human-trafficking/#2443b12b49b1>

⁸ *Id*

enforcement investigation and refer the tips to the appropriate law enforcement agency. Therefore, implementation of a non-law enforcement administered hotline that works in partnership with local law enforcement, government bodies and NGOs will result in the following: reduced pressure on law enforcement, a streamlined reporting process, and a reduction of fear and distrust by trafficking victims. Moreover, the availability of a hotline, in conjunction with an awareness campaign, will increase general understanding of human trafficking indicators, and provide a practical mechanism by which the average person can assist in combating human trafficking and exploitation.

The United Nations Office of Drugs and Crimes (UNODC) has noted that awareness and education are key in the fight against human trafficking.⁹ In an interview with one of the Trustees of the United Nations Voluntary Trust Fund for Victims of Human Trafficking, public awareness and citizen reporting of human trafficking were noted to be absolutely essential in combating human trafficking. Essentially, human trafficking can only be eradicated when all members and areas of society actively engage.

Education and knowledge of trafficking in persons among all members of society are key to beating human traffickers. You have to use all of the means at your disposal to raise awareness about the crime, its nature, causes and damage to victims - Governments, civil society, the press, private companies: each and every entity must work toward promoting knowledge of this issue.

Citizen reporting is a major area which shouldn't be overlooked. Victims can often be society's most marginalized members and it's up to neighbours and friends to look out for one another. On this note, access to authorities is key and the State should ensure that they are easily reachable and that the key departments such as the police are themselves educated about human trafficking. Here lies an opportunity for NGOs to work closer with the State and to assist in identifying those groups most at risk.¹⁰

⁹ United Nations Office on Drugs and Crime, *Awareness and Education are Key to Beating Human Trafficking*, (Feb. 7, 2011) https://www.unodc.org/unodc/en/frontpage/2011/February/awareness_and_education_are_key_to_beating_human_trafficking.htm.

¹⁰ *Id*

Moreover, as the U.S. State Department notes, most governments are using public awareness as a vital part of a successful anti-trafficking prevention strategy, noting that public awareness campaigns can target potential victims, purchasers of the trade, or to train the general public on indicators of trafficking.¹¹ Once public awareness has been raised, a reporting mechanism must also be provided to equip the target audience with the tools to report suspected human trafficking. One of the more effective reporting mechanism has been the implementation of a human trafficking hotline.¹²

A21's Response to the Inquiry:

The following comments represent our response to some of the specific terms of reference outlined in the inquiry call for submissions, namely sub-questions (b) and (c).

(b) What is the prevalence of human trafficking in New South Wales:

In terms of literature available on the situation of human trafficking in Australia, most organisations and research bodies discuss Australia in its entirety rather than regionally, such that the statistics, trends, and discussions are nationally focused rather than by region. Therefore, research specific to the NSW area is more limited, and stems mainly from grey literature, such as NGO case studies and media reports. Police reports are more difficult to come by, with only successfully prosecuted human trafficking cases available. Reliance on only successful cases to determine the

¹¹ DoS TIP 2016 Report, *supra* note 2 at 12.

¹² Rache M. Scaraf a, *Human Trafficking: The Need for Stronger Legislation in Louisiana to Protect Victims*, 60 *Loyola L. Rev.* 687, 713 (2014).

prevalence of human trafficking in a region is problematic as such statistics fail to consider the fact that a large number of cases are never reported, are deterred through threats and witness tampering, and other such impediments typical in human trafficking cases. Reliance on only prosecuted cases greatly misrepresents the actual number of human trafficking cases in NSW specifically, and in Australia as a whole.

Despite the very limited information available on the situation in NSW, it is important to note that many of the cases available to the public, involving convicted cases of human trafficking, occurred primarily on the East coast of Australia, with a majority taking place in Sydney, NSW. This observation is further supported by the *Australian Government's Response/Third Report of the Anti-People Trafficking Interdepartmental Committee* which found that,

[s]ince 2004, most victims of trafficking have come to the attention of authorities in Sydney and Melbourne and have primarily concerned allegations of sexual exploitation. This reflects the population concentration and the size of the local sex industries in these cities.¹³

Given the popularity of the NSW capital, Sydney, to visitors and migrants, the fact that more trafficking cases are identified in NSW is not surprising. Sydney has the largest overseas-born population in all of Australia and is the most visited capital city.¹⁴

The prevalence of human trafficking in NSW generally, and in Sydney specifically, may be attributed to the fact that “New South Wales has decriminalised all forms of sex work” and “is the only jurisdiction [in Australia] that has legalised the soliciting of sex services (which affects the legality of street-based sex work).”¹⁵

¹³ Australian Government's Response/Third Report, *supra* note 5 at 11.

