

# Chapter 3

## The response of Australian governments

### Introduction

3.1 This chapter examines the response of Australian governments – Commonwealth, state and territory – to the problem of trafficking of women, as well as focusing on the first and second terms of reference:

- (1) The Australian Crime Commission's work in establishing the extent of people trafficking in Australia for the purpose of sexual servitude.
- (2) The Australian Crime Commission's relationship with the relevant State and other Commonwealth agencies;

3.2 In considering the role of the ACC and its relationship with other agencies, the chapter begins with an overview of the various roles and jurisdictional responsibilities of the many players involved in combating the trafficking of women for sexual servitude.

3.3 The chapter then addresses a number of issues that emerge from these relationships. In particular, the coordination of action and information sharing between the numerous relevant agencies, and the provision of support for, and protection of the victims of trafficking. The chapter also examines the wider adequacy of the Commonwealth government anti-trafficking package.

### Overview of agency responsibility

3.4 Combating the trafficking of women is necessarily a complex task involving a number of agencies across the federal and state jurisdictions, as well as cooperation across portfolios. Listed below are the principal players.

#### *Australian Crime Commission*

3.5 In the context of combating the trafficking of women for sexual servitude, the ACC the role is threefold relating to threat assessment, intelligence coordination and crime investigations. These are detailed in the ACC submission:

- ACC Support to Defining National Criminal Intelligence Priorities (NCIP). In May 2003, the ACC produced a classified Overview Threat Assessment designed to support ACC Board decisions on NCIPs. It contained a general assessment of the regional and Australian people trafficking context. As part of deliberations on over 56 threat issues, the ACC Board designated 'illegal and indentured prostitutes' as a Category B NCIP.

- Production of a Strategic Criminal Intelligence Assessment. The ACC is finalising a classified assessment on the nature and future of trafficking of people to Australia for sexual exploitation.
- ACC Operational Activity. The ACC is currently conducting an intelligence probe in cooperation with partner agencies and on 4 December 2003, received a Board Authorisation and Determination to conduct a special intelligence operation specifically in relation to people trafficking. It collected additional information in the course of operations under the 'Midas' special investigation.<sup>1</sup>

3.6 As Australia's national criminal intelligence agency, the ACC maintains the Australian Criminal Intelligence Database (ACID), and the Australian Law Enforcement Intelligence Net (ALEIN).<sup>2</sup>

### ***Australian Federal Police***

3.7 As the Commonwealth government's primary law enforcement agency, the AFP focuses on investigating offences under Commonwealth law, which includes complex and serious transnational criminal activity, smuggling, and trafficking. Of particular relevance to this inquiry are investigations of offences created by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*.

3.8 To conduct these investigations, the AFP established a Transnational Sexual Offences Team (TSOT) in December 2002, within the Transnational Crime Coordination Centre (TCCC). As part of the government's new package, the TSOT has been enlarged, becoming the Transnational Sexual Exploitation and Trafficking Team (TSET). Still part of the TCCC, the TSET is a mobile force comprising 23 officers and focuses on both trafficking of women for sexual servitude and child sex tourism.<sup>3</sup> The TSET comprises an intelligence team in Canberra within the TCCC, with mobile investigations teams based in Sydney and Melbourne. The Team thereby aims to provide an 'intelligence driven, flexible and mobile' response to investigations.<sup>4</sup>

3.9 A crucial strength of the AFP is its International Liaison Network, which provides for the exchange of information with other law enforcement agencies, and includes AFP officers based in 23 countries.<sup>5</sup>

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1 ACC, Submission 29, p. 3. Mr Milroy, *Proof Committee Hansard*, 26 February 2004, p. 41. 'Midas' is the ACC special investigation into money laundering.

2 AFP, Submission 37, p. 6

3 AFP, Submission 37, p. 1-2

4 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 2

5 AFP website [www.afp.gov.au](http://www.afp.gov.au) accessed 21 April 04.

3.10 Another AFP role is the provision of specialist training for investigations into trafficking offences. The first of these training programs commenced on 16 February 2004, and is a three week residential course delivered at the AFP College in Canberra. The course includes content provided by non-government organisations and experts such as Mr Paul Holmes, the former head of operations at Britain's New Scotland Yard and an expert in combating people trafficking.<sup>6</sup>

3.11 Although the first course was limited to twenty AFP personnel, future courses will be offered to officers of other agencies, including state and territory police forces.<sup>7</sup>

3.12 The Committee also notes that the AFP has for some time had an active interest in people trafficking in the sex industry, with the 1992 'Operation Paper Tiger' described as the first sustained attempt by police to combat the 'contract girl' rackets in Sydney.<sup>8</sup>

### ***Commonwealth Department of Immigration, Multicultural and Indigenous Affairs***

3.13 DIMIA is responsible for the administration and enforcement of the *Migration Act 1975* including the detection and detention of unlawful non-citizens, plus investigation of people smuggling and migration fraud related offences.<sup>9</sup>

3.14 By reason of raids by the DIMIA compliance teams, targeting unlawful non-citizens working in brothels (as well as other work places), DIMIA is often the agency that first encounters trafficked women.<sup>10</sup> As such, DIMIA's sensitivity to the problem is crucial to the successful detection and prosecution of traffickers.

3.15 DIMIA has developed guidelines to assist its officers identify possible instances of trafficking. As part of the interview process, all sex workers located are questioned in relation to the circumstances of their recruitment, working conditions and freedom of movement in Australia,<sup>11</sup> as well as being asked a number of more

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6 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 2

7 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 2 & 10; Ms Fagan, *Proof Committee Hansard*, 26 February 2004, p. 7

8 'Man bailed on sex slave charges', Sydney Morning Herald, 20 June 2003, p. 2. 'Trafficking and Sexual Servitude in Australia', Presentation by Christopher Payne, Department of the Parliamentary Library, 20 August 2003, p. 1.

