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**STRATEGIC POLICY DIRECTORATE**

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Dear Mr Walsh,

***Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004***

Thankyou for your letter of 10 February 2005 addressed to the Commissioner of Police inviting the Western Australia Police Service to comment on the proposed *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004*.

The Legal Services Unit in consultation with the Child Abuse Unit and Organised Crime Investigation Unit have assessed the Bill and the following comments are made on the key areas of interest as indicated in your letter:

**1. Other child specific offences that may be appropriately included in this Bill**

In clause 9 of Schedule 1 of the Bill the proposed sub-sections 271.2(1) 'Offence of trafficking in persons' and 271.5(1) 'Offence of domestic trafficking in persons' provide for offences where a person uses force or threats to gain consent of person to be transported into, or within Australia. Furthermore, there are child specific provisions at 271.4 and 271.7 that apply where the offender intends, or the offender shows reckless regard to the fact, that the child will be used for sexual services or otherwise exploited but there would appear to be no child specific offence or circumstance of aggravation where a child (the victim) is threatened or force is used that results in the victim consenting to the entry, proposed entry or receipt into Australia, or to the transportation within Australia.

However, given the fact that children are particularly vulnerable, it may be appropriate to reflect the seriousness of child exploitation by amending the Bill to provide a higher penalty where a child is the victim of an offence against section 271.2(1) and 271.5(1), along similar lines to that provided for in proposed sections 271.4 and 271.7.

It might also be prudent to consider having a specific offence of trafficking children for any purpose without the consent of the relevant parent or guardian. While generally there is State Legislation dealing with Child Stealing or abduction that can be resorted to, it would

appear more appropriate to use a Commonwealth trafficking offence for incidents where children are transported from overseas or interstate in these circumstances.

## **2. Use of 'Absolute Liability' in the Bill**

The use of 'Absolute Liability' in the Bill would appear to be appropriate in that it will assist with the prosecution of offences under section 271.2 and 271.5 and correctly ensures that the 'resulting' element is judged upon what the victim perceives rather than what the offender intended.

## **3. Use of the phrase 'for Commercial Use'**

The Western Australia Police Service is not aware of any difficulties posed by using the term 'for Commercial Use' however, whilst it is difficult to imagine a circumstance where this may apply, consideration should be given as to whether the relevant offences (Sexual Services) are also intended to apply to persons who do not intend gain any commercial benefit from such offences..

## **4. Desirability of including in the Bill recommendations of the 2004 report into people trafficking**

In terms of whether any of the recommendations from the 2004 report ought to be included within the Bill, this is a matter for consideration by the Commonwealth government. Nevertheless, the Western Australia Police Service does support the broadening of section 270.7 and the use of victim impact statements in sentencing.

Once again, thank you for the opportunity to comment on this Bill and if you have any further queries on this matter please contact Mr Matthew Samson of our Legal Services Unit on (08) 9268 7880.

R M NAPIER  
A/DIRECTOR  
STRATEGIC POLICY

21 February 2005