¹⁴ Australian Bureau of Statistics, Australian Social Trends 2014, *Where Do Migrants Live* (last updated Aug. 26, 2014), <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4102.0main+features102014#SYDNEY>.

¹⁵ Australian Government/Australian Institute of Criminology (AIC), *The Australian Sex Industry* (last modified Sept. 21, 2015), http://aic.gov.au/publications/current%20series/rpp/121-140/rpp131/05_australian_sex_industry.htm.

Various forms of research have concluded that “when prostitution is legalized, trafficking increases exponentially.”¹⁶ The correlation between legalised prostitution and illegal trafficking has “been documented in the Netherlands, Germany, Victoria in Australia, and elsewhere” and makes reasonable business sense.¹⁷

As a business decision, it makes sense to traffic women and children where business is legal because once you get them there, the risks to sellers are minimal even if trafficking is formally a crime, and the profits to be made from operating in the open are astronomical. Illegal prostitution more generally explodes under legalization.¹⁸

Internationally, “Australia is a well-documented instance where legalization [of prostitution] has been identified as a ‘pull factor’ for traffickers”¹⁹ and noting that “all facets of the commercial sex industry have exploded,” specifically in Victoria, as a result of such legalisation.²⁰ Moreover, in areas in Australia where the sex trade has been legalised, many brothel owners operate both legal and illegal brothels, and law enforcement appear to assume the legality of most brothels.²¹ While the aforementioned studies are focused on Victoria, the Australian Government has noted that prostitution is most decriminalised in NSW.²² Such research supports that human trafficking is likely prevalent in areas where commercial sex is legalised, but difficult to detect because the insidious act can be hidden under a false cloak of legality. Moreover, where the victims involved are foreign, *see infra*, limited in English, and with tenuous immigration status, the difference between illegal human trafficking and legal commercial sex may be too nuanced for law enforcement to distinguish.

¹⁶ Catharine A. MacKinnon, *Trafficking Prostitution and Inequality*, 46 Harv. C.R. C.L. L. Rev. 271, 304 (2011).

¹⁷ *Id*

¹⁸ *Id*

¹⁹ *Id* at n.113

²⁰ *Id*; *see generally*, Mary Lucy Su van, *Making Sex Work: A Failed Experiment with Legalised Prostitution* (2007).

²¹ Su van, *supra* note 20 at Chapter 5.

²² DoS TIP 2016 Report, *supra* note 2.

Consequently, such legalisation provides yet another method to silence trafficking victims.

According to the Australian Institute of Criminology (AIC), the exact numbers of people working in the sex industry in Australia are unknown.²³ However, according to estimates by the AIDS Council of New South Wales (ACON), there are “up to 20,000 people working as sex workers in Australia in any one year.”²⁴ Of this number, more localised estimates drawing from qualitative and quantitative research estimate that in New South Wales, that there are “between 1,500 and 10,000 sex workers.”²⁵ As these estimates mostly include women working in a legal or regulated sex industry, the estimates overlook men and transgendered sex workers, and the possibility of sex workers who are working in illegal or underground brothels, or independently.²⁶ All these groups are at risk for exploitation and human trafficking within the sex industry.

This report also highlights that the “largest proportion entered Australia on Working Holiday visas” and that more than one quarter of Asian women who are legally working in the sex industry in Australia, originally entered on student visas.²⁷ Addressing these findings, it is important to also highlight the comments put forth in the *Australian Government’s Response/Third Report of the Anti-People Trafficking Interdepartmental Committee* noting that “all suspected victims to date have entered on a valid visa, although immigration malpractice or fraud may later become apparent....including tourist, student and working holiday visas, and some held electronic visas.”²⁸ The Government’s *Sixth Report of the Anti-People Trafficking*

²³ AIC, *supra* note 20.

²⁴ AIC, *supra* note 20 (citations omitted).

²⁵ AIC, *supra* note 20 (citations omitted).