9 DIMIA, Submission 38, p. 2

10 There are indications of a long term awareness of the problem by DIMIA, which as early as 1996 published a discussion paper on trafficking in women, which another task force reported in December 2002. 'Immigration knew of sex slave trade', Australian, 15 May 2003, p.3

11 DIMIA, Submission 38, p. 3

indirect questions designed to get behind prepared stories.<sup>12</sup> The guidelines have been distributed to DIMIA Compliance and Investigations staff around the country.

3.16 These are to be reinforced by formal training sessions as well as by a network of sex industry contact staff that has been put into place in all State and Territory offices to provide the first point of contact for all DIMIA sex industry related activities.<sup>13</sup>

3.17 Supporting the compliance teams, DIMIA also has its own Intelligence Analysis Section that is DIMIA's link into the wider intelligence community.<sup>14</sup>

3.18 The Committee notes that a number of women who may have been trafficked are deported within a short timeframe. While not wishing to criticise or impede the efficient administration of the law by DIMIA, the Committee is concerned that women should not be detained, processed and then deported so quickly that their full circumstances and stories are missed. This is certainly foreseeable where the raid, questioning and detention occur in the space of a few hours, potentially in the middle of the night.

3.19 While recognising the new lower referral triggers used by DIMIA (discussed below), authorities should ensure that women are not questioned in ways that would lessen the chances of their true circumstances emerging, leading to the possible failure to identify victims of sexual trafficking and the loss of evidence to the Commonwealth.

### ***State and local governments***

3.20 As the submission from the Attorney General's Department states:

Regulation of the sex industry is a State and Territory Government responsibility. It is important that each State and Territory Government address the issue of trafficking in persons into the sex industry, whether legal or illegal in that jurisdiction, through the relevant regulatory processes. A number of commentators and experts on trafficking in Australia have highlighted the importance of State and Territory Governments ensuring that their sex industries are not a haven for traffickers.<sup>15</sup>

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12 Mr McMahon, *Proof Committee Hansard*, 26 January 2004, p. 32

13 DIMIA, Submission 38, p. 3

14 DIMIA, Submission 38, p. 3

15 AGD, Submission 36, p. 10

3.21 The eight state and territory police services, as the frontline of community policing across the country, have an obviously crucial role.<sup>16</sup>

3.22 The local councils, especially in the inner city suburbs of the major cities like Sydney and Melbourne, are also significant – albeit indirect – players in combating trafficking of women by reason of their role in enforcing planning and workplace safety laws. As such, together with DIMIA officers, local government inspectors are the government officials most likely to have reason to inspect brothels, and therefore likely to discover trafficked women.

3.23 Thus for example, the City of Yarra enforce the planning scheme in the *Planning and Environment Act*, and the provisions in the *Prostitution Control Act*. According to one Council official:

We have a major role to play. We are at the coalface, if you like. ... I personally have been in at least 32 illegal brothels and all our legal brothels at least twice in the last 16 months. I know how they operate; I know who is in there. I know what they are doing.<sup>17</sup>

3.24 He comments that Council officers are frequently on site before the Police or DIMIA, in part because they will be often the ones to receive tips from legal brothel rivals seeking to get rid of illegal rivals.<sup>18</sup>

### ***Commonwealth Attorney General's Department***

3.25 The Commonwealth Attorney General's Department has three principal roles in relation to combating the trafficking of women.

3.26 First, it is responsible for coordinating the efforts of the various portfolios involved in the government response. As such, an officer of the department also chairs the Interdepartmental Committee on People Trafficking for Sexual Servitude.

3.27 Second, the department has primary responsibility for assessing the adequacy of the legislative framework that underpins the government response to the trafficking of women, as well as sponsoring amendments where necessary.<sup>19</sup>

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16 This includes the Community policing role of the Australian Federal Police in the Australian Capital Territory.

17 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 2

18 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 4. Note also Consumer Affairs Victoria which administers the brothel licensing system via the Victorian Administrative Tribunal, while WorkCover New South Wales have legislative powers that focus on health and safety in workplaces in NSW. Mr Miles, *Proof Committee Hansard*, 25 February 2004, p. 7, and "'Sex slaves' tell of trickery and terror', the Age, 22 August 2003, p.7

19 Ms Blackmore, *Proof Committee Hansard*, 26 February 2004, p. 15

3.28 Finally, the AGD is tasked with the development of the community awareness strategy that forms part of the Commonwealth Action Plan.<sup>20</sup> The plan is discussed in detail below.

### ***Office of the Status of Women***

3.29 The Office of the Status of Women, sitting within the Department of the Prime Minister and Cabinet, is responsible for the planning and administration of the Victim Support package (detailed below), and is also a member of the Inter-Departmental Committee. Importantly, while officers of the OSW developed the support package, the agency is not responsible for the delivery of the package, but rather the administration of the contract to supply the support services.

### ***AusAID***

3.30 The Australian Agency for International Development (AusAID), manages the Australian Government's official overseas aid program and, in the context of combating the trafficking of women, has been given the role of providing the overseas component of the victim support measures.

3.31 For those women who have been returned to their country of origin, voluntarily or otherwise, the AusAID programs will try to replicate offshore the Australian based Victim Support package. This assistance will aim at the reintegration of the women into their own country, particularly in relation to skills training that will minimise the women's vulnerability to being re-trafficked.<sup>21</sup>

3.1 Little detail of how the AusAID component of the package will operate has been provided to the Committee. It is clear that AusAID has a vital potential role in tackling the supply of sex workers at its source. As the International Commission of Jurists explained:

To deal effectively with the problem of trafficking it is necessary to understand the underlying causes, the most important of which are poverty and lack of education. The Protocol identifies poverty, underdevelopment and lack of equal opportunity as factors making persons, especially women and children, vulnerable to trafficking.<sup>22</sup>

3.32 Nevertheless, the reasons behind the economic migration of workers, in the sex industry and other areas, is part of a global phenomenon and one that is beyond either AusAID's or Australia's capacity to rectify.

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20 Ms Blackmore, *Proof Committee Hansard*, 26 February 2004, p. 15

21 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 15 & 18

22 Australian ICJ, Submission 8, p. 2. See also the comments of Ms Moyle, *Proof Committee Hansard*, 25 February 2004, p. 58.

