

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

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

Submission No:9

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

Dear Committee Members,

**PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN CRIME
COMMISSION - INQUIRY INTO TRAFFICKING IN WOMEN - SEXUAL SERVITUDE**

The Human Rights Committee of the NSW Young Lawyers (YLHRC) is a group of young lawyers and law students who are concerned with a variety of Human Rights issues in Australia and abroad.

We are grateful for the opportunity to make a submission to this inquiry and make the following points.

The problem

Not unlike other crimes, people trafficking calls for a delicate balance between protecting and rehabilitating victims, whilst pursuing and bringing to justice the criminals responsible. However, the third dimension to this problem is the intersection of the Migration Act, which provides that illegal non citizens be detained and then removed from Australia.

Whilst the YLHRC supports and acknowledges Australia's right to regulate immigration, we advocate that where trafficked women are involved, a degree of compassion be exercised. These women have quite often been stripped of their self autonomy and forced to endure an extremely difficult existence. It is this idea of compassion that underpins our submissions.

The Australian Crime Commission ("ACC")

The YLHRC welcomes the involvement of the ACC in an important issue. At a time when the Australian Federal Police ("AFP") are stepping up their prosecution of people suspected of involvement in trafficking women, the YLHRC hopes that meaningful co-operation will take place between the two groups. The intelligence mandate of the ACC will hopefully lead to the dismantling of trafficking groups who operate in Australia, allowing the AFP to prosecute those involved.

As such, the YLHRC would advocate the establishment of a specialist group within the ACC to deal specifically with the trafficking of women. This is because the victims of trafficking have been subjected to particularly horrendous conditions. We would advocate an approach in the interests of the victims of trafficking, not only to protect women in a particularly vulnerable position, but also to ensure that the ACC is able to obtain useful information which would hopefully lead to the prosecution of their perpetrators. This unit would hopefully undergo appropriate training to allow them to be able to deal with victims in a caring and understanding manner.

We note that the Human Rights Standards for the Treatment of Trafficked Persons ("HRSTTP") drawn up by the International Human Rights Law Group, the Foundation Against Trafficking in Women and the Global Alliance Against Traffic in Women, specifically suggests that specialised police and prosecutorial units are established and that members of those units are trained to be able to deal with the unique and sensitive situation of the victims. This is also in recognition that trafficking victims quite often are the victims of a multitude of other crimes.

Current Legislative Provisions - Effectiveness of the Criminal Code

The denial of full and equal human status to trafficked women significantly breaches a number of general principles recognised by international human rights law, such as the right to life, liberty and security of the person under the *Universal Declaration of Human Rights (1948) (UDHR)* and the prohibition of slavery, servitude and forced labour under both the *UDHR* and the *International Covenant on Civil and Political Rights (1966)*.

By codifying principles condemning the trafficking of women and sexual servitude, international agreements such as the *Trafficking Protocol* can play an important role in combating such activities. However, as there is no central authority to enforce the rights under these conventions, their practical effectiveness depends upon successful implementation into domestic legislation. If State Parties fulfilled their obligations, it is likely that the trafficking of women would be substantially reduced.

A number of countries, including Australia, have attempted to meet their obligations by enacting legislation criminalising the trafficking of women and sexual servitude. The *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth)* ('the *Sexual Servitude Act*') was designed to modernise Australia's slavery laws and combat the growing trade in people, by prohibiting Australians from trafficking people into Australia for the purpose of sexual servitude. The *Sexual Servitude Act* amended the *Criminal Code Act 1995 (Cth)* to incorporate division 270, which covers slavery, sexual servitude and deceptive recruiting, and commenced operation in September 1999.

The Act imposes a maximum penalty of 25 years imprisonment, for conduct amounting to 'slavery' or exercising a power of ownership over another person (s270.3). In addition, where a person is engaged to provide sexual services, and is not free to cease or leave because of force or threats, those responsible face penalties for up to 15 years imprisonment, or 19 years if the victim is under 18 years (ss270.4, 270.6). Deceptive recruiting for sexual services, where the recruiter deceives a person about the fact that an engagement involves the provision of sexual services, is also included. Offenders face a maximum penalty of 7 years imprisonment, 9 years if the victim is under 18 years (s270.7).

