Human trafficking is a complex crime

...that transcends national boundaries and impacts on many different countries, including Australia. The purpose of trafficking is sexual or labour based exploitation where the victim is usually deceived about the type and conditions of work they are being recruited for. Australia’s effort to tackle this crime has come from both the government and the community, however combating this phenomenon is no easy task – especially since there is widespread disagreement as to the types of conduct that amount to trafficking. This issue must be considered in relation to Visa 457 and its facilitation of labour exploitation that in some circumstances can amount to human trafficking.

The United Nations have defined Human Trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat, force, or other forms of coercion, abduction, fraud, deception, the use of power or a position of vulnerability, or of the giving or receiving of payments or benefits to achieve consent of a person having control over another person for the purpose of exploitation which at a minimum includes sexual exploitation such as prostitution, forced labour or services, practices similar to slavery, servitude and the removal of organs1.

The Australian Government’s response

The Australian Government has made an effort to combat human trafficking. Laws have been strengthened on trafficking related offences with the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth)2, and the Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 (Cth)3, and in 2005 Australia ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.4

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2 Division 270.
3 Division 271.
In 2003 a 20 million dollar action plan was announced to: create a Federal Police Strike Team, raise community awareness, assist with regional cooperation measures, provide reintegration assistance for victims returning home, and to provide limited victim support measures, albeit conditional on the victim’s willingness to help with an investigation. Most of these measures are in response to sex trafficking, with labour trafficking being largely left out of the picture.

Additionally the Australian Institute of Criminology has undertaken a four year research program to monitor trends in human trafficking in the Asia Pacific region and assess the impact of those trends to gather more reliable data on the nature and extent of trafficking phenomena.

The community response

Although Government measures are a necessary component of combating this crime, community responses adopting a bottom-up approach are equally as essential. Non-government organisations such as Project Respect and the Anti-Slavery Project are both engaged in trafficked victims support programs, offering legal or other services and helping survivors access the resources they need. The other important roles of these organisations include advocacy for governmental anti-trafficking efforts based on human rights, raising awareness amongst the community about trafficking, and gathering data on the occurrences and nature of trafficking. The link such organisations provide between the community and the government is important so that the voices and experiences of victims are heard.

The extent of trafficking in Australia

The lack of reliable data on the occurrences of this crime makes it difficult to assess the extent of the problem and know how best to address it. Conflicting interpretations of what actually amounts to trafficking further complicates the process of gathering accurate statistics of its prevalence. Statistics provided by the Australian Institute of Criminology indicate that from January 2004 to September 2006, there were 117 trafficking investigations, 23 charges laid, 14 prosecutions and 4 convictions.

This relatively low number of convictions however does not mean trafficking to and within in Australia is a minor problem. There are numerous reasons why statistics on victims of trafficking are unreliable and perpetrators of trafficking crimes escape investigations, trials and convictions. These include underreporting by victims out of fear and the risk of deportation, limited English skills and understanding of the Australian legal and immigration

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8 Above n 5.
9 Ibid, 3.
10 Ibid.
system\textsuperscript{11}, reluctance of victims to assist authorities perhaps out of fear of retribution, or because they do not wish to prolong the trauma they have already suffered\textsuperscript{12}, and the general difficulty in detecting these crimes due to their international and underground nature.\textsuperscript{13}

**Redefining trafficking**

As indicated by the US Trafficking In Persons (TIP) report 2007\textsuperscript{14} more cases of sex trafficking have come before Australian courts than cases of labour trafficking. Correspondingly, Australia’s response to trafficking has been primarily focused on sex based trafficking offences. While these efforts were commended, the TIP report recognised the need for Australia to devote more attention to labour trafficking especially in regards to the 457 visa work program that has been the subject of much controversy over its facilitation of the exploitation of foreign workers. The government has rejected such contention and does not see abuse of this visa as amounting to labour trafficking.

**Visa 457**

Visa 457 was created in 1996 as a temporary skilled migration visa to allow foreign workers to work in Australia for up to four years.\textsuperscript{15} The purpose of this more streamlined system was to make it easier and faster for employers to hire foreign workers where there was a local skilled labour shortage.\textsuperscript{16} Arguably this purpose has been superseded by the realisation of employers that they are only required to pay these workers minimum standard wages that are often significantly lower than the cost of Australian workers. In some cases this has led employers to seek foreign workers where no labour shortage exists or to use the threat of foreign workers to drive down local wages and conditions.