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## **Agency coordination and the whole of government approach**

3.33 As is evident from the summary of relevant agencies set out above, an effective response to the problem of trafficking in women requires the effective coordination of policy, information and resources across all levels of government. The need for this coordination is well understood – Ms Blackburn of the Attorney General's Department telling the Committee that the government package specifically aims to provide 'a comprehensive and coordinated whole of government approach'.<sup>23</sup>

3.34 This section examines how this coordination process takes place and then assesses the effectiveness of the outcomes.

### ***Overview of coordination mechanisms***

3.35 There are a number of coordination mechanisms in place, ranging from general high level policy coordination, down to the operational level of individual investigations.

3.36 At the international level, the Australian government is involved in a number of regional diplomatic efforts to improve intergovernmental cooperation to combat trafficking, including two Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crimes (the Bali conferences). The Ministers for Foreign Affairs, Immigration and Multicultural and Indigenous Affairs, and Justice and Customs, led Australia's delegation to both these conferences. Senior officials also participated in:

legislative workshops which aim to assist countries develop suitable legislation to address trafficking in persons. With China, for example, Australia prepared model legislation on trafficking in persons. With Thailand, Australia is co-ordinating the next legislative workshop on 10-11 November 2003 which will have a specific focus on trafficking in persons. The head of the Office of the Status of Women led Australia's delegation to the Expert Group Meeting on the Prevention of International Trafficking and Promotion of Public Awareness Campaigns in the Republic of Korea on 22-23 September 2003.<sup>24</sup>

3.37 The AFP continue to negotiate Memoranda of Understanding with regional countries on developing police cooperation to combat transnational crimes, including trafficking of women.<sup>25</sup> Similarly, a senior officer of the ACC has recently conducted a seven-country tour of discussions on intelligence sharing. Mr Kitson commented that:

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23 Ms Blackburn, *Proof Committee Hansard*, 26 February 2004, p. 14

24 AGD, Submission 36, p. 11

25 AGD, Submission 36, Attachment: News Release, 13 October 2003, p. 15

In the countries I visited recently there was a widespread recognition of the nature of the problem, the scale of it and the need for international cooperation to address the issue. ... We have seen agencies in the countries that I have visited, which included the Philippines, Thailand, Malaysia, Singapore, Hong Kong and Korea, indicate to us that they are prepared to push intelligence through the AFP to us in areas where they may not previously have done so ...<sup>26</sup>

3.38 At the national level, there are five groups relevant to this inquiry and which consider (among other things) the trafficking of women for the sex trade:

- The Australian Police Ministers Conference (APMC).
- The Australian Crime Commission Board, which comprises the Commissioners of each of the State and Territory Police Forces, chaired by the Commissioner of the AFP, and including the Director-General of ASIO.
- The Australasian Crime Commissioners' Forum (ACCF).
- The Heads of Criminal Intelligence Agencies.
- The National Information Sharing Working Group.<sup>27</sup>

3.39 Within the context of the ACCF, the AFP is leading the development of the Australian Policing Strategy to Combat People Trafficking. The strategy will be finalised by the APMC in July 2004. The framework for this strategy has six focus areas: prevention, capacity and resources, victim assistance, partnerships, training and education, and regulation and legislation.<sup>28</sup>

3.40 At the Commonwealth level, and specific to the issue of the trafficking of women, is the interdepartmental committee comprising representatives of twelve agencies across the Commonwealth. This Committee was tasked with the development of the Commonwealth action plan and has a continuing responsibility to monitor and report on its implementation and to evaluate its effectiveness.<sup>29</sup>

3.41 At a more operational level, ACC officers have conducted briefings with state and territory police to ensure that they fully understand the ACC's powers and how to access them, which promises to improve the effectiveness of law enforcement agencies across all areas of their activities. The ACC also briefs local police

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26 Mr Kitson, *Proof Committee Hansard*, 26 February 2004, p. 48

27 AFP, Submission 37, p. 6

28 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 2 & 11. See also AFP, Submission 37, p. 3

29 Ms Blackburn, *Proof Committee Hansard*, 26 February 2004, p. 30



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commanders on ACC Board determinations and the type of information that the ACC is looking for.<sup>30</sup>

3.42 Mr Clark, the ACC General Manager of Intelligence Services, told the Committee that these efforts have seen the creation of an informal network that should ensure that the ACC's special investigative powers are used to best effect and that agencies such as the AFP and DIMIA get the best possible information.<sup>31</sup>

3.43 There have also been recent refinements to the relationship between DIMIA and the AFP. A key document covering the relations between DIMIA and the AFP in relation to the investigation of the trafficking in women is the February 2002 Service Agreement which puts in place formal arrangements for the referral of investigations by DIMIA to the AFP.

3.44 This agreement was tightened in May 2003, with the signing of a protocol:

The May 2003 protocol has been designed with very low thresholds for referral to the AFP. In practice this translates to any possible trafficking-related matters that come to DIMIA attention being immediately referred to the AFP for further investigation regardless of whether elements of sexual servitude offences are detected. This is a change in practice as previously DIMIA staff investigated matters more thoroughly to establish and validate facts before referring to the AFP.<sup>32</sup>

3.45 In return, the agreement also requires the AFP:

to advise DIMIA whether the matter is accepted for investigation. Where a matter is not accepted for investigation, the AFP is required to advise DIMIA why the matter was not accepted and, where appropriate, to recommend alternative methods of handling the matter.<sup>33</sup>

### ***Effectiveness of the coordination and communication***

3.46 It is evident from the amount of coordination work, that the need for coordination is well understood by Australian law enforcement agencies. As Detective Superintendent Migro of the Western Australia Police Service told the Committee:

One of the big things we need to be effective as law enforcement is for us all to be linked, working together.<sup>34</sup>

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30 Mr Milroy, *Proof Committee Hansard*, 26 February 2004, p. 47

31 Mr Clark, *Proof Committee Hansard*, 26 February 2004, p. 45

32 DIMIA, Submission 38, p. 2

33 DIMIA, Submission 38, p. 2

34 Det Supt Migro, *Proof Committee Hansard*, 25 February 2004, p. 51

3.47 However, in the course of the inquiry two problems have become apparent. Firstly, at a national level, the objective of a 'whole of government approach' may be undermined by the absence of any single final authority responsible for the outcome. Secondly, at the operational level, it seems likely that there are still gaps in the 'trip wires' that set off investigations.

