

Chapter 4

Australia's legal response

Introduction

4.1 This final chapter addresses the third term of reference: 'the adequacy of the current legislative framework.'

4.2 In doing so, the chapter necessarily commences with a survey of existing relevant law in Australia, and then analyses the extent to which it is adequate to meeting operational requirements, Australia's international legal obligations, and the needs of the victims of the trafficking trade.

Offences under current law

4.3 The law which applies to sexual servitude and trafficking in women has a strong Commonwealth focus, but there are some state offences which apply.

Commonwealth offences

4.4 The Commonwealth legislation includes provisions principally under the *Criminal Code Act 1996* ('the Code').

4.5 The Committee notes that the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 added the offences set out in Division 270 of the Code. These offences include sexual servitude, slavery, sexual slavery and deceptive recruiting. Sexual servitude is defined in the Code as 'the condition of a person who provides sexual services and who, because of the use of force or threats is not free to cease providing sexual services; or is not free to leave the place or area where the person provides sexual services'.

4.6 The offence of causing another person to enter into or remain in sexual servitude (s.270.6) attracts maximum custodial penalties varying from 15 years (offences involving adults) to 19 years (for offences involving people under the age of 18).

4.7 Slavery is also defined in the Code at section 270(1) as 'the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.' There is a maximum custodial penalty of 25 years imprisonment for this offence.

4.8 Section 270(7) states that the deceptive recruiting offence is committed where a person deceives another about the fact that the work they will be doing includes sexual services. The recruiter is a person who:

with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about the fact that the engagement will involve the provision of sexual services ...

4.9 The penalty is seven years imprisonment, and nine years where the victim is under 18 years.

4.10 The submission from the Attorney General's Department observes:

Both the deceptive recruiting and sexual servitude offences apply to Australian citizens and residents who commit the offences overseas, persons who commit the conduct overseas where the sexual services are to be provided in Australia, and persons who commit the conduct in Australia where the sexual services are to be provided overseas.¹

4.11 The Committee notes that this is consistent with the relevant offence provisions for child sex tourism under part IIIA of the *Crimes Act 1914*.

4.12 The Code also contains the offences of people smuggling,² aggravated people smuggling (for circumstances in which the exploiter's conduct causes the victim of people smuggling to enter into slavery or sexual servitude),³ and enforced prostitution.⁴ In addition, the making, providing or possessing of false travel or identity documents is prohibited under Section 73(8) of the Code, with similar provisions in the *Migration Act 1958*, concerning the presenting of false documents, or misleading statements.⁵

4.13 The submission from the Attorney General's Department points out that the people smuggling offences can capture many instances of trafficking, although there is a distinction between people smuggling and people trafficking:

It is important to distinguish between people smuggling ... and people trafficking. The Protocol Against the Smuggling of Migrants by Land, Sea and Air, which also supplements the United Nations Conventions against Transnational Organised Crime, defines 'smuggling in migrants' as: 'the procurement, in order to obtain directly or indirectly a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.'⁶

1 AGD, Submission 36, p. 6

2 Section 73(1)

3 Section 73(2)

4 Section 268(16)

5 Section 233A

6 AGD, Submission 36, p. 7

Recent developments

4.14 Apart from the Commonwealth Action Plan as noted in Chapter 1 there are other proposals before the Parliament which would support the work of other agencies in this area.

Australian Crime Commission Amendment Bill

4.15 During the process of preparing corresponding State legislation, the *Australian Crime Commission Act 2002* was found to have a number of limitations which inhibited the functioning of the Commonwealth/State co-operative scheme and the conferral of functions, duties and powers on the ACC under State legislation.

4.16 To address these issues, the ACC Amendment Bill was introduced into Parliament in late 2003. The Bill enables the ACC to investigate and conduct intelligence operations in relation to serious and organised crimes that are offences under State legislation.⁷ The implications for the offences in Division 270 and of the Criminal Code are that when similar State offences such as those relating to sexual servitude under Division 10A of the *Crimes Act 1900 (NSW)* are involved, the ACC will be able to investigate the full range of activity in co-operation with the state police, without the need for more complex arrangements.

Telecommunications Interception Amendment Bill 2004

4.17 The Telecommunications Interception Bill 2004 contains provisions which clarify the application of the *Telecommunications (Interception) Act 1979* to:

both users of the Australian telecommunications system whose communications are intended to be protected by the Act, and to those law enforcement and investigative bodies who may require access to communications in the course of the performance of their functions.⁸

4.18 There are specific amendments which address the issue of stored communication and delayed message services such as SMS messaging. The provisions specify when a communication is passing over a telephone system – and therefore when an interception warrant is required.