Prosecutions for offences under the *Sexual Servitude Act* committed wholly outside Australia can only be brought against Australian citizens, residents or corporations. There are no restrictions on who may be charged if the offence is partially committed within Australia (s270.5). The Attorney-General's consent is required to begin proceedings for an offence under the *Sexual Servitude Act* if the conduct occurred outside Australia, or the alleged offender is not an Australian citizen, resident, or corporation (s270.11).

The Australian government can be commended for implementing the *Sexual Servitude Act*, as it is fairly thorough in proscribing human trafficking and sexual servitude. However, the Act's practical impact on curbing such practices currently seems to be fairly limited, and so these provisions may only bear significance as declarations of principle. While anecdotal evidence indicates that large numbers of women are being trafficked and recruited into sexual services, particularly from

Southeast Asia, to our knowledge there has not yet been any successful recorded prosecutions under the Act, although eight people were arrested in Melbourne and Sydney this year.

Successful prosecutions are crucial for combating such crimes, as they dispel the belief that human traffickers and those that keep women in sexual servitude will not be held personally accountable for their actions. While we welcome the decision in August by the Victorian Civil and Administrative Tribunal to suspend a brothel's licence following allegations of sexual servitude, administrative action is not sufficient to adequately deter those engaged in the trade. Criminal convictions are necessary to highlight the unacceptable nature of these activities.

We also welcome the recent proposal by the Australian Federal Police Commissioner, Mick Keelty, for the formation of a multinational team of police investigators within ASEAN, to curb the trafficking of women into sexual servitude. For such initiatives to have maximum impact, however, the AFP needs to allocate sufficient resources, as due to Australia's position within the region, it will be required to shoulder a significant share of the costs necessary for the effective operation of investigatory and prosecutory powers. If other ASEAN countries do agree to the proposal, it is hoped that Australia will acknowledge this responsibility.

It is not yet possible to analyse how the *Sexual Servitude Act* operates in practice, due to the lack of prosecutions. It is important, however to ensure that the rights of the witness will be adequately protected. While the right to a fair trial is a fundamental aspect of the common law tradition, it is necessary to balance this right against the needs of the witnesses. Finding an appropriate equilibrium in protecting these disparate interests will be difficult, but the Government should review the operation of the *Sexual Servitude Act* in upcoming prosecution cases, to determine whether witnesses' needs are sufficiently recognised. Beneficial procedural initiatives may include the use of specialised teams, including counsellors and health care workers, to interview witnesses, the use of closed-circuit television for witnesses to give evidence, and the development of guidelines to prevent the harassment or intimidation of witnesses.

The consideration of victims and witnesses will also largely depend on how the offences and requirements are judicially interpreted, and the attitude of individual judges towards particular victims. There is currently no express requirement to consider the impact on the victim in sentencing. 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. Incorporating such a provision may be a beneficial reform.

The *Sexual Servitude Act's* underlying purpose is to meet Australia's obligation under *the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* to protect women from trafficking and sexual servitude, whatever their nationality. While this is undeniably a worthy goal, the success of legislation criminalising breaches of international human rights can only be measured against their success in protecting the victims concerned. Against this criterion, the operation of the *Sexual Servitude Act* must currently be considered disappointing, as no successful convictions have yet been obtained. Adequate resourcing is necessary to ensure that the AFP can actively monitor potential trafficking and sexual servitude cases, and convert the Act's ideals into practical procedures. In addition, when prosecutions are brought, the court needs to ensure that the victim's rights are adequately considered

[The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children \("the Trafficking Protocol"\)](#)

This international protocol, which Australia has signed but not ratified, came into existence in 2000, supplementing the UN Convention against Transnational Crime. It outlines methods of prevention of trafficking through co-operation as well as encouraging compassionate treatment of victims. Specifically, article 6 calls on signatory states to consider implementing programs for the physical, psychological and social recovery of victims, whilst article 7 suggests the adoption of legislation to permit victims of trafficking to remain in the country. The YLHRC notes that the specific articles to which we refer are not couched in mandatory terms, but nonetheless we would urge an approach consistent with these suggestions.

To undertake successful prosecutions, we need victims willing to testify against their traffickers. At the moment, we would argue that the conditions in Australia are not conducive to victims revealing their often illegal migration status in order to help us prosecute criminals. The Trafficking Protocol seeks to balance these competing factors, and as such, the YLHRC urges its ratification by Australia.