*where does 'the buck stop'?*

3.48 During the questioning of agencies during public hearings, it became apparent to the Committee that a problem with existing organisational arrangements is the absence of any single officer who is ultimately answerable for the Commonwealth government response to the trafficking of women.<sup>35</sup> Government officials argued that, given that the package is a 'whole of government response', involving a number of different agencies, there is not – and cannot be – any single point of authority since 'there is no single Commonwealth government or state agency that is capable of delivering that whole range of services.'<sup>36</sup>

3.49 Thus, the focus is on the coordinating mechanism between agencies – the Interdepartmental Committee, that includes representatives from twelve agencies. Each of the agencies is responsible for their relevant part of the overall package, and while the Attorney General's Department is the coordinating agency, it does not have any operational authority over other agencies on the committee. As Ms Flanagan of the Office of Status of Women explained, the interdepartmental committee continues to meet and monitor the program as it is implemented:

I would have thought – and it has happened with other interdepartmental committees that I have worked on over the years – that if there are issues that go across a number of portfolios the appropriate place to address those is within the interdepartmental committee or in discussions between officers so that we can try and come up with solutions.<sup>37</sup>

3.50 The Committee accepts the need for these coordinating efforts, but remains concerned with any system that ultimately depends on 'management by Committee'. The problems with such a system are legendary and derive from the fact that, while each agency represented at the interdepartmental committee has its particular responsibilities and focus, there is no-one who is responsible for making sure that the overall system actually works.

3.51 Realistically, it is too early in the implementation of the program to make any final judgements, but the Committee notes that this problem has characterised much of the government's approach to trafficking in the past. As Project Respect commented:

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35 see for example, the discussion with officers of the Attorney General's Department in the *Proof Committee Hansard*, 26 February 2004, p. 29 et seq; and with the Office of the Status of Women, *Proof Committee Hansard*, 30 March 2004, p. 2-7.

36 Ms Blackburn, *Proof Committee Hansard*, 26 January 2004, p. 29

37 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 7

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Traffickers are resourceful, flexible and opportunistic. They operate across state and international borders. To challenge traffickers, it is necessary to show some of the same qualities. However, at present, government agencies often operate in isolation, and key responsibilities are divided across local, state and federal government. ...

At present, there is no one body receiving trafficking-related information or coordinating responses to traffickers nationwide.<sup>38</sup>

3.52 Similarly, former police officer Christopher Payne explained to a Parliamentary seminar that the basic problem has always been one of systems:

Federal Police are a scarce resource so are saved for organised crime. Scooping up illegal immigrants is not organised crime so this function was given to immigration compliance officers.

When compliance officers encounter organised crime, they are supposed to report it to the AFP, who will then determine if they will investigate it or not, depending on resource demands at the time.<sup>39</sup>

*gaps in the fence?*

3.53 The second problem is more operational, and relates to agency cooperation. As was evident in the preceding chapter, the first challenge for law enforcement agencies is often becoming aware of the potential existence of women being held in a given location. Since prostitution is legal in most states and territories in Australia, police no longer routinely enter or search brothels. They therefore rely on information from agencies, groups or individuals that do routinely go inside brothels to alert them to the possible presence of trafficked women. Most prominent of these sources are DIMIA, state and local government agencies, and groups such as Scarlet Alliance or Project Respect.

3.54 However, the evidence suggests that at least some of the time, the necessary cooperation and information sharing does not happen. In Victoria, for example, the Yarra Council gave evidence of the need for effective backup for Council officers:

There seems to be a major disjunction between us – we have all the access but no real capacity to deal with the problem – and the people who now have legislative and other mandates to police brothels but who cannot be in every brothel, legal and illegal, in Australia twice a year to keep an eye on the problem. Not that we want to take on those powers, not that we want to

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38 Project Respect, Submission 25, p. 13.

39 Mr Christopher Payne, 'Trafficking and Sexual Servitude in Australia', Department of the Parliamentary Library – Vital Issues Seminar, 20 August 2003, p.4 [Transcript] See also ABC Radio National, The Law Report, 'Human Trafficking', 15 November 2000, p. 4

get involved; we would just like to be able to phone a help line and have the whole thing dealt with.<sup>40</sup>

3.55 However, the City of Yarra Council has no formal protocols for information exchange with the Victoria Police, the AFP, or DIMIA. Despite the City of Yarra including areas containing a high number of brothels, and with Council workers having routine contact with these businesses, DIMIA has reportedly shown no interest in working collaboratively.<sup>41</sup>

3.56 The key problem is one of jurisdiction. Each agency focuses on its own particular task which may not have anything to do with detecting trafficked women. Since an agencies powers are granted and limited by legislation, this focus is to a large extent appropriate, however it can lead to frustrating institutional myopia. For example in the City of Sydney, which includes within its new boundaries perhaps the highest concentration of brothels and sex workers in Australia, evidence given to the Committee suggests that council officers see their role exclusively in terms of planning approvals and have little interest in trafficking issues.<sup>42</sup> In contrast, organisations such as the Sex Worker Outreach Project in Sydney, which have almost unparalleled access to sex workers, are hampered by the fact that they rely on the cooperation of the brothel owners and cannot be seen to take an enforcement or compliance role.<sup>43</sup>

3.57 Similarly, DIMIA's jurisdiction and role is limited by law to a person's migration status. As Mr McMahon noted: 'once people have a legal status, we have no interest in them other than as to whether or not they are meeting the conditions of their visa.'<sup>44</sup>

3.58 In enforcement terms, this also means that DIMIA's legal task is to remove unlawful non-citizens from the country in accordance with the requirements of the Migration Act, not to develop a case for prosecution under the criminal law.<sup>45</sup> As became evident in the past, this can have the perverse result that trafficked women are efficiently deported from Australia before they could be protected or their evidence used in prosecutions.

