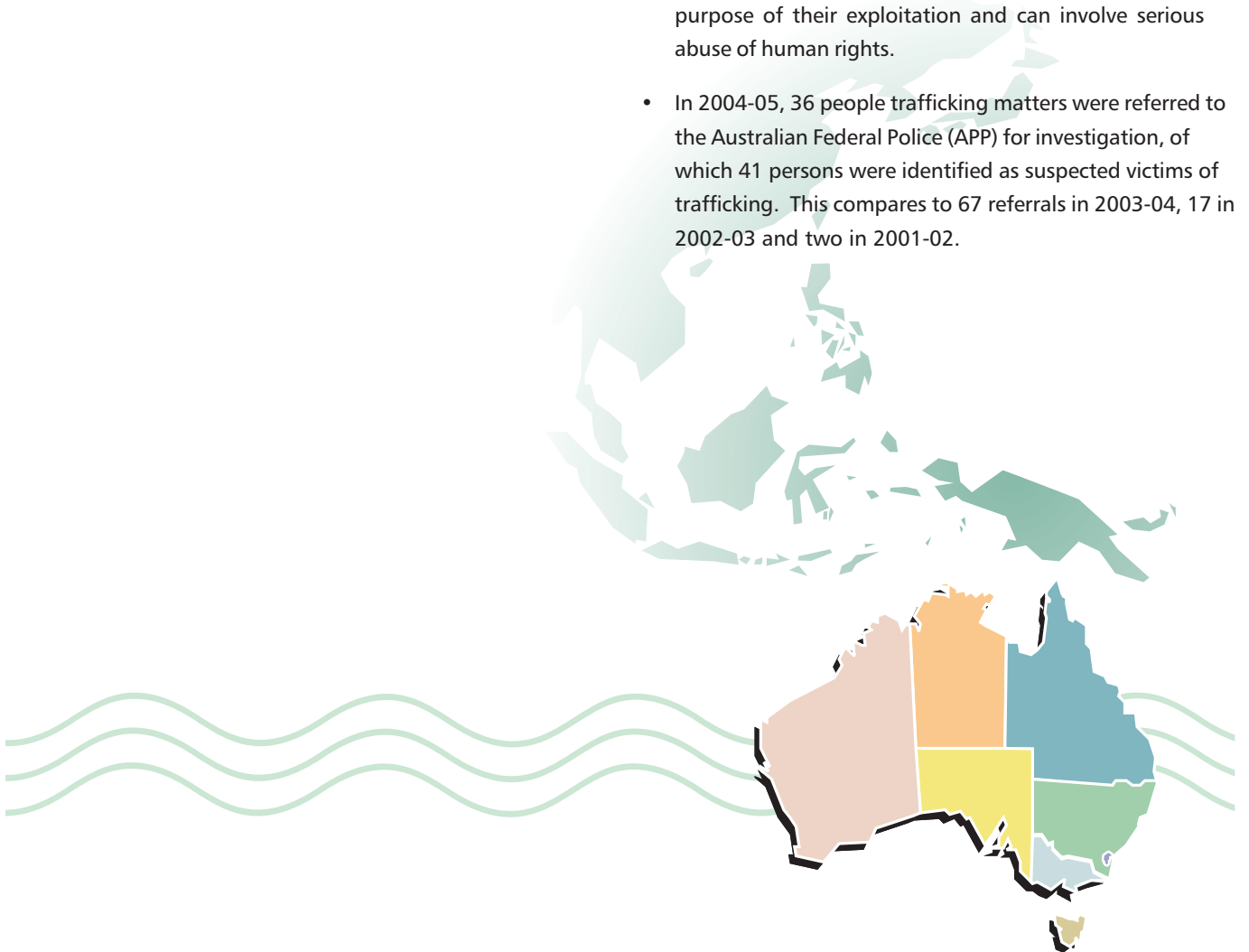


## Chapter 13

### People Smuggling and Trafficking

- 'People Smuggling' refers to the organised illegal movement of groups or individuals across international borders, usually on a payment for service basis. The International Organization for Migration estimates that about four million people are moved illegally each year.
- In 2004-05, there were 94 new allegations of people smuggling, a fall of 26.6 per cent compared to 2003-04, and 88 allegations finalised compared to 143 in 2003-04, a fall of 38.5 per cent.
- In 2004-05, one prosecution was initiated for people smuggling offences, while three persons were convicted of people smuggling offences and five cases were pending.
- 'People trafficking' involves the physical movement of people through deception, coercion or force for the purpose of their exploitation and can involve serious abuse of human rights.
- In 2004-05, 36 people trafficking matters were referred to the Australian Federal Police (AFP) for investigation, of which 41 persons were identified as suspected victims of trafficking. This compares to 67 referrals in 2003-04, 17 in 2002-03 and two in 2001-02.





# People Smuggling

## People Smuggling

'People Smuggling' refers to the organised illegal movement of groups or individuals across international borders, usually on a payment for service basis. It may occur as the result of several identified 'push factors' including lack of economic opportunity, reduced availability for legitimate migration and the lure of a better lifestyle. All of these factors can be exacerbated by regional destabilisation. The International Organization for Migration (IOM) estimates that globally approximately four million people are moved illegally each year. People smuggling is profitable, relatively low-risk and increasingly the work of criminal networks with international links.