²⁶ AIC, *supra* note 20.

²⁷ AIC, *supra* note 20.

²⁸ Australian Gov’t Response/Third Report, *supra* note 5, at 20.

Interdepartmental Committee highlights the same visa falsification observations.²⁹ Therefore, the fact that an individual has come with the correct visa, does not imply that trafficking did not or could not have occurred. The reality is, no country, state or city is immune to crime of human trafficking. Moreover, research shows that these trafficked women “owe” their traffickers fees for entry into Australia, ranging from between \$12,000-\$50,000, which obligate these women to work for the brothel-owner until their debt has been paid.³⁰ In these instances, where debt and visa falsification may be present, in our experience, the likelihood of victims speaking out is diminished due to fear of retribution from their traffickers and deportation from the Government. Again, we know that in reality the Australian Federal Police (AFP), Australian Government and anti-trafficking NGOs have frameworks in place to protect trafficking victims in these situations, however, due to a lack of awareness, these fears limited self-identification.

Reports from various Australian Government bodies have overwhelmingly found that the majority of trafficking victims in Australia are Asian, with origin countries to include South Korea, Thailand, Indonesia, Malaysia, China, Hong Kong, and the Philippines.³¹ Trafficking victims from non-Asian countries appear to occur infrequently.³² Moreover, “[t]he great majority of victims of trafficking in persons victims in Australia are found working in the sex industry” in both legal and illegal brothels.³³

²⁹ Australian Gov’t Response/Sixth Report, *supra* note 5, at 20.

³⁰ Andreas Schoenhardt, *Return and Reintegration of Human Trafficking Victims from Australia*, Int. J. Refugee Law, ¶ 3 (July 1, 2011) (citing U.S. Department of State, “Trafficking in Persons Report 2008” at 61) (Washington, DC: Department of State 2008); see also Parliamentary Joint Committee on the Australian Crime Commissions, “Inquiry into the trafficking of women for sexual servitude” at v (June 2004).

³¹ *Id*

³² Schoenhardt, *supra* note 30, ¶ 3.1 (citing AFP, “Annual Report 2005-06” (Canberra, ACT: AFP, 2006)).

³³ Schoenhardt, *supra* note 30, ¶ 3.1 (citing Queensland, Crime and Misconduct Commissions, “Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)” (Brisbane, Qld: CMC, Dec. 2004), 26).

As previously noted, most research relating to human trafficking in Australia applies to the country as a whole rather than by region. However, the Parliamentary Joint Committee on the Australian Crime Commission's, "Inquiry into the Trafficking of Women for Sexual Servitude" found that Sydney was the main point of entry into Australia for most trafficking victims.³⁴ The following constitutes some key findings of the Commission:

The traffickers facilitate the women's entry to Australia by a range of fraudulent means, including providing visas (typically student or holiday), false passports and funds. Traffickers usually bring the women into Australia through Sydney before being farmed out to brothels in Melbourne, Perth and other areas.³⁵

The Commission found that although sex trafficking in Australia involved a number of other cities, by and large, Sydney was central to this issue:

2.29 The most common entry point of trafficked women into Australia is Sydney, and it is from there that the traffickers farm them out to the brothels, both legal and illegal. Detective Senior Sergeant McKinney from the Victoria Police, told the Committee, there are four or five traffickers in Sydney and two or three in Melbourne, competing against each other for the brothel business,

And they all know each other. You will find that there are people here in Australia whose prime business is the recruitment of women. They get them here and then they disburse them once they are here.

* * *

2.32 The centre for the sex trade using these trafficked women seems to centre on Sydney – as the gateway – and Melbourne and Perth, although other state capitals are certainly involved. Investigators have found that the trade is highly mobile, with women moved rapidly between premises and across states.³⁶

³⁴ Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the Trafficking of Women for Sexual Servitude*, at v (June 2004), http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/acc/competed_inquiries/200204/sexual_servitude/report/index.

³⁵ *Id*

³⁶ *Id* at 12-13.

In addition to being the gateway of sex trafficking in Australia, the Committee found that Sydney contained the highest concentration of brothels.³⁷ Given the posture of Sydney as both the gateway for entrance into the sex trafficking industry in Australia, as well as the highest per capita concentration of brothels, addressing human trafficking in Sydney will implicate and address this issue throughout Australia.