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40 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 3

41 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 11

42 See generally the evidence given by Mr Miles, *Proof Committee Hansard*, 25 February 2004, p. 1

43 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 16-17

44 Mr McMahon, *Proof Committee Hansard*, 26 February 2004, p. 38

45 a point noted by the Hon Mr Kerr, *Proof Committee Hansard*, 25 February 2004, p. 45

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## ***Conclusion***

3.59 The Committee accepts that many of these problems are inevitable and in a complex jurisdictional environment, sometimes insoluble. Nevertheless, much can be done to minimise the impact of traffickers slipping through the jurisdictional cracks.

3.60 The Committee commends the government for the creation of the interdepartmental taskforce. Bringing together all key agencies is a necessary first step in coordinating a 'whole of government approach', and the evidence suggests that this has already resulted in significant progress. However, the Committee is still concerned at the absence of a more formalised final responsible authority at the Commonwealth level.

3.61 The Committee considers that a useful, but administratively feasible, reform would be the formalisation of the Interdepartmental Committee (IDC), with the appointment of a Chairperson, and a committee charter or terms of reference. This committee would have formal responsibility for addressing coordination issues on an ongoing basis and have the capacity (and obligation) to issue recommendations to the relevant authority (at any level of government) to address defects in the system. While the IDC would not have any direct power, a formalised responsibility would have the benefit of ensuring that problems were tackled and the relevant agency alerted to their responsibility to respond.

3.62 Importantly, the IDC should be obliged to respond to issues referred to it within a set timeframe – reflecting the response timeframes operating in other parts of the system such as the AFP/DIMIA communications protocol.

3.63 Finally, to ensure that the IDC does not outlive its usefulness and become a bureaucratic irrelevance, it should review its functions after eighteen months in operation, and make a recommendation on its future.

## **Recommendation 2**

**3.64 The Committee recommends the formalisation of the existing Interdepartmental Committee (IDC), by the appointment of a Chairperson and charter, which should state the IDC's formal responsibility for addressing coordination issues and its authority to issue recommendations to any relevant authority to address defects in the system.**

**3.65 The IDC charter should require the IDC to issue a response to matters referred to it within a stipulated timeframe.**

**3.66 The IDC charter should require the IDC to review its functions after eighteen months in operation and make a recommendation on its future.**

## **Protection and support of trafficking victims**

3.67 A central change introduced by the Commonwealth action plan is the victim support measures for the victims of trafficking. As noted above, responsibility for these measures was given to the Office of the Status of Women. In order to make the support measures available as soon as possible after the announcement of the package, an interim support package was arranged with Centrelink, which operated from 5 January 2004, while tender specifications for the main contract were released on 6 December 2003, with a closing date of 29 January 2004. In April 2004, a contract was awarded to Southern Edge Training.<sup>46</sup>

3.68 The Victim Support package comprises two phases.

3.69 Phase 1 goes for a maximum of 30 days and is triggered after the person has been assessed by the police as being a victim or a suspected victim of trafficking offences and of interest to them for the investigation or prosecution of a trafficking offence. They are then given a bridging visa, which, once granted, entitles them to access the victim support. This period is designed to give the women a 'breathing space' or 'reflective delay' to recover mentally and physically, in which they can consider their situation and options in a place of safety, and was an aspect of victim support recommended by a number of submissions.<sup>47</sup>

3.70 Officers of the OSW told the Committee that benefits under the first phase are modelled on programs such as those for humanitarian settlement, asylum seekers and refugees and aims to provide a flexible and tailored package of assistance. It includes:

- a one-off start-up allowance to buy toiletries and clothing;
- accommodation and a food and living allowance;
- immediate availability of medical and pharmaceutical treatment and counselling;
- access to various forms of training, such as English language training and other training that might be deemed to be suitable; and
- up to three appointments with a legal practitioner.

3.71 Assistance provided under the first phase is intended to be flexible and entirely driven by the case managers' assessment of their needs. As Ms Flanagan of the OSW explained:

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46 Senator the Hon Kay Patterson, Media Release 20 April 2004, 'Trafficking victim support contract awarded.'

47 Eg Victorian Immigrant and Refugee Women's Coalition, Submission 12, p. 1; Darwin Centre Against Rape, Submission 16, p. 2

It relies on the individual case manager, who speaks to you as a victim and asks, 'What do you need? Do you have to learn how to go shopping?' Centrelink has been taking people shopping, showing them how to catch a bus and how to buy a bus ticket – things which we would consider to be basic living skills but which these people have not had the opportunity to learn in Australia.<sup>48</sup>

3.72 It may also involve the case manager arranging for and accompanying the person to meet with a migration officer.<sup>49</sup>

3.73 Moving to phase 2 depends on whether it has been established that the victim may be able to assist in the prosecution of offenders. At that stage a Criminal Justice Stay Visa is granted and a different range of support measures come into effect. As such, the victim support package is driven by the visa regime.

3.74 In phase 2 the victim is able to access special benefit and rent assistance (currently around \$12,600 per year including rent assistance, and set at the same level as the unemployment benefit<sup>50</sup>), and continue to have access to medical, pharmaceutical, counselling and training assistance.