During the period 1999–2001, Australia saw a developing trend in people smuggling activities demonstrated by a significant increase in unauthorised arrivals by boat. The effectiveness of the whole-of-government effort to deal with unauthorised boat arrivals has resulted in the virtual cessation of this type of activity. Chapter 4 provides further information on unauthorised boat arrivals.

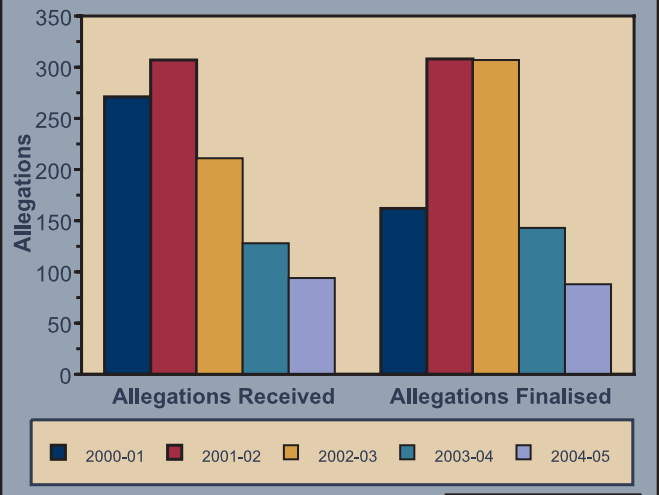
There was also a continuing downward trend in people refused entry at airports. Key contributing factors include Australia's network of overseas compliance officers stationed at high risk overseas posts, the expanded Airline Liaison Officer network at international airports and the more widespread adoption by airlines of the Advance Passenger Processing system. See Chapters 1 and 3 for further details.

The *Migration Act 1958* provides offences for dealing with people involved in people smuggling and using fraudulent documents to enter Australia. These offences carry penalties on conviction of up to 20 years imprisonment and/or a \$220,000 fine. The harbouring or concealing of unlawful non-citizens in Australia is also a serious offence under the Act. The organised illegal movement of persons from or transiting Australia, as well as the involvement of Australian residents in such activities offshore, has been criminalised under Division 73 of the *Commonwealth Criminal Code Act 1995*.

The involvement of organised criminal syndicates in people smuggling is investigated by the Australian Federal Police (AFP) / DIMIA joint-agency People Smuggling Strike Team (PSST). In addition, DIMIA works in cooperation with other agencies including the Australian Tax Office, Centrelink and Customs, to investigate other types of fraud linked to people smuggling.