4.19 For law enforcement agencies, the amendments clarify the agencies' capacity to gain access to data transmitted via telephones, and thereby assist investigations into organised crime networks including those involved in trafficking for sexual servitude.

State provisions

4.20 Queensland, Victoria and Tasmania have no specific sexual servitude provisions but there are generalised criminal offences which can be applied to

7 Australian Crime Commission amendment Bill 2003, Explanatory Memorandum, p. 2

8 Australian Crime Commission amendment Bill 2003, Explanatory Memorandum, p. 6

trafficking. For example, in Victoria, Part 2 of the *Prostitution Control Act 1994* prohibits forcing a person into, or remaining in prostitution against their will.

4.21 The remaining states (with the exception of Western Australia, where the *Criminal Code Amendment Act 2004*, covering sexual servitude offences, commences on 22 May 2004) have legislated against sexual servitude offences within their respective jurisdictions. The Attorney General's Department submission notes that the penalties are compatible with those imposed by the Commonwealth,⁹ although it should be noted that these offences cover 'purely domestic activity'.

International law

4.22 The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children is the primary international source of international law relating to the issue.¹⁰ The principal requirements of the Protocol are that:

- states criminalise trafficking and provide assistance to victims;
- victims be allowed to stay in the state temporarily or permanently;
- repatriation of victims should preferably be voluntary; and
- states undertake to establish public education programs for prevention and for victim protection.¹¹

4.23 Although Australia has signed the Protocol, it has not yet ratified it, and a number of submissions called for Australia's ratification of the Protocol as an essential step in dealing with trafficking in women for sexual servitude.¹²

4.24 Human rights instruments such as the *International Covenant on Civil and Political Rights* and the *Convention on the Elimination of all Forms of Discrimination Against Women* may also be relevant to informing Australia's obligations. The Australian section of the ICJ points out that since children may also be victims of sexual trafficking, the provisions of the *Convention on the Rights of the Child* will also apply in certain circumstances.¹³

Adequacy of Commonwealth law

4.25 In the context of the legal framework set out above, several issues emerge in relation to the adequacy of current Commonwealth laws. These include whether:

9 AGD, Submission 36, p. 8

10 Australian ICJ, Submission 8, p. 1

11 Australian ICJ, Submission 8, p. 2-3

12 See for example, submissions 8, 9, 13, 16 and 17.

13 Australian ICJ, Submission 8, p. 3. Australia is a signatory to all three of these international instruments.

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- existing provisions are broad enough to cover the criminal activity involved in the trafficking of women;
 - Australia's laws and procedures comply with its international legal obligations; and
 - the operation of the Migration Act is appropriate to trafficked women.

4.26 In answering these questions, the Committee notes that many of the points raised in submissions to this inquiry have been overtaken by events and have been addressed within the Government's package, announced in October 2003.

Commonwealth laws and the trafficking crime

4.27 Although the enactment of the sexual servitude laws in 1999 represented a clear advance on the existing legislation, evidence to the inquiry suggests that the legislation contains several limitations to its effectiveness.

4.28 The first problem is that the structure of the offences contained in the Criminal Code may not adequately match the operational methods of the trafficking trade, as described in Chapter 2. In particular, the Commonwealth legislation does not expressly provide offences that cover the recruitment, transportation and transfer of the trafficked women, although the Committee notes that each of these is included in the definition of 'trafficking' contained in the Protocol.¹⁴ As Chapter 2 demonstrated, the criminal groups that organise the trafficking of women rely on a network of 'helpers' to identify and recruit the women in their home country, organise their departure (including document fraud and bribery of officials), and in some instances, to accompany the women to Australia and through the Australian customs barrier.

4.29 The second issue relates to the nature of the offence of deceptive recruiting. Subsection 270(7) of the Code provides:

A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about the fact that the engagement will involve the provision of sexual services is guilty of an offence.