3.75 Women under the program also have work rights in Australia while under Phase 2.<sup>51</sup>

### ***The need for protection and support***

3.76 The basic reasoning behind the Victim Support package is clear and twofold.

3.77 The first is underpinned by the recognition that trafficked women are victims of crime – in many cases including rape, violence, and incarceration. As described in chapter 2, women coming out of these situations are also likely to suffer significant mental and physical health problems. As such, these women have a fundamental right to receive care and a right that 'is crucial to women's recovery from the violence and exploitation they have experienced.'<sup>52</sup> Ms Maltzahn of Project Respect reiterated this view to the Committee during hearings:

The first issue is the most fundamental: that is, the issue of victim support ... We would argue very strongly that victim support should be seen not

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48 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 13

49 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 14

50 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 8

51 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 5

52 Project Respect, Submission 25, p. 16. See also Miss Wczfwski, Submission 3, p. 1; WRANA, Submission 33, p. 1

simply as a way of encouraging women to give evidence but as something of value in itself.<sup>53</sup>

3.78 Mr Iselin, a former AFP officer, argued in his submission that the core of the government's response must be restorative justice:

In trafficking, adopting a restorative justice approach is what occurs often now in rape and child abuse responses where the emphasis is on helping the victim first. If a criminal prosecution can be launched then that is all the better but it is secondary to helping the victim.<sup>54</sup>

3.79 The second issue is that the cooperation of the victim is crucial to the success of investigations and successful prosecutions:

Victim led prosecutions will continue to be the case for the foreseeable future while law enforcement agencies in countries such as Australia begin to acquire the capabilities and resources for proactive, intelligence-led investigations.<sup>55</sup>

3.80 As Mr Iselin points out, the cooperation of the trafficked woman is closely linked to her protection:

Paramount in a victim's mind is not what will happen to the trafficker, but what will happen to them. All effort put into a case that deals with trafficked victims will result in nought if the investigating staff cannot help to answer this obvious question of the victim. If there is doubt in the mind of the victim that they will be safe and secure after trial and in a better position than before, we will absolutely not achieve viable criminal justice outcomes.<sup>56</sup>

3.81 For law enforcement agencies a further consideration is that, while sex workers may be willing to talk, their evidence cannot be used in a trial unless the women are prepared to testify in court, since the defence must have the opportunity to test the evidence in cross examination. This means that women providing evidence must either remain in Australia for the duration of the trial process – which can take years – or undertake to return to Australia for court appearances. The Committee heard evidence of one example in which a trafficked woman was identified in around 1998, but the whole trial and appeal process was not finished until as late as mid-2002.<sup>57</sup>

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53 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 31

54 Iselin Consulting, Submission 6, p. 5

55 Ms Gallagher, Submission 23, p. 8

56 Iselin Consulting, Submission 6, p. 9

57 Detective Senior Sergeant McKinney, *Proof Committee Hansard*, 25 February 2004, p. 42



3.82 According to Project Respect, UK research finds that only a small minority of trafficking victims testify:

the rest ask to be deported, preferably within 48 hours, ‘fearful that their exploiters will think they have given evidence against them, and carry out threats made to themselves and their families.’ Clearly trauma from violence experienced also impacts on their choices.<sup>58</sup>

3.83 However, proper protection of the women can significantly improve these outcomes. Again quoting UK research, Project Respect point out that in countries where there are specialist non-government organisations who offer support, up to 50 per cent of women testify.<sup>59</sup>

### *Scope of protection*

3.84 Notwithstanding these imperatives, providing adequate protection presents significant problems. Protection must begin with physical security for the woman in Australia, but must also extend to the provision of accommodation, food, access to medical services, legal and immigration advice, and interpreters. Given that trafficked women will frequently view law enforcement authorities with suspicion and fear,<sup>60</sup> it is also desirable that these support services be provided by non-police or better still, non-government organisations.

3.85 These elements, although they can be expensive, are relatively easy to provide.

3.86 Much more complex is the situation in which a woman returns to her country of origin either before, during or after the trial of those who trafficked her. Given the international nature of the trade, it is readily foreseeable that criminals will be aware that a woman has provided assistance to Australian law enforcement authorities and will seek retribution. As Detective McKinney commented:

You have this network of people who recruit women from overseas. They know where they live; they know their families; they know everything about them – that they are bar girls or whatever.<sup>61</sup>

3.87 However it is almost impossible for Australian authorities to offer guarantees of safety for the women once they have left the country. Equally, even where a woman remains in Australia and is protected, Australian authorities cannot provide

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58 Project Respect, Submission 25, p. 15

59 Project Respect, Submission 25, p. 16

60 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 6 & 10

61 Detective Senior Sergeant McKinney, *Proof Committee Hansard*, 25 February 2004, p. 43

any guarantee of safety to the woman's family or friends in the home country, who may also be the targets of retribution.<sup>62</sup>

3.88 This problem is to some extent insoluble, since effective protection in these cases involves taking action in countries outside of Australian legal jurisdiction. Detective McKinney told the Committee of an example in which a witness had agreed to assist with the prosecution, but then wanted to return home:

She was here for 14 or 15 months and we were in contact with her regularly. Her brother had a car accident and she wanted to go home to see her brother and her mum – because, again, she was a young girl. So she left the country. ... The trial date was not set for another 10 or 11 months. We stayed in contact with her up until then. You go through all your preliminary hearings and all your filing hearings and so forth until you actually get to a trial date. As soon as the trial date was set, we rang to tell her that we would have to arrange tickets for her to be back here on such-and-such a date. She was gone. She was nowhere to be found.

Her sister got a letter from her that said, 'I'm in America. I'm being held in America. I'll be home soon.' We do not know whether she is being held against her will or held in detention.<sup>63</sup>

### ***The adequacy of the victim support package***

3.89 The Committee commends the government for its recognition of the need for thorough victim support and the provision of the victim support package.