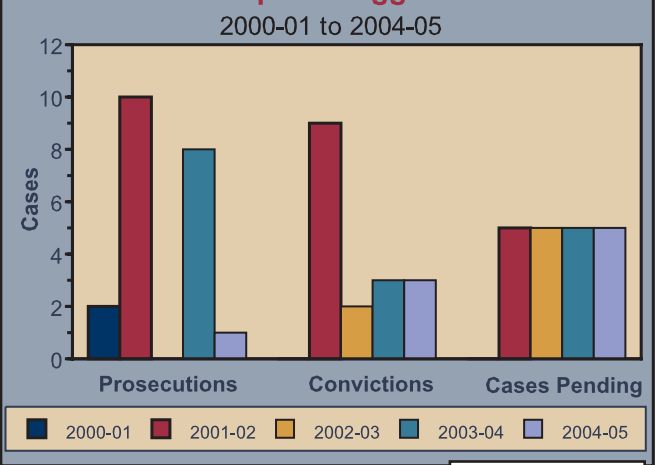
In 2004-05, there were 94 new allegations of people smuggling referred to the DIMIA, a fall of 26.6 per cent compared to 2003-04 (128), reflecting the almost complete cessation in the number of unauthorised boat arrivals in recent years. There were 88 allegations of people smuggling finalised in 2004-05, a fall of 38.5 per cent compared to the previous year (143). In 2004-05, there was one prosecution for people smuggling offences, while three persons were convicted. This compares to eight new prosecutions and three convictions in 2003-04. In 2004-05 there were five pending cases under appeal.

**Fig. 13.1: Allegations of People Smuggling**  
2000-01 to 2004-05



Source Data: IMIRS, DIMIA

**Fig. 13.2: Investigation and Prosecution of People Smugglers**  
2000-01 to 2004-05



Source Data: IMIRS, DIMIA

# People Trafficking

## People Trafficking

'People trafficking' involves the physical movement of people through deception, coercion or force for the purpose of their exploitation and can involve serious abuse of human rights.

In December 2002, Australia signed the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* ('the People Trafficking Protocol'). Under the People Trafficking Protocol, people trafficking is defined as:

"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

The term 'people trafficking' has been subject to a range of interpretations and this has resulted in confusion over the prevalence of the crime within Australia. 'People trafficking' is sometimes used overseas to describe the illegal movement of people across borders, a definition that falls within the Australian description of 'people smuggling'.

There is a popular misconception that people trafficking only occurs in the context of the sex industry, however this is not the case. People trafficking can occur in any industry. It is important to note that the existence of people working illegally does not mean that they have been trafficked. Similarly, individuals who find that their working conditions are different from those which they anticipated are not necessarily trafficked.

The *Criminal Code Act 1955* already contained anti-trafficking legislation with severe penalties of imprisonment for slavery, sexual servitude, deceptive recruiting and people smuggling aggravated by exploitation. On 21 June, the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* was passed fulfilling Australia's legislative obligations under the UN People Trafficking Protocol. The Act creates new and revised trafficking in persons offences that comprehensively criminalise trafficking in persons activity. Examples of the new offences include:

- a significant extension to the existing deceptive recruiting for sexual services offence;
- new offences targeting the trafficking of persons to and from Australia;
- new offences of trafficking children into and from Australia;
- new offence of debt bondage;
- new domestic trafficking in persons offences where trafficking in persons activity takes place wholly within Australia;
- the application of Part 1 AD of the *Crimes Act 1914* to the trafficking offences, provides a protective regime for children appearing as witnesses in proceedings for sexual offences; and
- amendments to make telephone interception warrants available for the investigation of the new trafficking offences.

In accordance with their responsibility for the investigation of offences under the Commonwealth Criminal Code, the Australian Federal Police (AFP) have carriage of the investigation of people trafficking offences. DIMIA, however, has responsibility for the enforcement of matters contained in the *Migration Act 1958*, and matters involving people trafficking may come to the attention of DIMIA staff during the course of the enforcement of migration law. Any matters involving indications of people trafficking coming to the attention of DIMIA staff are referred to the AFP for investigation in accordance with agreed referral protocols.