4.30 The Australian Chapter of the International Committee of Jurists points out that this definition does not appear to cover:

deception as to the conditions of work which apply to the victim unless this can be considered as conduct causing a person to enter into sexual servitude. This is an important issue, as some women are deceived about the circumstances in which they would have to work in Australia.¹⁵

14 Australian ICJ, Submission 8, p. 6

15 Australian ICJ, Submission 8, p. 6

4.31 As was concluded in Chapter 2, although a number of women are undoubtedly deceptively recruited on the misapprehension that they are to work in jobs outside of the sex industry, it is clear that the majority of trafficked sex workers understand the nature of the work they are to do in Australia. However, the majority of the deception that occurs relates to the size of the women's debt, the numbers of clients they must see, and the range of sexual services that they must perform. It is essential therefore, that the offence of deception extends to cover these issues.

4.32 Thirdly, Ms Costello of Project Respect argued that the current legislation does not address aspects of migration fraud common to trafficking, including the situation where traffickers withhold a woman's travel documents, where a woman is deceived about her migration status, or where an application for a protection visa is lodged on her behalf without her knowledge.¹⁶

4.33 Finally, there is also no express requirement to consider the impact on the victim in sentencing. The NSW Young Lawyers noted in their submission that:

As proceedings under the Act will often involve anonymous victims from overseas, significant aggravating circumstances may be ignored in determining a sentence if judges are not compelled to consider the particular circumstances involved and the impact of the crime upon the victim.¹⁷

4.34 State legislation (such as the *NSW Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004*) provides for the Court to accept Victim Impact Statements in certain serious matters, after conviction, and before sentencing. The offences under the sexual servitude provisions of the Code are undeniably serious, carrying substantial penalties of up to 25 years imprisonment in some cases. Given the nature and effect of the sexual trafficking offences on the victim, there is a compelling reason to require that victim impact be considered when sentencing offenders.

Conclusion

4.35 The Committee considers that the Australian criminal laws enacted to counter the trafficking of women for sexual servitude do not adequately reflect the realities of the trafficking trade. These issues should therefore be a focus for the legislative review that was announced as part of the government's anti-trafficking package.

Recommendation 4

4.36 The Committee recommends that the following matters be examined in the legislative review announced as part of the government package:

16 See chapter 2.

17 Human Rights Committee – NSW Young Lawyers, Submission 9, p. 4

- **The adequacy of existing provisions of the Criminal Code Act 1995 covering recruiting transportation and transfer of women for the purposes of trafficking;**
- **amending section 270(7) of the *Criminal Code Act 1995* to broaden the offence of deception to include deception regarding not only the type of work to be done, but expressly the kind of services to be provided, whether of a sexual nature or not;**
- **adopting the use of victim impact statements in sentencing.**

International standards

4.37 A second consideration is the way in which Australia's criminal law fits with international standards.

4.38 As noted, the principle source of law in this area is the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, which Australia has signed but has yet to ratify (although the Committee notes that the government has indicated that it will ratify as soon as possible, consistent with the call of many submissions to this inquiry, which were written prior to the Government's announcement of the new package in October 2003).

4.39 The Committee considers that many of the responsibilities contained in the Protocol require non-legislative responses, such as inter-governmental task forces to collect data, bilateral agreements with the countries of origin to ensure safety of the returned victim, as well as educational, social and economic programs.¹⁸

4.40 While many aspects of trafficking have already been criminalised in Australia,¹⁹ to comply with the Protocol additional and comprehensive people trafficking offences as provided in Canadian, New Zealand and US legislation may be required.²⁰ Changes could include the incorporation of a definition of 'trafficking', which the Australian Federation of University Women observed is currently absent from legislation.²¹

4.41 The Attorney General's Department noted that this general trafficking offence could be supplemented by further specific offences including deception regarding the contracts and working conditions, a specific offence dealing with trafficking in children and an offence of debt bondage, where a person is forced to pay off the debt but with no powers of ownership attaching.²²

18 Australian ICJ, Submission 8, p. 12-14

19 AGD, Submission 36, p. 6

20 AGD, Submission 36, p. 8-9

21 Australian Federation of University Women, Submission 19, p. 2

22 AGD, Submission 36, p. 9

4.42 The Committee notes that there is no timeframe associated with the initiatives announced in October last year, nor with any legislative change which is necessary to implement and ratify the Protocol.

4.43 If Australia is to honour its international obligations at the co-operative intelligence level as well as in the implementation of the Protocol, it will be necessary to review, introduce, pass and implement legislation as soon as possible as a means of achieving these objectives.

Recommendation 5

4.44 The Committee recommends the speedy implementation of the legislative review that forms part of the anti-trafficking measures announced in October 2003. The review should focus particularly on the measures needed to ensure Australia's compliance with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Recommendation 6

4.45 The Committee further recommends that the results of this review form the basis for legislative changes that should be ready for introduction to the Parliament early in 2005.