3.90 However, a matter of concern to the Committee is the adequacy of the payments made to women in the victim support program. It is the Committee's view that there are obvious problems setting the support payments at the 'Special Benefit' level of around \$12,600 per year, out of which women in the scheme must also pay for their accommodation.<sup>64</sup> At the heart of this issue is equating trafficked women who are assisting police inquiries – potentially at great personal risk – with categories such as asylum seekers and refugees. This matter was put to government officials by the Hon Mr Kerr:

You are saying to them that they can have a very reduced standard of living, the threat of retribution, circumstances where they may be the subject of threats and intimidation, the prospect that at some stage the prosecution may not proceed and their abuser will still be out there ready to take revenge, ultimately they may have to go home into circumstances where they will be in danger and so on. What are we being told? The

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62 a point noted by the Women Lawyers of Western Australia, Submission 18, p. 3. see also Iselin Consulting, Submission 6, p. 4

63 Detective Senior Sergeant McKinney, *Proof Committee Hansard*, 25 February 2004, p. 43

64 Support for victims of people trafficking programme, Attachment D, Communication and operation protocol, p. 31

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framework that is so attractive to these folk is a maximum of \$12,500 ...  
Frankly, you are asking an awful lot of people.<sup>65</sup>

3.91 Furthermore, it is readily foreseeable that someone who has been trafficked into the sex industry and is facing an indefinite future in Australia with relatively few skills and meagre means is likely to continue as a sex worker while under the protection of the scheme:

They have been placed into a situation – whether or not they were in it beforehand – where they have learnt that their bodies are marketable commodities. When they do not get sufficient resources to support themselves through other means, they fall back on something that they have, sadly, learnt to do.<sup>66</sup>

3.92 If the proposed level of financial benefits is considered inadequate, what should the program provide instead? It is relevant to note that people coming within the National Witness Protection Program or similar State or Territory programs<sup>67</sup> may be given financial assistance of varying amounts. The increased benefits paid to trafficked women in these circumstances would not add substantially to the overall costs of the program given the small number of women involved. At the same time, these additional costs may be a modest price to pay relative to the significant public policy benefits that the program aims to deliver – the conviction of organised crime people traffickers.

3.93 The Committee notes the view of the Office of the Status of Women that the program, in the short time it has been in operation, has enjoyed a 100% success rate, 'in that all of the victims who have been identified are still with the program'.<sup>68</sup> This implies that participants themselves consider the program to be attractive.

3.94 Nevertheless, it is also the case that the bulk of trafficked women who come to the attention of Australian authorities – many of whom are deported – do not wish to stay in the country or assist police with their investigations. Provision of a more adequate level of financial support may go far in assisting some of these women to agree to stay in Australia and testify.

### **Recommendation 3**

**3.95 The Committee recommends the urgent reassessment of benefits payable to women under the victim support scheme. Given that a precondition of participation in the scheme is the women's preparedness to assist Australian law enforcement agencies to prosecute traffickers, it would be appropriate for**

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65 The Hon Mr Kerr, *Proof Committee Hansard*, 30 March 2004, p. 9

66 The Hon Mr Kerr, *Proof Committee Hansard*, 30 March 2004, p. 12

67 Established for example, under the *Witness Protection Act (1994)* Cth, or the *Witness Protection Act (1995)* NSW.

68 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 10

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**women under the scheme to receive benefits benchmarked against those afforded to witnesses under the Witness Protection Scheme.**

***Police and DIMIA handling of trafficked women***

3.96 A matter that is virtually a prerequisite for the effectiveness of both the government program in general, and the victim support measures in particular, is the sensitivity and adequacy of police and DIMIA handling of trafficked women. It is obvious that women who have fallen victim to this crime will often be traumatised, disorientated and vulnerable.

3.97 The Committee heard evidence that criticised the AFP handling of individual cases, which related in particular to intimidating and insensitive police interviewing techniques.<sup>69</sup>

3.98 In response, the AFP stressed that many of the issues that are involved with dealing with trafficked women, including the need for interpreters and social workers, are no different to police dealings with many victims of crime, especially the victims of sexual assaults. As such, the police – both AFP, State and Territory police services – have well established training and protocols for dealing with these situations. As Mr Keelty told another Committee:

Part of the core training of investigators in the organisation is how to deal with these witnesses and also how to access assistance for witnesses in terms of some of the welfare agency services that they can access. That does occur, and it occurs in a whole range of offences, not just this one.<sup>70</sup>

3.99 It is also AFP policy that female sex workers would always be interviewed either by a female police officer or at least with a female present.<sup>71</sup>

3.100 Nevertheless, it is also clear that there is an important role for non-government organisations in providing support to trafficked sex workers. One witness, with wide experience of the industry and the treatment of these women by authorities, argued that each of these women should have access to an entirely independent support person who is neither police nor government.<sup>72</sup> Support organisations such as Project Respect and the Scarlet Alliance are likely to be particularly effective in these support roles, by reason of their deep understanding of the industry. According to the Project Respect:

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69 Confidential evidence

70 Mr Keelty, Legal and Constitutional Legislation Committee, *Estimates Committee Hansard*, 27 May 2003, p. 335

71 Mr Keelty, Legal and Constitutional Legislation Committee, *Estimates Committee Hansard*, 27 May 2003, p. 333

72 confidential evidence

The principle of providing independent support and advice to victims of crime is clearly recognised across Australia. In Victoria (as in other states), in relation to sexual assault, this is expressed through a protocol between Victoria Police and Centres against Sexual Assault (CASAs) that requires the police to contact CASAs if women make allegations of recent sexual assault.<sup>73</sup>

3.101 The Committee acknowledges the important role of non-government organisations play in providing overall support for victims, and notes that this role will be provided by the independent case worker provided under the victim support scheme.

### ***Linking victim support to prosecution***

3.102 A criticism of the adequacy of the victim support arrangements is that access to it depends on both a woman's cooperation with law enforcement agencies, together with these agencies' judgement that the woman will be of assistance to their investigation. As a government official explained, the proposed system is tied into the visa system: those who stay, do so under a Criminal Justice Stay Visa which is only granted on the basis of the person's role in a prosecution. If a victim of trafficking is found, but for whatever reason is not considered useful to the prosecution, they will be deported.<sup>74</sup>

3.103 Under some circumstances, this arrangement is likely to be in conflict with the principle (discussed above) that as victims of crime, these women deserve protection and support irrespective of their role in the prosecution. As Ms Maltzahn from Project Respect told the Committee:

If we have a position that says we should support victims because we need them for prosecutions, in some ways we are replicating the experience they have already had – which is about being used for somebody else's gain.<sup>75</sup>

3.104 At a practical level, it is also possible that the focus on a woman's usefulness to the prosecution may lead to iniquitous results. For example, a woman may agree to provide evidence in an investigation, but for various reasons, a prosecution does not eventuate. This woman would be liable to return to her country despite having given assistance and as a result, is vulnerable to retaliation by traffickers.

