

**Parliamentary Joint Committee on the
Australian Crime Commission**

**Inquiry into trafficking in women for
sexual servitude**

Submission No:1

Received 8 September 2003

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E-mail:

The Secretary
Parliamentary Joint Committee on the Australian Crime Commission
Suite S1 107
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Canberra ACT 2600

12 September 2003

Dear Sir or Madam

Re: PHA NSW Submission to the “New Inquiry Trafficking in Women – Sexual Servitude”.

Please find attached a copy of PHA NSW submission for the inquiry into the “New Inquiry Trafficking in Women – Sexual Servitude”.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Jim Hyde', with a stylized flourish at the end.

Dr Jim Hyde
President NSW PHA

Trafficking in women for sexual servitude

The United Nations Secretary – General, Kofi Annan described trafficking in women for sexual slavery as '*one of the most egregious violations of human rights*'¹.

This submission will address the terms of reference when discussing issues relevant to and trafficking in women for sexual servitude. These are as follows:

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

The extent of people trafficking in Australia for the purposes of sexual servitude

It is not possible to estimate how many women enter Australia every year for the purposes of sexual servitude. There is a lack of clarity around the definition of crimes involving trafficking. The National Crime Authority (NCA) estimated that between 1992 and 1996 25 women were trafficked into Australia. Kathleen Maltzahn, coordinator of Project Respect², an organisation that promotes the rights of trafficked sex workers, claims that approximately 1000 women are trafficked into Australia each year. The Project report noted that:

- Two trafficked women have died in the Villawood detention centre. The first, a 20 year old, was brought into Australia for prostitution at 12 years old;
- In Melbourne, in one case alone, a trafficker brought in at least 40 Thai women;
- Government estimates put the gross cash flow to organisers of the Australian sex slavery at Aus\$1 million a week; A single trafficker in a Melbourne municipality has allegedly earned \$4.5 million dollars from trafficking for prostitution.

Underreporting is partly due to lack of reporting by victims for fear of reprisals and involvement in illegal activity.

Wynhausen and O'Brien report regularly in *The Australian* on conditions the women are subjected to. They have exposed the sordid experiences and humiliation such women endure. The authors have tirelessly lobbied the Immigration Minister to listen to the stories of the victims and highlighted the practice the Government currently has of deporting the women thereby limiting the prospect of convicting the traffickers.³

A report on trafficking from the Federal Government Library⁴ commented that regardless of the numbers, many women who migrate to work in the sex industry find themselves to be victims of sexual servitude.⁵ While the consent of the women to prostitution has been raised in defence of Australia's poor prosecutions record, under Australian law the original consent is irrelevant to the question whether or not an offence of sexual servitude has been committed.

Trafficking in women and children for prostitution and sexual exploitation is now one of the fastest growing crimes in the world;

The United Nations estimates that trafficking is a US\$5-7 billion operation annually, with 4 million people moved from one country to another and within countries each year⁶;

Trafficking in women and children for prostitution is a lucrative trade for traffickers, with fewer risks than arms or drugs trafficking;⁷

In the UK, it is estimated that that only a tenth of trafficked women are actually detected⁸;

The adequacy of the current legislative framework

There is an overall legislative framework at both Commonwealth and State levels to deal with sexual servitude but there is no separate offence for 'people trafficking' in the Commonwealth Criminal Code Act 1995. In 1999 the offences of slavery, sexual servitude and deceptive recruiting were introduced by the Commonwealth's Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999. The Act defines sexual servitude⁹, sexual slavery and deceptive recruiting for sexual services which is intended to target traffickers, is limited to deception about the nature of the work and does not capture the situation where women agree to work in the sex industry but are deliberately deceived about the conditions of work. In other words deceptive recruiting only deals with cases where a person is deceived about the fact that their work will involve provision of sexual services. Deception can involve women being locked in a room with no outside contact, minimum wages and in most cases no health or medical supervision. The Act does not address cases where the engagement is for sexual services and the deception relates to the fact that engagement is based on covert or undisclosed types of sexual services or conditions of work.

These new offences were intended to target traffickers and address the problem of international trafficking of people. The Act was the Commonwealth's part of a proposed package of uniform commonwealth, state and territory offences to deal with the problem and apply where an international element is present. The difficulty is proof of causation. The person who manages a business that involves the sexual servitude of another, namely, the managers, financiers and organisers, are also captured by this Act. Again these provisions go some way toward addressing traffickers, but it is arguable whether they are in step with the Trafficking Protocol.