Other problems have arisen through this streamlined system, largely due to the huge increase in the number of 457 visas being administered per year, and the inability of the Immigration Department to provide checks on all employers who are sponsoring foreign workers to ensure compliance with visa arrangements.\textsuperscript{17} In the last year a growing number of reports surfaced alleging abuse by employers of these workers in regards to: underpayment of wages, no payment for overtime, unlawful deductions made for travel, accommodation and food, discrimination on the basis of union membership, workplace safety and training requirements not being met and skilled workers being placed in unskilled

\textsuperscript{11} Project Respect \url{http://www.projectrespect.org.au/} viewed 28 October 2007.
\textsuperscript{13} Above n 5, 3.
\textsuperscript{16} Ibid.
positions or locations other than those stated in their visas.\textsuperscript{18} To compound the problem many of these workers feel unable to report such abuses out of fear of losing their jobs or being deported.\textsuperscript{19} Some of these situations have been described by Immigration expert Bob Birrell as “akin to slavery”.\textsuperscript{20}

The facilitation of labour trafficking

For some workers the coercion or deception leading to migration and the conditions of exploitative work environments illustrate their condition as labour trafficking.\textsuperscript{21} Under section 271 (2) of the Criminal Code, a person will commit an offence of trafficking if they organise or facilitate the entry or receipt of another person into Australia, and deceive that person about the fact that their entry, receipt or stay in Australia will involve exploitation, or debt bondage.

Although the government refuses to concede that Visa 457 is facilitating labour trafficking they have attempted to improve this visa system through the adoption of the \textit{Migration Amendment (Sponsorship Obligations) Bill 2007} (Cth). The changes provide enhanced protection to workers, specific obligations for employers and stricter enforcement provisions for those utilising visa 457.\textsuperscript{22} However the new civil rather than criminal penalties for breach of employer obligations indicate that the exploitation of migrant labour workers is still not being treated seriously.

Comparative penalties

The perceived gravity of both trafficking offences, and certain breaches of employer obligations under visa 457 that may amount to trafficking, are reflected in the penalties they are prescribed. Under the Criminal Code trafficking offences generally incur a penalty of 12-25 years imprisonment.\textsuperscript{23}

The penalties prescribed for employers who facilitate the entry of foreign workers through sponsorship under visa 457, and deceive them about the fact that their job will involve exploitation and perhaps debt bondage, are comparatively light. The penalty for an employer’s breach of visa obligations is merely $6600 for an individual or $33000\textsuperscript{24} for a body Corporate, and a possible ban from using this visa, even though such breach could amount to a situation of or close to trafficking. For such a serious crime these consequences are nothing more than a slap on the wrist.

\begin{itemize}
\item \textsuperscript{18} Joint Standing Committee on Migration, Commonwealth Parliament, \textit{Temporary visas permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program} (2007) 112-117.
\item \textsuperscript{19} Above n 17, 115.
\item \textsuperscript{22} Above n 14.
\item \textsuperscript{23} \textit{Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999} (Cth), \textit{Criminal Code Amendment (Trafficking in Persons Offences) Act 2005} (Cth).
\item \textsuperscript{24} Above n 14.
\end{itemize}
The reason criminal penalties were not prescribed was because the Government believes criminal sanctions on sponsors that could result in the loss of their export license would be too harsh and not in Australia’s best interest.\textsuperscript{25} It is thus clear that the government’s overarching priority is protecting the economy, and not the victims of labour exploitation. The government and community must reconsider what trafficking means and recognise that our visa system in its current state is facilitating labour based trafficking offences, which is a violation of human rights. Our response to trafficking in the future must extend to these types of offences so we can be sure this country is offering opportunity rather than indenture.

Just Action

- To find out more information about community anti-trafficking action visit the Anti-Slavery Project website at: http://www.antislavery.org.au/about/getinvolved.html
- To find out more about Visa 457 visit the Joint Standing Committee on Migration’s inquiry into temporary business visas at: http://www.aph.gov.au/house/committee/mig/457visas/report.htm