3.105 Further, since the criminal justice visas are only temporary, the women are liable to be returned to their home country once court proceedings are complete.

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73 Project Respect, Submission 25, p. 17. See also Scarlet Alliance, Submission 27, p. 15; WRANA, Submission 33, p. 1

74 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 15

75 *Committee Hansard*, 18 Nov 2003, p.31

3.106 It is also clear that the offshore protection and support arrangements, to be provided by AusAID, are not capable of guaranteeing any meaningful levels of safety to returned women or their families.

3.107 Finally, Mr Brian Iselin argues that:

there is good reason not, in our common law system with adversarial criminal justice processes, to link residency with testimony. There is a very obvious point to be scored for defence lawyers if in fact residency is granted conditional to testifying, for the intent behind the testimony comes into question and is easily turned to discredit the victim. It is in this regard also important not to link the two.<sup>76</sup>

3.108 However, it must also be recognised that the alternative – automatic assistance and visas for all women identified as having been trafficked – may be counterproductive, with the perverse effect of creating an incentive for women to come to Australia and claim to have been trafficked as a 'backdoor' way to secure entry. This may also inadvertently increase demand for the services of people traffickers.

3.109 As concluded in chapter 2, it is also likely that many of the trafficked women who are detected by DIMIA or police, have voluntarily come to Australia with the intention of working in the sex industry, and cannot be considered victims of sexual servitude. It is also recognised that where there are concerns relating to the return of women who have been on a criminal justice visa, the women may be granted a protection visa allowing them to remain in Australia.<sup>77</sup>

3.110 The Committee concludes that it is appropriate for assistance under victim support scheme to be tied to their cooperation with, and value to, the prosecution.

### **Awareness raising program**

3.111 As noted above, the Commonwealth Action Plan includes a community awareness raising program worth \$630,000, to be delivered by the Attorney General's Department. According to the Department, the project will have two major streams:

First, it will target the legal sex industry, the community health and welfare sectors, and non-government organisations with a specific focus on these issues. Second, it will provide accurate information on this issue to encourage informed community debate and raise awareness of the issue. In both streams, the goal will be to raise awareness and alertness to the issue of trafficking in persons for sexual servitude, helping the identification of potential victims or potential traffickers, and highlighting channels for

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76 Iselin Consulting, Submission 6, p. 10 – a point also made by Project Respect, Submission 25, p. 25

77 Note that the issue of detention and removal of trafficked women is considered separately in Chapter 4.

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reporting information to the relevant authorities for further investigation. The project will also raise awareness about the range of victim support measures, to encourage victims themselves to come forward. The project will be carefully designed in close consultation with the sex industry, outreach and advocacy organisations, service providers and professionals in the community health and welfare sector, and the media.<sup>78</sup>

3.112 Further details of the package were provided by Senator Ellison, Minister for Justice and Customs:

The strategy comprises four stages over four years at a total cost of \$0.4 million from the Government's overall \$20 million package of anti-trafficking initiatives announced on 13 October 2003. The tender process for stage one, exploratory and developmental research, is now underway. In accordance with Australian Government requirements for communication activities, five consultants have been selected and asked to submit a proposal. ... The successful tenderer will be assisted by a specialist project advisory group and will be required to directly consult and liaise closely with key non-government organisations.<sup>79</sup>

3.113 Project Respect warned that this awareness raising must be tightly focused to be effective. According to Project Respect, the most important priority for awareness raising is for women in the sex industry. Although accessing women in some situations can be very difficult, once the message is put out into the sex worker community:

people talk. It may only be one in a hundred or one in a thousand, but those women may be able to get information. So, if you can get information out there that has a hotline number, they may be able to access it.<sup>80</sup>

3.114 The second priority is men who go to prostitutes, as it is often the customers who help women escape.<sup>81</sup> The awareness campaign may also be able to play a valuable role in getting men who use sex workers to actively ensure that they are not buying women who are trapped in these situations.<sup>82</sup> An illustrative example of the current environment was given by Project Respect of an interviewer who asked one of the sex workers:

about how men approached her, and she said that out of the 500 customers she had, because it was a 500-job contract, four men had asked her if she was okay. It is interesting that obviously 496 people approached her as if

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78 AGD, Submission 36, p. 12

79 The Hon Senator Ellison, Minister for Justice and Customs, Senate Hansard, 30 March 2004, p 21984

80 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 36-37

81 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 36-37

82 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 49

her welfare was entirely irrelevant to what they were buying and as if their right to whatever service they wanted overrode how she was as a person, whether that was in terms of the violence of trafficking or other things. So addressing the demand is, I suppose, saying that men have a responsibility to ensure that they are not buying women in these situations ... .<sup>83</sup>

### **Conclusion: the effectiveness of the Commonwealth government response**

3.115 It is evident that the Commonwealth government has implemented a substantial and wide ranging response to the problem of trafficking. Although it is too early in the program to make any realistic judgements as to the effectiveness of the program, it seems likely that it will go a considerable way to addressing earlier limitations in Australia's response to the problem of trafficking of women for sexual servitude.

3.116 While there have been no prosecutions or convictions since the enactment of the Commonwealth sexual slavery laws in 1999,<sup>84</sup> as at February 2003, the AFP had commenced 62 investigations, with fifteen current investigations resulting in ten arrests and 35 charges.<sup>85</sup> As well, at the time of writing, five women were receiving benefits under the victim support scheme.<sup>86</sup>

3.117 The Committee commends the government for its initiatives and its progress to date.

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83 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 49. See also the comments of Ms Costello, same page, and Project Respect, Submission 25, p. 11

84 The only successful prosecution having occurred in Victoria, although not under the sexual slavery laws. Det Snr Sgt McKinney, *Proof Committee Hansard*, 25 February 2004, p. 33 et seq

85 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 3. See also Mr Keelty, Legal and Constitutional Legislation Committee, *Estimates Committee Hansard*, 27 May 2003, p. 331

86 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 20