

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

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

Submission No:19

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Cover Sheet

Submission from the Australian Federation of University Women to the Inquiry of the Joint Parliamentary Committee on the Australian Crime Commission into Trafficking in Women for Sexual Services.

This submission is presented on behalf of the Australian Federation of University Women Inc.by

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Submission from the Australian Federation of University Women to the Inquiry of the Joint Parliamentary Committee on the Australian Crime Commission into Trafficking in Women for Sexual Services.

Introduction

The Australian Federation of University Women is one of seventy-three national affiliates of the International Federation of University Women. Founded in 1922, it pursues educational and other initiatives to advance the status and well-being of women and girls privately and publicly, nationally and internationally, and it attempts to further peace and international co-operation through the development of understanding and friendship between women of the world irrespective of race, nationality, religion or political opinion. Membership is open to any woman residing in Australia who holds a degree from a recognised university or college worldwide.

While supporting all human rights, AFUW has a particular commitment to supporting the those of women and girl children. It has been concerned for some time with the abuse of women and girls involved in their being trafficked for purposes of sexual servitude and the extent to which this world-wide problem is present in Australia. Two examples of representations previously made to the Australian government on these issues are attached as Appendix A to this submission.

The Submission

With respect to reference points 1 and 3, AFUW submits that, while it is appropriate for the Australian Crime Commission to be responsible for dealing with trafficking, its capacity to do so at the moment is limited by the following contextual matters:

- The failure of the Australian government to ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and to give sufficient recognition to its obligations under the CEDAW Supplementary Convention on the Abolition of Slavery and the Slave Trade and Institutions and Practices Similar to Slavery.
- The absence of an adequate legal framework in which trafficking is defined, the prosecution of offenders is enabled and the protection of victims ensured. There is at the moment no legal definition of 'trafficking' in Australia. The absence of such a definition and the absence of a specific crime of trafficking in Australian law results in the law being inappropriately enforced under smuggling provisions. One consequence of this has been that women detected as having been brought into Australia for the purposes of prostitution are treated primarily as illegal entrants and made subject to deportation orders. Apart from any question of equity in the treatment of these individual women, their deportation virtually ensures that, because of the absence of witnesses, there can be no successful prosecution of the persons who trafficked them into Australia and in many cases kept them in sexual servitude. AFUW is pleased to see that there has been some recent recognition of the need to correct this situation, but it protests strongly against any provision that such women will be considered for permanent residence only if they are witnesses in a *successful* prosecution. Prosecutions fail for many reasons, some technical and having no relation whatever to the credibility of witnesses. It could be argued that a woman who has been a credible witness in an unsuccessful prosecution is even more urgently in need of protection than one in a situation where the prosecution has succeeded.

An appropriate reference point in establishing a legal definition of trafficking would be the UN Protocol referred to above. Trafficking is there defined essentially as the transportation of an individual for the purpose of exploitation, where the victim has been trapped by means of threats, force or other forms of coercion or by abuse or

vulnerability. (Exploitation includes such treatment as prostitution, slavery or the removal or organs). The poverty of many third world women and their relative powerlessness within their societies means that they can often be regarded as coerced by their own poverty and/or that of their families into accepting offers of employment as prostitution. While addressing international poverty can hardly be the responsibility of the Australian Crimes Commission, there are initiatives which could be undertaken by the Australian government to reduce trafficking at its source (see the final recommendation below).

- The absence of a dedicated unit within the Australian Federal Police with sufficient staff and resources for intelligence gathering and sharing. Currently, the AFP/DIMA team is concerned with illegal immigration, including trafficking in people. Trafficking and sexual slavery are treated, often with inappropriate outcomes, as subsets of the more high profile and politicized issue of people smuggling.

With respect to reference point 2, AFUW submits that the Australian Crime Commission's relationship with the States and other relevant Commonwealth agencies can only be satisfactorily developed when an appropriate legal framework for dealing with the crime of trafficking has been established, and that acting on this should be a prime government priority.