In terms of how this impacts the work of the ACC, the YLHRC again advocates that a specialist unit be established to ensure that victims receive adequate rehabilitation.

Solutions to the problem

The YLHRC advocates a more victim friendly approach to the trafficking of women for sexual servitude. As such, we look to the examples of Italy, Belgium, and the United States as examples of countries who have made serious attempts to find the delicate balance between victims rights and the need to prosecute.

Italy

Italy, due in part to its proximity to Albania, receives many trafficked women. The system that it has established affords protection to the victim and prioritises their recovery and rehabilitation. Italy has a special visa which is a type of permanent residency for humanitarian reasons. Women who are identified as victims by the police are given a 6 month permit to remain in Italy. If it can be established, normally through a statement made in the course of police proceedings against the trafficker, that the woman was a victim of severe exploitation or exposed to danger to her well being or life, then the police can apply for a right of abode for the victim. This is aimed at allowing the victim to free themselves of the shackles of their traffickers by placing victims with registered organisations who house them.

This right of abode can be extended for one year, and then every two years after that for humanitarian reasons. If the victim has found employment during the term of her right to abode, then a residence permit can be issued.

It is important to note that victims do not need to act as a witness or testify in order to obtain a right to abode. As part of this strategy, a free national help line was created.

It would appear that Italy has been quite successful since the introduction of these measures in dismantling several key trafficking rings.

Belgium

Once a victim of trafficking has been identified, she is given 45 days to leave the country. Victims are required to be assisted by specialist centres in terms of accommodation and other requirements. If a victim then makes a formal complaint to the police, they are then allowed to remain in Belgium for a further three months. The victim is allowed to work during this time. During this period, the prosecutor needs to supply certain information to the Foreign Office about whether the woman is a victim of trafficking and whether her complaint has resulted in a judicial investigation. If this is the case, then the victim is granted a six month residency.

If the complaint results in a court summons, then the victim can apply for unlimited duration residency.

The United States

The United States has adopted a victim oriented approach to people trafficking by enacting a series of measures to assist trafficking victims.

In 2000, the United States Congress passed the Victims of Trafficking and Violence Protection Act Pub. L. 106-386, Oct. 28, 2000, 114 Stat. 1464.

Section 102 sets out Congress' Purposes and Findings. Subsections 17 to 19 state:

"Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.

Additionally, adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.

Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes."

Section 107(b)(1) provides that an alien who is a victim of a severe form of trafficking in persons shall be eligible for benefits and services under any Federal or State program to the same extent as an alien who is admitted to the United States as a refugee. Section 107(c)(1) provides that victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall:

- (a) not be detained in facilities inappropriate to their status as crime victims;
- (b) receive necessary medical care and other assistance; and
- (c) be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including:

- (i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and

- (ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

Victims of severe forms of trafficking shall have access to information about their rights and translation services under Section 107(c)(2) and may be permitted to stay in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible. Officials involved in investigating and prosecuting traffickers must protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

The Act requires the Department of Justice to present annual reports to Congress on Trafficking in Persons. The 2002 Report contains a list of each country's record as an origin and destination for trafficking and on measures introduced to eliminate trafficking.

Migration Issues

All of the above solutions are predicated on a change in the immigration legislation of the respective countries.

Currently in Australia, most trafficking victims do not have legal immigration status, which, under the present scheme, means that they must be detained. The YLHRC feels that these are a special category of victim which merits a special category of visa tailored to their unique situation.

We feel that the Migration Act 1958 should be amended to include a new category of visa for victims of trafficking. This category of visa should be able to be applied for on-shore, should be permanent and should have a humanitarian basis. The visa should be granted on the basis of police evidence that the women has been trafficked. Police should be required to advise victims of their right to apply for this visa (as most victims do not speak English and would not be aware of their rights). This should be done to ensure that the Criminal Code is able to be used to its full extent by allowing victims to come forward without the fear of being deported. Countries where this has happened have shown a greater proficiency at decreasing trafficking.

Recommendations

On the above bases, the YLHRC would make the following recommendations.

* The creation of a specialist unit within the ACC to deal with trafficked women

- * Specialised training for personnel who deal with trafficked women
- * Ratification of the Trafficking Protocol
- * A more victim oriented approach to encourage victims to come forward, using Italy, Belgium and the United States as examples.
- * A new category of visa to allow victims of trafficking the ability to stay in Australia permanently.

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