Recommendation 7

4.46 That the Protocol be ratified as soon as possible.

Criticisms of the operation of the Migration Act

4.47 A difficult issue that emerges in combating trafficking of women for the sex trade is the manner in which the operation of the Migration Act may have harsher outcomes for the trafficked women than for the traffickers themselves. Women sex workers who are detained by DIMIA are ordinarily placed in a detention facility and will be returned to their country of origin, in the same way as any other illegal non-citizen working in Australia.

4.48 Given that these women should in many cases be regarded as victims of crime, the operation of the law gives rise to two questions. Firstly, should illegal sex workers, who may be victims of trafficking, be detained in the same way as other illegal non-citizens? Secondly, should they be liable to deportation?

Detention of sex workers who may have been trafficked

4.49 According to the Department of Immigration submission, in 2002-2003, 257 people were detected working illegally in the sex industry,²³ and it is probable that the majority of these were detained, if only briefly, and deported.

4.50 A number of submissions and witnesses criticised this procedure, principally on the grounds that trafficked women should first and foremost be treated as victims of crime, rather than criminals (a point discussed in Chapter 3).²⁴ Those critical of detention point to several deaths of sex workers in detention,²⁵ and that a detention centre is not an appropriate place to provide the support services required by the women. There is also the issue of privacy for these women. The nature of their work could, if it became known, make them vulnerable to physical and emotional abuse, and stigmatisation among other detainees, further complicating their return to their own country. As such, witnesses called for trafficked women either not to be detained at all,²⁶ or to be given separate, private accommodation.²⁷

4.51 In considering this criticism, it is important to be clear about which groups of women are being referred to (and recognising that some of the comments referred to above were written before the new package was announced). Following the new government program, women who are suspected of having been trafficked and judged to be of interest for the investigation or prosecution of trafficking offences, will not be put into detention.

4.52 The only exception to this is when authorities cannot determine a person's identity.²⁸ Nevertheless, officials stressed that trafficked women under the victim support program would still receive, wherever possible, all the elements of the support package even in detention.²⁹

4.53 However, all other women working in the sex industry who are found to be illegal non-citizens will be detained. Setting aside the debate over the rights and wrongs of the detention policy, this practice is consistent with the treatment of all other illegal workers detected by authorities. Secondly, under the new arrangements between DIMIA and the AFP, including the low referral threshold, any women

23 DIMIA, Submission 38, Attachment A

24 See also: Ms Maltzahn, *Committee Hansard*, 18 November 2003, p. 31; Det Snr Sgt McKinney, *Committee Hansard*, 25 February 2004, p34

25 NSW Public Health Association, Submission 1, p. 6

26 Australian Federation of University Women, Submission 19, p. 1; and Centre Against Sexual Assault House, Submission 21 p. 3

27 Ms Vichie, Proof *Committee Hansard*, 18 November 2003, p. 51

28 Mr McMahon, Proof *Committee Hansard*, 26 February 2004, p. 33

29 Ms Blackburn, Proof *Committee Hansard*, 26 February 2004, p. 19

suspected of being a victim of trafficking should be referred to police for investigation and, where appropriate, receive assistance under the victim support program.

4.54 While Committee members may hold varying views on the issue of the mandatory detention policy in general, the Committee does not support treating illegal sex workers differently from any other category of illegal workers.

4.55 For the same reasons, the Committee also disagrees with the proposals put by several submissions for sex workers in detention to be held in separate facilities. Within the context of the policy of mandatory detention, illegal sex workers should be treated in the same manner as other illegal workers. Separate housing would in all likelihood be counterproductive and result in the isolation and stigmatisation of the detained women, further hampering their return to their home countries.

Deportation by DIMIA

4.56 The Committee noted that on one view, deportation of a trafficked person amounts to a breach of human rights because of the potential for the person to suffer retaliation on return to her country.³⁰ The issue of deportation was one which concerned a number of witnesses, as well as the Committee, particularly in view of the potential for harm to the victim and her family.