RECOMMENDATIONS:

That Australia ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and that it conform to that protocol in acting on the following recommendation;

That legislation be developed to specifically address trafficking as a crime. That this include legal definition of the crime and appropriate penalties for those convicted thereof, and that it include legal provisions for the treatment of the women involved that treat them as primarily victims in need of protection, not as themselves offenders. (see below for specifics);

That such legislation include protection for women who have consented to prostitution but have been deceived or uninformed as to the conditions under which it will be undertaken;

That such legislation be developed in consultation with community groups and NGOs with special interest and experience in problems relating to the exploitation of women and girls and various forms of violence directed against them;

That such legislation be developed in consultation with the States, so that uniform conditions apply and effective co-operation is facilitated between the Australian Crime Commission, the Australian Federal Police and the law enforcement bodies of the States and Territories;

That the government establish a dedicated unit within the Australian Federal Police with sufficient staff and resources for intelligence gathering and sharing. The unit to set up a database in order to determine the extent and manner of trafficking within Australia and to enable the unit to liaise and interact with other international, national, state and territory bodies.

That the protection offered to women and girls discovered to have been trafficked into Australia for sexual servitude include:

- alternative arrangements to detention in Villawood or Maribyrnong in cases where those identifiable as possible victims of trafficking are detained by DIMA;

- visa arrangements that (a) allow such women a period in which to recover from the physical and psychological trauma associated with sexual servitude and to decide whether they wish to provide the authorities with information which may lead to legal proceedings against other persons; and (b) allow such women to remain in Australia if they give information to the police or testify in subsequent legal proceedings, without such a visa being conditional on the success of any prosecution involved;
- that appropriate services (accommodation, counseling, income support) be provided to women identified as victims of trafficking.

That Australia accept a degree of responsibility to ensure the well-being of trafficked women who are returned to their country of origin, and that bi-lateral and multi-lateral initiatives are set up to ensure that these women are linked to support agencies in such countries;

That more overseas aid be directed to addressing the factors that make women vulnerable to trafficking, especially poverty, lack of education, discrimination of various kinds;

Dr Jennifer Strauss
President, Australian Federation of University Women

September 25, 2003

Appendix to Submission (2 items)

20 June 2001

The Hon. Chris Ellison
Minister for Justice and Customs
Parliament House,
Canberra, ACT 2600

Dear Senator Ellison,

I am forwarding herewith a motion passed by the Australian Federation of University Women at its Council Meeting of 16 June. Council have requested that it should be brought to your attention for a response:

Motion passed at 16 June Council Meeting of AFUW:

In view of the evidence of the ongoing exploitative trafficking of women into Australia for the purposes of prostitution, and in the apparent absence of prosecutions for this offence, the Council of the Australian Federation of University Women

- (a) calls upon the Australian government, and in particular upon the Minister for Justice and Customs, to ensure that the provisions of the Criminal Code Amendment (Slavery and Sexual Servitude) Act of 1999 are vigorously pursued and enforced;
- (b) requests the Minister to provide statistical information on the investigation and prosecution of offences covered by the above legislation;
- (c) calls for the establishment of a dedicated and well-resourced unit of the Australian Federal Police to ensure that those who profit from keeping women in sexual servitude are discovered, prosecuted, and sentenced in an appropriate manner under the provisions of the Act;
- (d) calls for measures to ensure that the prosecution of offenders is not subverted by the deportation of the very women whose testimony is essential if an offence is to be proved;
- (e) applauds the support given through AusAID to the recent anti-trafficking project identification mission in the ASEAN region and urges the Government to intensify such efforts at international co-operation in the work of preventing the trafficking of women and children;
- (f) urges the Government to define Australia's opposition to human trafficking by signing the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime.

We look forward to receiving a response on these matters from you in the light of your Ministerial responsibility in this area,

Yours Sincerely,

(Dr) Jennifer Strauss
President, Australian Federation of University Women

20 March 2002

The Hon. Chris Ellison
Minister for Justice and Customs
Parliament House
Canberra, ACT 2600

Dear Senator Ellison,

On June 20th 2001 I forwarded to you a motion passed by the Australian Federation of University Women at its Council Meeting of 16 June. This motion read

In view of the evidence of the ongoing exploitative trafficking of women into Australia for the purposes of prostitution, and in the apparent absence of prosecutions for this offence, the Council of the Australian Federation of University Women

(a) calls upon the Australian government, and in particular upon the Minister for Justice and Customs, to ensure that the provisions of the Criminal Code Amendment (Slavery and Sexual Servitude) Act of 1999 are vigorously pursued and enforced;

