

18 February 2005

Mr Owen Walsh
Secretary
Senate Legal and Constitutional Committee
Parliament House
Canberra ACT 2600
email:

Dear Mr Walsh,

**SENATE INQUIRY INTO THE PROVISIONS OF THE CRIMINAL CODE
AMENDMENT (TRAFFICKING IN PERSONS) BILL 2005 (CTH)**

I refer to your correspondence of 10 February 2005 requesting comment on the *Criminal Code Amendment (Trafficking in Persons) Bill 2005 (Cth)* (the "Bill").

The Law Council of Australia is the peak national representative body of the Australian legal profession. It is the federal organisation representing approximately 40,000 Australian lawyers, through their representative Bar Associations and Law Societies (the "constituent bodies" of the Law Council). It speaks for the Australian legal profession on the legal aspects of national and international issues, on federal law and on the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.

Due to competing priorities, the Law Council of Australia has not given the proposed Bill detailed prior consideration. Moreover, the Bill, and the general comments which follow, have not been considered or endorsed by the Executive or Directors of the Law Council.

Subject to the foregoing, the Law Council makes the following comments:

INCREASE IN PENALTIES UNDER THE BILL

The Law Council is supportive of any legislation which aims to deter the misery caused by people trafficking, and particularly where such trafficking has as its ultimate purpose slavery, sexual servitude and/or deprivation of liberty. The pursuit of criminal conduct of this nature is even more reprehensible in circumstances where it is facilitated by deceptive conduct.

Within this context, the Law Council is pleased to support, in principle, an increase to sanctions to deter any criminal activity, including illegal people trafficking.

However, it should be noted that increasing penalties alone is not always a deterrent to criminal behavior. Moreover, existing penalties, for example, for aggravated sexual

servitude are already set at 19 years imprisonment, rising only one year to 20 years imprisonment under the proposed amendments. In this sense, the Law Council suggests that of equal concern to the Parliament should be the appropriate allocation of law enforcement and intelligence resources to effectively deal with, reduce and deter people trafficking. As the Law Council understands things, as at August 2004 there were only nine current prosecutions under the existing laws dealing with this subject, though the position may have changed since this time. The Law Council suggests that, consistent with a recommendation made by the Parliamentary Joint Committee on the Australian Crime Commission¹, the Parliament also satisfy itself that the Australian Crime Commission is appropriately resourced to focus investigations on the methods by which people traffickers are able to circumvent Australian immigration barriers, whatever the means.

RATIFICATION OF THE *PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TORTURE* (THE “PROTOCOL”)

The Law Council welcomes the general policy intention of the legislation, ie ratification of the Protocol. The Law Council believes the ratification of international instruments, wherever possible and appropriate within the Australian context and existing statutory and common law principles, is an important part of Australia’s responsibilities as a member state of the United Nations.

The Law Council notes the focus of the proposed Bill is on deterrence of criminal activity, though it forms only part of the Australian Government’s overall response to the issue.

One equally important aspect of the relevant international treaty is victim support. For example, the treaty provides, inter alia²:

Article 6: Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

¹ PJCACC, *Inquiry into the trafficking of women for sexual servitude*, June 2004, Recommendation 1.

² *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Torture*, UN, 2000.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7: Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

The Law Council further notes the Australian Government's current approach to victim support as identified in its action plan to eradicate people trafficking, which states as follows³:

A case-management approach is used, and suspected victims who are granted a Bridging F Visa can receive intensive support for the period of the Visa's validity or until they wish to leave Australia, whichever occurs first. This support includes temporary accommodation, access to Medicare and medical services, counselling and legal services, training, and social support. Victims who are subsequently granted a Criminal Justice Stay Visa can continue to receive support.

³ See "Australian Government Action Plan to Eradicate Trafficking in Persons", joint plan released by Attorney General, Minister for Foreign Affairs, Minister for Immigration and multicultural and Indigenous Affairs, Minister for Justice and Customs, and Minister Assisting the PM for the Stats of Women, 03 July 2003.

Additionally, victims who, as a result of their contribution to an investigation or the prosecution of people-trafficking offenders, are deemed at risk of harm if they return to their home country may be eligible for a temporary or permanent Witness Protection (Trafficking) Visa.

The Australian Government is also implementing a re-integration assistance project for victims of trafficking who return to their countries of origin. AusAID, the International Organization for Migration, the Department of Immigration and Multicultural and Indigenous Affairs, the Australian Federal Police and the Office of the Status of Women are working together on this project.

The Government has also introduced training to increase awareness among police and immigration officials who come into contact with victims of trafficking during field operations. The training is designed to better help officers recognise indicators of trafficking and respond appropriately by ensuring that victims are removed from servitude and placed in a secure, supportive environment where they can assist investigators.

The Law Council recognizes and commends the Government's attempts to provide support to victims through various means including the granting of bridging visas to victims on a case-by case basis, the provision of witness protections where appropriate, and the provision of other general support.

Without wishing to detract from the merits of these efforts, the Parliament, in considering this Bill and its intention to give effect to the aforementioned Protocol, needs to be satisfied that the provisions of the Bill adequately cater for the area of victim support.

In particular, the Law Council believes inquiry should be made to ensure that the Bill appropriately reflects the Government's responsibilities under Article 7 of the Protocol. On this point, the Law Council notes that in reviewing the Australian Government's approach to this issue, the Parliamentary Joint Committee on the ACC recommended in June 2004 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 origin⁴.

And further that:

The Government [should] 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 requirements⁵.

⁴ PJACC report (supra), Recommendation 8.

⁵ PJACC report (supra), Recommendation 9.

The Law Council would welcome the Government's comment on these matters to ensure that all measures in relation to victim support are appropriately reflected in the Bill.

It would be the Law Council's submission that, in the event that any such deficiencies do exist, the Bill should be amended to recognize the full range of victim support measures provided by Article 7, and others, in the Protocol.

CONCLUSION

The Law Council is grateful for the opportunity to provide these general comments on the Bill.

I hope that they are of some assistance to you in your further consideration of the proposed Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Webb', with a large, stylized initial 'P' that loops around the start of the name.

Peter Webb
Secretary General