4.57 The Committee was told by Ms Osborn, a policy officer from the NSW Public Health Association of the likely consequences of deportation:

... the people that organised the trafficking in the country they came from would make sure that their life was miserable. Their families might have sold them to the trafficking organisation. There are a number of those sorts of cases. It could be very difficult for them to go back to their country if they are deported. Their families will lose out.³¹

4.58 The major risk returned women face is that of re-trafficking.³² According to Mr Iselin:

The victim knows, as do many law enforcement officers working on trafficking that deportation means re-trafficking. Sending the victim women back to their country of origin places them in a position of extreme vulnerability and at great risk of being re-trafficked. Often they will simply be recaptured by their original trafficker and trafficked to another destination.³³

4.59 Ms Anne Gallagher agreed:

30 See discussion in Chapter 3.

31 Ms Osborne, *Committee Hansard*, 25 February 2004, p. 10

32 Project Respect, Submission 25, p. 24

33 Iselin Consulting, Submission 6, p.9

Trafficking responses that do not place the victim at their centre are likely to contribute to further violations of victim's rights and to re-trafficking: consequences which will also have a negative impact on the investigation, apprehension, and prosecution of traffickers.

4.60 A second category of women of concern are those who have agreed to help Australian investigators and stayed in Australia for a period of potentially several years under a Criminal Justice Stay Visa. Once the trial process is completed, the reason for the grant of the visa no longer exists, and these women are likely to be returned to their home countries in the normal way.

4.61 Having helped Australian authorities, these women face an altogether more serious threat should they be returned. Ms Sally Moyle from the Office of the Status of Women observed in evidence, that:

It will be important to monitor the use of trafficking visas that have been made available. A woman giving evidence in any trafficking prosecution takes a great risk. As the industry is a small one, a woman who gives evidence is generally easily identifiable. The visas should be adequate to assure the longer term safety of the subject and ensure that accepting such a visa is not an overwhelmingly bad gamble for the woman.³⁴

4.62 While the Committee accepts that there is a danger that a number of women who are returned to their home countries are likely to be re-trafficked, it does not consider that this is of itself sufficient to justify a blanket exclusion of trafficked women from the rules requiring deportation. On the evidence received, probably the majority of these women voluntarily entered into arrangements to be trafficked to Australia for sex work, and if deported, would similarly seek to enter voluntarily into new arrangements to return to Australia or elsewhere.

4.63 Of some concern to the Committee is the group of women who, once they have assisted Australian prosecutions, are in danger of retribution from traffickers should they be returned home. As concluded in the preceding chapter, Australian authorities cannot give any meaningful guarantees of their safety once they leave the country. The Committee strongly believes that once a trafficked woman has agreed to assist Australian authorities, she should not be returned to her home country against her will.

Recommendation 8

4.64 The Committee recommends that all trafficked women accepted onto the victim support program or receiving the Criminal Justice Stay Visa be exempt from compulsory return to their country of origin.

34 Ms Moyle, Proof *Committee Hansard*, 25 February 2004, p. 55

Undercutting traffickers – options for wider reform

4.65 While much of the above discussion focuses on the existing legal framework, the Committee also heard arguments in favour of more fundamental legal reform aimed at undermining the role for traffickers bringing women into Australia for the sex trade.

4.66 However, the nature of these proposals differed profoundly, with some witnesses arguing for a change to visa rules to enable easier entry to Australia for sex workers, while others sought changes that would reduce demand for sex workers.

Work visas for sex workers

4.67 The Committee was told that one solution to the trafficking problem would be to reduce migration barriers to entry and work rights for women who want to come to Australia to work in the sex industry.

4.68 As the Scarlet Alliance point out, the majority of overseas women involved in sex work arrive legally and are in Australia on working holiday or student visas.³⁵ While women from Korea, Malaysia and Japan are able to take advantage of easier visa arrangements,³⁶ trafficked women tend to originate from countries from which it is extremely difficult to obtain such visas, such as Thailand and China, and it is in these circumstances that the traffickers are able to find their market.

4.69 In the view of the Scarlet Alliance, enabling women from these countries to come in on working holiday visas, or to be sponsored by an employer, would 'pull the carpet from under' the traffickers.³⁷ At the same time, legal work status would improve the chances of these sex workers operating in a work environment that is better regulated by employment and occupational health and safety laws.

4.70 In their submission, the Scarlet Alliance argued:

The granting of employment rights for these workers ... [would] remove the criminality attached to these individuals and their work [and] it would effectively remove the current need for them to be 'underground'. This would result in these highly marginalised workers having increased access to information, support, health services, protection from exploitation and access to victim of crime support services.³⁸

4.71 While not doubting the benefits legality of employment would bring, it will not necessarily resolve the problems which surround the deception of the women

35 Ms McMahon, Proof *Committee Hansard*, 25 February 2004, p. 18 et seq

36 Ms McMahon, Proof *Committee Hansard*, 25 February 2004, p. 27

37 Ms McMahon, Proof *Committee Hansard*, 25 February 2004, p. 24

38 Submission no 27, p. 23

involved. Because many work in illegal brothels the trafficker may not want to engage in any – even partly – legitimate process which might open him or her to scrutiny.

