

Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005]

Submission by Project Respect Inc

Feb 17, 2005

Introduction

Project Respect is one of Australia's leading specialist counter-trafficking organisations. We address trafficking through research, direct work with trafficked women, community education and advocacy (see appendix A). More information about Project Respect's work is available at www.projectrespect.org.au

Project Respect welcomes the new trafficking bill: it is a significant improvement on our existing legislative framework, and as such will substantially strengthen our counter-trafficking capacity. The government should be applauded for this further measure to address trafficking.

In particular, the expansion of the legislative framework to address deception about conditions of prostitution, and not just the fact of prostitution, is a great improvement, as many women previously not covered by the act will now be recognised as victims of crime. Similarly, the debt bondage provisions better reflect the reality of trafficking to Australia. We note that these measures reflect recommendations of the Parliamentary Joint Committee on the Australian Crime Commission Inquiry into the trafficking of women for sexual servitude, and recommendations from a range of NGOs, including Project Respect.

Comments and Recommendations

Project Respect made a submission in relation to the exposure draft of the Criminal Code Amendment (Trafficking in Persons) Bill 2004. This submission should be read in conjunction with that submission. In particular, that submission recommended that the following items be addressed by the bill, or through other mechanisms:

- penalties for business which knowingly engage trafficked women;
- penalties for men who knowingly or recklessly purchase sexual services involving a trafficked women (this would be a step towards addressing demand for trafficking, as required by the UN trafficking protocol);
- protection for witness at trial, including provisions so trafficked women do not need to give evidence in person.

While this legislation is extremely good, and should be applauded, the best legislation in the world is useless if complementary measures, such as support for trafficked women, are inadequate. There are __ areas where Project Respect believes our current provisions are inadequate, and will undermine the new legislation.

Women trafficked before 2000

At present, support for trafficked women is linked to the existing legislation. That is to say, if women were trafficked before 1999, they are not eligible for support, despite having experienced significant crimes against them. In one case Project Respect is aware of, a trafficked women was referred by the AFP to local police, as the AFP is not mandated to work with women not covered by the legislation. This woman is currently unlawful, as there is no visa available for women in this situation, and as

such is without financial support. This is despite the fact that she is aware of who and where the traffickers who victimised her are, and is willing to give the AFP information about this.

There are only a limited number of women in this situation – extending the current support services to them would not be costly. However, if these are not given support, other trafficked women may be discouraged from contacting the police, as women are unlikely to understand the technicalities behind the decision to exclude these women from support, and will simply see that if you go to the police they will be unable to help you. Further, in human terms, women who were trafficked before 1999 are left in limbo, without support to recover from the violence they have experienced. Project Respect is aware of five women in this situation, who would like to help police but were trafficked before the current legislation came into force. Two of these women may be available to meet with the committee when it is in Sydney next week.

Project Respect **recommends** that women trafficked prior to the existing legislation be included under the trafficking support program, and that AFP work with state and territory police to pursue charges against traffickers based on the other crimes they have committed (such as rape, assault etc).

Link between prosecutions and support/visas

Under the current system, women are given Criminal Justice Stay Visas if they provide police with information of use in a prosecution. If the information they provide is not enough to mount a prosecution, women cannot remain on the CJV. This is in contrast to jurisdictions such as the United States and Italy where women are eligible for visas if they give police information, not if the information is of use to police. Project Respect **recommends** the de-linking of visas and prosecutions.

In the absence of this de-linking, women are becoming ineligible for visas. Project Respect is aware of women in this situation in both Sydney and Melbourne. This is not to say that all women must stay in Australia indefinitely. Rather, women's departure (if safe) should correspond with them having received adequate support to allow them to at least partially recover from the crimes they have experienced. At present, women are repatriated if they are no longer needed by the police, rather than when they have received enough support to equip them to return home in a positive way. This creates the impression that we are using the women like the traffickers – when they are of use to us (through helping with a prosecution) we will provide them protection and support; in contrast, if they provide no benefit to Australia, they will be deported.

In addition, some women are choosing not to access support because they are frightened of the repercussions of being a witness in a prosecution. In one case, a woman in Melbourne decided not to contact the police because she feared for her family. She made the point that while the police may be able to keep her safe (and even this point worried her), they could not protect her family in her home country. She believed she did not have the right to imperil her family, and so elected not to contact the police. This meant she was excluded from accessing the support services offered by the federal government to trafficking victims. Project Respect is concerned that victims of crime remain in vulnerable conditions without access to help, simply

because they still fear the traffickers. We **recommend** de-linking support from prosecutions to address this problem.

Repatriation

Further to this, there must be an adequate mechanism for establishing that it is safe for women to return home. In contrast to protection claims, there is no independent process for establishing if it is safe for women to return to their home country. It is not only women who appear as witnesses who may be at risk if they return home. Women who are known to have cooperated with police (even if this did not lead to a prosecution) may be unsafe, but there is currently no clear process for establishing this. Project Respect **recommends** that an independent process be established for determining if women can be safely repatriated.

Transparent process for visas

The current visa process for trafficking lacks transparency: women are given the visas (whether the trafficking bridging visa, CJVs, or, potentially trafficking victim temporary or permanent visas) and cannot apply for them, and there is no process for reviewing this process. Project Respect **recommends** that a more transparent process be developed.

In the absence of the above changes, trafficked women who help police face considerable uncertainty, and have little control over their situation. Again, this replicates their situation when under the traffickers' control.

Financial support to NGOs

Linked to these issues, Project Respect **recommends** that financial support be given to NGOs such as Project Respect working with trafficked women prior to them approaching police. None of the \$20 million trafficking package money has gone to groups such as ours, despite the fact that we do considerable work with trafficked women. In many cases, if women can talk through their experiences and concerns with a non-government body, and can gather accurate information (rather than the gossip and disinformation that often informs their decisions), they are in a better position to decide what to do. In the absence of this, women chose not to contact the police, and continue in vulnerable situations in Australia. Providing funding to counter-trafficking NGOs doing direct work with trafficked women would address this problem.

Research

Further to this, Project Respect **recommends** that funding be provided to academics and NGOs to further research trafficking.

Demand

Finally, more must be done to address demand, including the provisions recommended in our prior submission (as above), relating to penalising customers of trafficked women who recklessly or knowingly buy their sexual services.

These provisions would ensure that the very strong legislative framework put forward by the government is not undermined by a weak support regime for victims of trafficking. Further, addressing these aspects would allow us to more fully address the

three central aims of the UN trafficking protocol: protection, prevention and prosecution.

Submitted by:

Kathleen Maltzahn

Director

Project Respect

PO Box 1323

Collingwood

Victoria 3066

kathleenm@projectrespect.org.au

www.projectrespect.org.au

Ph 03 9419 3401