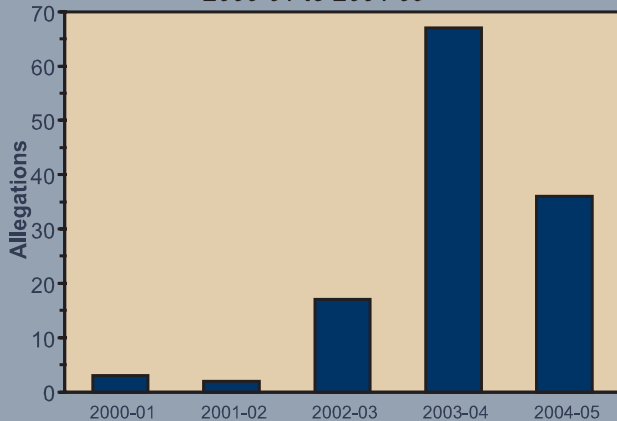
The referral protocols have been designed with very low thresholds for referral to the AFP. Therefore, while DIMIA may refer any possible people trafficking-related matters to the AFP for further assessment, not all of these matters will necessarily be investigated by the AFP. A number of matters will be for information only and will contribute to intelligence gathering.

Since the *Commonwealth Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* came into effect, to the end of June 2005, DIMIA formally referred 126 people trafficking matters to the AFP for assessment, with 159 persons identified as suspected victims of trafficking. In 2004-05, 36 matters were referred (41 suspected victims), compared to 67 in 2003-04 (75 suspected victims), 17 in 2002-03 (29 suspected victims), two in 2001-02 (five suspected victims) and three in 2000-01 (eight suspected victims). Fourteen have been charged during this period.

The cooperation of victims is essential to the investigation and prosecution of people trafficking. The major impediment to prosecuting trafficking related offences is the reluctance of people to give evidence of the offence, particularly as they are commonly the subject of violence or threats of violence during their servitude.

**Fig. 13.3: Referrals to AFP of Allegations of People Trafficking**

2000-01 to 2004-05



Source Data: IMIRS, DIMIA

Potential witnesses may also be reluctant to testify in a trafficking case if they fear that they may be required to return to their home country at the end of the trial, possibly to face the persons who trafficked them. DIMIA has in place a comprehensive range of visas that enable persons who are assisting, or who have assisted, with an investigation or prosecution of people trafficking offenders to remain lawfully in Australia.

The Bridging Visa F (BVF), introduced on 1 January 2004, addresses the needs of the Federal, State or Territory police in retaining victims/witnesses in Australia, for a period of up to 30 days, to assist with people trafficking investigations. Between 1 January 2004 and 30 June 2005, 42 suspected victims of trafficking were granted BVFs.

Criminal Justice Entry Visas (CJEV) and Criminal Justice Stay Visas (CJSV) allow a person to enter, or remain in, Australia lawfully, for the period of criminal justice proceedings. During the same period, 26 people were granted CJSVs and two people were granted CJEVs.

Witness Protection (Trafficking) Visas, temporary and permanent, allow a person who has made a significant contribution to the investigation or prosecution of an alleged trafficking offence, and who may be in danger if they return to their home country, to remain in Australia lawfully. No Witness Protection (Trafficking) Visas have been granted to-date – a small number are in the process of being assessed.

The visa regime is balanced to support those in genuine need of protection while targeting the traffickers. Where a suspected victim chooses not to assist law enforcement authorities or the person's evidence is insufficient to assist a trafficking investigation or prosecution, the person is assisted in returning to their home country.

### ***Senior Migration Officer (Compliance) Trafficking***

As part of the 13 October 2003 whole-of-government announcement to combat people trafficking, DIMIA created a new Senior Migration Officer Compliance (SMOC) position in Thailand. This position focuses exclusively on people trafficking issues in the South-East Asia region. The SMOC undertakes analysis of trends in the visa processing caseload including applicants' travel patterns, use of migration agents, nature of the claims lodged in applications – vetting the visa caseload for fraud that may lead to people trafficking, and liaison with local government and non-government organisations. The officer is part of a compliance network located at 22 posts in 20 countries.

DIMIA continued to look at profiling methods to reduce incidence of visa fraud and where profiles can be developed they are included in the new safeguards system that alerts processing officers to inherent risks.

### ***Work With Other Agencies***

DIMIA continued to work collaboratively with other agencies, including working closely with the Australian Crime Commission on their special intelligence operation into People Trafficking for Sexual Exploitation. As a result of this collaborative work DIMIA is assessing implications for processing both onshore and offshore.