Attacking demand

4.72 Other submissions took virtually the opposite approach, arguing that the best way to reduce the incidence of the trafficking of women for sexual servitude is to reduce demand for prostitutes. This argument is underpinned by the view that decriminalisation of prostitution drives an increase in demand for prostitution, and when supply of sex workers in Australia cannot meet that demand, there is an inevitable increase in the probability of trafficking. In their submission, the Australian Chapter of the International Commission of Jurists said:

Some take the view that the decriminalisation of prostitution not only makes it easier to operate the commercial sex industry but also helps to promote and support international trafficking. NGOs in the US have emphasised the need to avoid legitimising the sex industry and to provide real employment alternatives for women rather than making the industry safe and legal.³⁹

4.73 The Catholic Women's League (CWL) argued in their submission that: Efforts to legalise prostitution must be understood as inhibitors to the prosecution of those running illegal brothels and trafficking women. ...⁴⁰

4.74 The Coalition Against Tracking in Women (CATWA) expressed a similar view:

Legalisation leads to trafficking in two ways: the massive illegal industry, which always accompanies legalisation – for instance, in Victoria an estimated 100 legal and 400 illegal brothels employ trafficked women; and the legal industry, which also uses trafficked women.⁴¹

4.75 The Committee also noted that both the CWL and CATWA refer to the alternate model offered by Swedish legislation which criminalises the purchase of prostitution services while decriminalising the supply. According to these groups, the legislation has had the effect of causing 60% of women to leave the industry and there has been no increase in the number of trafficked women since the implementation of the legislation.⁴²

39 Australian ICJ, Submission 8, p. 5

40 Catholic Women's League, Submission 20, pp. 2-3

41 Professor Jeffries, Proof *Committee Hansard*, 18 November 2003, p. 57. See also CATWA, Submission 39

42 Catholic Women's League, Submission 20, pp. 3

Conclusion

4.76 The two approaches detailed above reflect a fundamentally opposed view of the legitimacy of the sex industry. On one view, prostitution is a legitimate career choice, which should remain legalised and properly controlled. On the other view, prostitution is a form of exploitation, which should never be legitimised.

4.77 This is a somewhat broader (and older) debate, that the Committee does not intend to enter into and which is, in any case, beyond its terms of reference.

4.78 Similarly, the suggestions aimed at addressing the demand for prostitution involve judgements about the legalisation of brothels, which are a matter for state and territory governments rather than the Commonwealth.

4.79 The Committee notes that part of the initiatives announced in October last year was to place a senior DIMIA officer in Bangkok, to focus on the trafficking issue. The Committee believes that it is more appropriate to put personnel in key centres, such as Bangkok, to assist in tracking and deterring traffickers and the trafficked at the beginning of the process.

4.80 In relation to the suggestions of the Scarlet Alliance, the Committee accepts that changes to the current restrictions on working visas may do much to enable women wishing to come to Australia for sex work to do so without recourse to the services of traffickers. At the same time, the Committee considers that even a substantial widening of the visa rules would not of itself solve the trafficking problem, since there will always be those who wish to enter Australia but cannot, and who will therefore fall victim to traffickers.

4.81 However, the Committee is concerned that the prosecutions, which require the attendance of a trafficked woman as a witness, can take years to reach the stage of hearing. To require the woman to remain Australia without contact from family over that period could discourage her from providing important prosecution information, and the Committee is aware of the possibility of losing a witness in such a process.

4.82 Currently, a witness who is on a Criminal Justice Stay visa cannot leave Australia and return, since to do so requires a different visa: the Criminal Justice Entry visa. It should also be remembered that women in this situation, as foreign nationals, can return to their home country at any time, so it is important that Australian migration arrangements do not create impediments to the return of witnesses.

Recommendation 9

4.83 The Committee recommends that the government review current visa provisions, and consider changes to ensure that the Minister for Immigration has the discretion to allow witnesses to return to their country of origin for short periods to enable contact with their families. Such a visit should be subject to conditions including reporting requirements.

The Hon. Bruce Baird MP

Committee Chair

