

**LEGAL AND CRIMINAL JUSTICE RESPONSES TO
TRAFFICKING IN PERSONS IN AUSTRALIA:
OBSTACLES, OPPORTUNITIES AND BEST PRACTICE
WORKSHOP**

**Convened under the ARC Linkage Grant entitled
“Australia’s Response to Trafficking in Women: A Model for the Regulation of Forced
Migration in the Asia-Pacific Region?”**

**With the support of the Attorney-General’s Department
“Grants to Australian Organisations Program, 2009-2010”**

**Monday 9 November 2009
Monash University Law Chambers
472 Bourke Street, Melbourne**

Convened by Dr Julie Debeljak and Professor Susan Kneebone

PROGRAM

1. **Welcome:** Professor Susan Kneebone

Introductory Remarks: Dr Julie Debeljak
2. **Session 1: The Elements of an Effective Legal and Criminal Justice Response to Trafficking in Persons**
 - a) **Dr Anne Gallagher** (Technical Director, ARTIP), *An Effective Legal and Criminal Justice Response to Trafficking in Australia: Achievements and Challenges*: discussing the core elements of an effective legal and criminal justice response to trafficking in persons and considering the extent to which the current response in Australia meets international standards and accepted good practice.
 - b) **Ms Elizabeth Broderick** (Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination, Australian Human Rights Commission) and **Ms Bronwyn Byrnes** (Lawyer, Australian Human Rights Commission), *Beyond Wei Tang: Do Australia’s human trafficking laws fully reflect Australia’s international human rights obligations?*: exploring the definitional differences emerging between the international and domestic offences of trafficking in persons and related offences, and the impact that such definitions have on investigating, prosecuting and judging such offences (i.e. how definitions influence the subtle types of evidence that investigators must secure), both in relation to trafficking offences for sexual labour and non-sexual labour end purpose exploitation.

3. **Session 2: Identifying and Investigating Trafficking in Persons and Labour Exploitation**

- a) **Commander Ramzi Jabbour** (Manager Border Operations (TSETT, Drugs and People Smuggling), Australian Federal Police), *Obstacles, Opportunities and Emerging Best Practice in Identifying and Investigating Trafficking in Persons in Australia*: discussing recent developments, obstacles, opportunities, and emerging best practice in investigating trafficking in persons and related offences in Australia, including exploration of the impact the definition of trafficking has on investigations, the challenges of investigating trafficking for both sexual labour and non-sexual labour end purpose exploitation, and the difficulties associated with identifying trafficked persons.
- b) **Professor Marilyn Pittard** (Faculty of Law, Monash University), *The Vulnerability of Overseas Temporary Workers to Labour Exploitation and Slavery: Problems with Detection, Regulation, and Enforcement*: setting discussions within the broader framework of labour regulation, this paper will explore the different categories of overseas temporary workers (ranging from those in a relatively strong position to those vulnerable to exploitative situations to those vulnerable to slavery-type situations), analyse the institutional and practical challenges pertaining to the detection of those vulnerable to exploitation and slavery, and focus on the challenges with enforcement, with a focus on the gaps in enforcing the s 457 visa regime.

4. **Session 3: Strong and Well-Informed Prosecuting in Trafficking in Persons**

- a) **Mr Albert Moskowitz** (Prosecutorial Adviser, ARTIP), *Challenges and Priorities in Prosecuting and Adjudicating TIP Cases: With a Special Focus on South-East Asia and the United States*: addressing obstacles, opportunities and best practice in prosecuting trafficking in persons and related cases from a comparative, regional and international perspective, with a special emphasis on experiences in South-East Asia and the United States.
- b) **Commonwealth Department of Public Prosecutions**: The CDPP will explore the prosecutorial experience to date with trafficking in persons and related offences, reflecting on the challenges posed by both sexual labour and non-sexual labour end purpose exploitation cases, and exploring the influence of the trafficking and related offences on prosecutorial strategies. This will be presented as two case studies of recent prosecutions in Sydney and Melbourne, as follows:
 - i) **Ms Mary Lagana and Ms Gina Nott**, *Examining the Prosecution of Sieders: A Detailed Analysis of Prosecuting Trafficking and Related Offences under Australian Laws*
 - ii) **Ms Lisa West and Mr Matthew Phillips**, *Examining Recent Prosecutions in Melbourne: A Detailed Analysis of Prosecuting Trafficking and Related Offences under Australian Laws*.

5. **Session 4: Securing Better Victim Participation in the Legal and Criminal Justice System**

- a) **Judge Michael McInerney** (Victorian County Court), *Judging and Decision-Making: Court Room Observations about Trafficking in Persons and Related Offences*: exploring the process of first instance judging and the

difficulties associated with jury trial, as well as offering a practical commentary on and insights into the adequacy of the existing range of trafficking in persons and related offences.

- b) **Associate Professor Jennifer Burn** (Director of the Anti-Slavery Project, University of Technology Sydney), *The Characterisations of the “Victim” in the Legal and Criminal Justice System: Fresh Approaches to Old Problems*: exploring the topic of victims as witnesses in the legal and criminal justice system, including discussion about the characterisation of victims by and in the system, the cross-cultural issues faced by victims in the investigatory and prosecutorial processes, the support offered to victims in the court process, and migration control as an obstacle to cooperation.
- c) **Ms Fiona McLeod SC** (Barrister), *Securing Better Victim Participation, Co-operation and Outcomes in the Legal and Criminal Justice System through Meaningful Victim Compensation*: examining how the legal and criminal justice system can better secure victim participation, co-operation and outcomes, particularly through civil claims under victims of crime compensation and sentencing legislation schemes, and compensation claims under contract and tort law.

6. **Conclusion to the Day**: Dr Julie Debeljak/Professor Susan Kneebone

CHATHAM HOUSE RULE

In order to facilitate discussion, it will be conducted under the Chatham House Rule, which provides:

“When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.”

OBJECTS OF THE WORKSHOP

The Workshop will consider ways to improve legal and criminal justice responses to trafficking in persons, and to encourage greater emphasis on, and coordination with, civil justice and labour regulatory responses. The Workshop will address four broad themes, as follows:

- How to improve criminal justice responses to human trafficking, particularly in the area of prosecutions and judging.
- How to utilise the criminal justice, civil justice and labour regulatory systems to respond better to human trafficking, with particular emphasis on learning the lessons from the criminal justice response to trafficking for the purpose of sexual labour exploitation in order to pursue criminal justice, civil justice and labour law responses to trafficking for the purpose of non-sexual labour exploitation.
- How to use the justice system to improve outcomes for victims of trafficking, particularly through civil claims under victims of crime compensation and sentencing legislation schemes, and compensation claims under contract and tort law.
- How to ensure better coordination between criminal justice, civil justice and regulatory regimes to maximise punishment, deterrence and compensation efforts.