(b) requests the Minister to provide statistical information on the investigation and prosecution of offences covered by the above legislation;

(c) calls for the establishment of a dedicated and well-resourced unit of the Australian Federal Police to ensure that those who profit from keeping women in sexual servitude are discovered, prosecuted, and sentenced in an appropriate manner under the provisions of the Act;

(d) calls for measures to ensure that the prosecution of offenders is not subverted by the deportation of the very women whose testimony is essential if an offence is to be proved;

(e) applauds the support given through AusAID to the recent anti-trafficking project identification mission in the ASEAN region and urges the Government to intensify such efforts at international co-operation in the work of preventing the trafficking of women and children;

(f) urges the Government to define Australia's opposition to human trafficking by signing the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime.

In your reply of 6 September 2001 (Ref 01/2992 CRJ Min 210736) you assured us that investigations under the Sexual Servitude Act were a priority of the government, but that no successful prosecutions had resulted from the seven investigations undertaken to that date, for reasons which included insufficient evidence. To answer our concern about a case in which the women who might have given evidence had in fact been deported before the trial, you assured us that the Director of Public Prosecutions in each State or Territory "can stop the removal or deportation of witnesses in criminal proceedings by issuing a Criminal Justice Stay Certificate. Once the certificate has been issued, the person cannot be removed or deported." However, we are concerned by the following passage of your letter in which you indicate that there is a second stage in the treatment of such a witness, namely that the decision to issue a criminal justice stay *visa* (my italics) rests with DIMA and that DIMA is concerned that, since such a visa authorises release from custody and work rights, the visa might lead to the witness returning to prostitution "as a means of supporting their stay while waiting to give evidence". This suggests that these women, who are victims trafficked into Australia for sexual exploitation, are in the eyes of DIMA, potential offenders who are better kept in detention if only because they have no visible means of support. Surely a simple and just solution resides in supplying them with a social

security pension for the period that they remain in Australia, given that, as witnesses, they are serving the interests of Australian justice.

There still appear to have been no successful prosecutions under the Sexual Servitude Act, although it is common knowledge that trafficking of women continues to be a phenomenon of Australian as well as global society.

Can you inform us as to whether there have been, since September 2001, any prosecutions under the Act, and if so, did any result in conviction?

Can you inform us whether there are currently in immigration detention any women known or suspected to have been brought into Australia illegally for the purposes of prostitution?

If this is the case, are these women actual or potential witnesses in an investigation or prosecution?

Are such women considered to be at risk of punitive acts from local trafficking organisations if they are returned to their country of origin?

Is any attempt made to follow up on the case histories of such women after deportation? Or are they considered no more Australia's responsibility than the Chinese woman subjected to a late-term abortion after her deportation from Australia to her country of origin?

We ask for information about the presence of such women in detention, and their treatment, because of our concern at the disturbing reports of the deaths in Villawood Detention Centre of two Vietnamese women who had been picked up in brothels by DIMA as having been trafficked for prostitution. The young woman who died on 27 September 2001 had been brought into Australia at the age of 12 to be prostituted. She was 20 when she died. She had needle marks and long scars on her body. Her death seems to have been drug related, which raises the questions of how she obtained the drugs, given that there was no record of visitors for her at Villawood. The second woman, who died on 13 January 2002, died in hospital from injuries reportedly received in jumping from a first storey window. This followed an earlier suicide attempt which should surely have alerted authorities to the need to monitor and protect her.

In your letter, you stated that the Government was currently considering ratification of the Protocol to the Convention against Transnational Organised Crime, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. **Could you correct me if we are wrong in believing that Australia has not proceeded to ratify that Protocol?** We were pleased to hear the announcement that Australia would ratify the Protocol on the sexual exploitation of children which supplements the Convention on the Rights of the Child, but we do not believe that vulnerable women are less in need of, or have less right to, protection against sexual exploitation and we look to your Government to demonstrate an active commitment to provide this by punishing the perpetrators rather than the victims,

Yours Sincerely,

(Dr) Jennifer Strauss
President, Australian Federation of University Women

cc: The Leader of the Opposition, The Hon. Simon Crean
The Shadow Minister for Women's Affairs, Dr Carmen Lawrence