There have been no prosecutions under the 1999 Commonwealth legislation on sexual servitude and slavery.¹⁰ The only prosecuted trafficking case (against a Melbourne trafficker) resulted in an extremely light sentence for the trafficker: eighteen months, fully suspended, and a Aus\$33,000 fine, payable over a year.¹¹

The Australian Crime Commission's relationship with the relevant State and other Commonwealth agencies

- The UN definition of Trafficking recognises forms of coercion through which women can be trafficked into prostitution, which extend beyond force and payment to include fraud, abuse of power and vulnerability to poverty¹²;
- Trafficked women and children experience gross human rights violations with grave health implications, including rape; beatings; forced abortions; threats and actual violence against family, including children in home countries; having their passport taken by traffickers; verbal abuse; imprisonment.
- Trafficking is a crime where the obstacles to victim testimony are significant.¹³ Only a small minority testify against their trafficker, 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.'¹⁴ In countries where there are specialist non-government organisations (NGOs) that offer support, up to 50% of women testify¹⁵.
- Women and children trafficked to Australia are currently 'removed' from the country by the Department of Immigration and Multicultural Affairs, without being referred to NGOs here or in the sending country.¹⁶

The UN Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons¹⁷, Especially Women and Children establishes important principles for addressing trafficking, particularly that:

- Trafficked persons, especially women and children, should be viewed not as criminals but as victims of a crime¹⁸;
- That all victims of trafficking should be protected, not just those who can prove force, including those who may have consented to trafficking;
- Receiving countries should be encouraged to consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territory, temporarily or permanently, in appropriate cases;
- Receiving countries should consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including in cooperation with non-governmental organisations;
- When receiving countries return trafficking victims to a sending country, there should be due regard for the safety of that person and should preferably be voluntary;
- Governments should work through bilateral and multilateral approaches between trafficking and receiving countries.
- As trafficking in women and children for prostitution in Australia is amenable to better management PHAA recommends that:

PHA Recommends that

- The Act does not include deportation and therefore does not come under the Department of Immigration but remains as a Criminal Act;
- Australia ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- Further research examines the prevalence and circumstances of trafficking in Australia and how it can be prevented;
- There be an inquiry into the efficacy of existing Commonwealth laws addressing trafficking for prostitution;
- Australia allow victims of trafficking for prostitution to stay in Australia;
- Specialist trafficking-related services be funded to provide support to victims of trafficking;
- Trafficked women who choose to return to sending countries be referred to specialist services in that country, and that Australian development aid be given to such services;
- Health services for trafficked women address related women's mental and physical well-being, rather than taking a narrow clinical approach;¹⁹
- Trafficking be regarded as a higher priority policing issue, at both State and Federal levels, and sentencing guidelines be developed that reflect the gravity of the offences involved.

References

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- ¹ Annan, K. Secretary-General, In Address To 'Women 2000' Special Session, Says Future Of Planet Depends Upon Women. UN Press Release SG/SM/7430.
- ² Maltzahn K *Report of Project respect*.
- ³ O'Brien N, Wynhausen E, *Sex slavery: don't deport the evidence*. The Australian, 4 April 2003.
- ⁴ Carrington K, Hearn J. *Trafficking and the Sex Industry: from impunity to protection*. Current Issues Brief No. 28 2002-03 Department of the Parliamentary Library.2003
- ⁵ Richard, Amy O'Neill. (1999). *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*. DCI Exceptional Intelligence Analyst Program. Center for the Study of Intelligence: Washington, DC.
- ⁶ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.
- ⁷ Chapter 4, Immigration Malpractice Detected at Airports, Protecting the Border: Immigration Compliance, Department of Immigrant and Multicultural Affairs (DIMA), 2000.
- ⁸ Explanatory notes can be found at www.catwinternational.org
- ⁹ Austlii Criminal Code Amendment (Slavery and sexual servitude) Act 1999 Br No 104 1999 Schedule 1 Criminal, Code Act 1995
- ¹⁰ Williams, The Hon DR., speech introducing the Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1998, 1 July 1998, extract from Hansard.
- ¹¹ Chapter 4, Immigration Malpractice Detected at Airports, Protecting the Border: Immigration Compliance, Department of Immigrant and Multicultural Affairs (DIMA), 2000.
- ¹² Phinney A. *Trafficking of women and children for sexual exploitation in the Americas*. for the Inter-American Commission of Women (Organization of American States) and the Women, Health and Development Program (Pan American Health Organization).
- ¹³ Statement from speech during conference for signing of UN Convention Against Transnational Organised Crime in Palermo, Italy, reported by Thalif Deen, 'Rights: Trafficking in Human Beings Reprehensible, Says Annan', Dec 13, IPS.
- ¹⁴ Reports of violence against women in the Australian sex industry include: Mark Forbes 'Life as a commodity, to be bought and sold', June 5 2001, The Age.
- ¹⁵ Article Premier et al, Guide to the New UN Trafficking Protocol; 2001; p. 1.
- ¹⁶ Dillon, J 'Help for 'Sex Slave Women' to Escape Pimps, Independent on Sunday, July 2, 2000. 6 were men; Information from DIMA, faxed to Project Respect, Victoria.
- ¹⁷ Janice Raymond, Donna Hughes, Carol Gomez, *Sex Trafficking of Women in the United States: International and Domestic Trends*; Coalition Against Trafficking in Women; 2001; p78.
- ¹⁸ Kelly L, Regan L. *Stopping Traffic: Exploring the extent of, and responses to, trafficking in women for sexual exploitation in the UK*. Police Research Series Paper 125, Home Office (UK) 2000. Kelly and Regan, op cit. p 32.
- ¹⁹ The research looked at violence and mental health, specifically rates of post-traumatic stress disorder, and covered almost 500 children, women and men in 5 countries. Research presented to American Psychological Association by Dr. Melissa Farley, Kaiser-Permanente Medical Centre, San Francisco; www.prostitutionresearch.com