The fact there are no trafficking prosecutions in Australia in the past two years, does not mean that the problem is not on our shores. Rather, the lack of prosecutions evinces the hidden nature of this crime and that this form of exploitation is not always reported. This significant gap in combating human trafficking demonstrates a need for alternative methods to address the situation. This leads into the answering the next term of reference.

(c) What is the effectiveness and of relevant legislation and policies:

Australia has strong and comprehensive anti-trafficking legislation and slavery related crimes legislation, that have continued to be amended and strengthened over the past few years, including:

- Divisions 270 and 271 of the Commonwealth *Criminal Code Act 1995* (Criminal Code)
- The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Slavery Act)
- The *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Vulnerable Witness Act)
- Migration Act 1958
- Fair Work Act 2009³⁸

Australia has also signed and ratified international anti-trafficking conventions and protocols, including:

³⁷ *Id* at 34.

³⁸ See generally, Australian Gov't/Attorney General's Dep't., *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (2014), <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/TraffickingNationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>.

- the Supplementary Slavery Convention in 1958
- United Nations Convention against Transnational Organized Crime (UNTOC) in 2004
- And the UNTOC supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) in 2005³⁹

The legislation and policies in place to address human trafficking and slavery related crimes are comprehensive, and therefore A21 does not suggest that legislation needs to be further strengthened. We also recognise that the Australian Government has invested millions of dollars into supporting anti-trafficking organisations, as well as developing and implementing strategies to combat human trafficking.⁴⁰ Our concerns relate to the fact that, despite strong legislative structures and financial investment, there still appears to be underreporting and limited successful prosecutions.

We believe, as previously stated, that these problems stem back to a lack of adequate understanding of what constitutes human trafficking, limited training of frontline officials, and a lack of public awareness. Currently, the AFP is the only body that has jurisdiction to investigate human trafficking cases, and is the only entity positioned to provide referrals and host a hotline. This is very limiting. The 2016 DoS TIP Report highlights the same areas of limitations in Australia's anti-trafficking response, and recommends that Australia:

- “increase efforts to train police and other front-line officers to recognize indicators of trafficking”
- continue to implement or fund awareness campaigns; increase training for prosecutors and judges on Australian trafficking laws
- develop a targeted campaign to raise awareness among clients of the legal commercial sex industry about the links between prostitution and trafficking.⁴¹

³⁹ *Id*

⁴⁰ *Id* at 16.

⁴¹ DoS TIP 2016 Report, *supra* note 2 at ¶ 3.

We agree with these suggestions and as part of this submission, A21 is offering use of our expertise and resources to help fill some of these gaps. In particular, addressing the great need for public awareness campaigns, human trafficking specific training, and an alternative non-law enforcement administered hotline. A21 is currently administering human trafficking hotlines (or resource lines) in Greece, Bulgaria, and S. Africa. A21 also has successfully raised public awareness through national campaigns throughout the world and event specific campaigns such as the World Cup and the Olympics. As previously noted *supra*, both the U.S. State Department and the UNODC have recognised the vital and indispensable roles that public awareness and citizen reporting play in successfully combatting human trafficking.

Conclusion

In conclusion, A21 welcomes this inquiry. We feel that this inquiry is needed and we hope that the outcomes will benefit the unseen victims of human trafficking living within Australia. We believe the questions guiding the inquiry do not address the specific deficiencies currently in the system, namely: a lack of national awareness campaigns educating the public on the complexities and different appearances of human trafficking, a national non-law enforcement administered anti-trafficking hotline, awareness campaigns aimed at risk groups clarifying their rights and addressing their fears, and specialised training for front line officials.

As previously mentioned, we believe anti-trafficking legislative structures in Australia are strong, yet differing state laws regulating and legalising certain kinds of sex work makes it easier in some areas for trafficking to take place unnoticed and complicates victim identification. Financial contributions towards anti-trafficking measures from the Federal Government are sizable. However, we believe more

funding could be directed towards awareness. Finally, while we believe the AFP, as well as NSW State police play a significant role in policing cases of trafficking, as research and our experiences prove, victims are often fearful of authorities and are reticent to contact law enforcement. Therefore, we strongly believe there is a need for a national non-law enforcement administered assistance, like the aforementioned hotline, which would greatly complement the current efforts of federal, state and local authorities.