

Parliament of the Commonwealth of Australia

**PARLIAMENTARY JOINT COMMITTEE  
ON THE AUSTRALIAN CRIME COMMISSION**

**Inquiry into the trafficking of women for sexual servitude**

June 2004

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# EXECUTIVE SUMMARY

## **The Committee and the ACC**

The Parliamentary Joint Committee on the Australian Crime Commission has a statutory responsibility to examine trends and changes in the method and practice of criminal activities, and to report to Parliament with any suggested changes. Accordingly the Committee conducted an inquiry into the Commission's involvement in assessing trafficking for the purposes of sexual servitude in Australia, its relationship with the relevant State and other Commonwealth agencies, and the adequacy of the current legislative framework.

## **Major Issues**

The Committee's inquiry stemmed in part from the emergence in the media of allegations of mishandling of cases of trafficked women by government agencies. Of particular concern was the allegation that women, who were in effect prisoners of traffickers who forced them into the sex trade against their will, were simply deported by government agencies with no regard for their condition as victims of crime.

The major issues which emerged from the inquiry were:

- the extent of trafficking in women in Australia;
- the effectiveness of the National Action Plan announced in 2003;
- the need for interdepartmental co-ordination of the response to the National Action Plan;
- the protection and treatment of trafficked women;
- the adequacy of the applicable legislation; and
- the need for ratification of the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children*.

## **Extent of the problem**

People trafficking is defined under international law by three key elements:

- movement (across or within borders); through
- coercive, deceptive means; for the purpose of
- exploitation.

In the case of trafficking in children, the second element is unnecessary. In other words, the movement of children for purposes of exploitation is considered trafficking, irrespective of whether or not the child was coerced, deceived or otherwise lured into the situation.

The Committee acknowledges that people trafficking results in the exploitation of people in a range of settings beyond just the sex industry, including the construction, clothing and textiles, domestic service and hospitality industries. Nevertheless, the evidence of conditions in which some women in the sex industry are forced to work was deeply disturbing. These women are required to work six or seven days a week, and see as many as ten customers per day. They often have little or no freedom of movement, poor food and accommodation, and no control over which customers they see, or what sexual acts they are forced to provide. Many women are the victims of sexual and physical assaults and suffer a range of physical and emotional health problems.

The Committee found that most of the trafficked women in Australia were recruited from South East Asia and China. Some of the women are recruited from within the sex industry and are aware of what they are required to do when they arrive in Australia, while others are deceived either as to the nature of the work they have contracted to do, or the conditions they will work under in Australia. In any case, they will typically incur a debt of \$35,000 – \$40,000 to be brought into the country.

The traffickers facilitate the women's entry to Australia by a range of fraudulent means, including providing visas (typically student or holiday), false passports and funds. Traffickers usually bring the women into Australia through Sydney before being farmed out to brothels in Melbourne, Perth and other areas.

The Committee remains concerned at the ease with which traffickers appear able to obtain entry visas for the hundreds of women they bring into Australia each year for the purpose of sex work, and accordingly **recommends** that the Australian Crime Commission focuses its investigations on the methods by which people traffickers are able to circumvent Australian immigration barriers through visa fraud.

The extent of trafficking in women for sexual servitude proved difficult to establish, principally due to differing definitions of the crime. The Committee was given varying estimates of the number of trafficked women into Australia each year, varying from over 1000 to a handful.

While it seems to be generally accepted that approximately 300 women are trafficked into the country each year for sex work, the number of these who can be considered to be in servitude is likely to be relatively small. Whether the figure is as low as Scarlet Alliance's estimate of ten, or as high as Project Respect's estimate of one thousand, is impossible to determine accurately. Contract women who have been trafficked into Australia represent a continuum of those who enter with full knowledge and consent; those who enter with consent but are deceived as to conditions; and those who enter Australia completely deceived as to their work in the sex industry.

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However, the Committee agrees with Ms Maltzahn of Project Respect that, whatever the final proportions represented in each category:

It is a significant enough problem that we need to take it seriously. I do not think it is just a few aberrations that we are finding.<sup>1</sup>

In any case, this uncertainty underlines the continuing importance of the ACC's intelligence gathering and analysis role for informing the Australian government's response to the problem.

### **The National Action Plan and the effectiveness of the government response**

During the Committee's inquiry, the government introduced the National Action Plan to combat Trafficking in Women, which includes a wide range of measures to be implemented by a variety of agencies.

Key agencies include the Australian Crime Commission, the Australian Federal Police, the Department of Immigration, and Multicultural and Indigenous Affairs, the Attorney General's Department, AusAID and a range of state agencies. These activities are coordinated through a number of bodies operating at the Ministerial, police commissioner, interagency and operational levels. In particular, these include the Australian Police Ministers Conference (APMC) and an interdepartmental Committee.

During the inquiry, the Committee focused on an assessment of both the adequacy of the various agencies' strategies for implementation of the plan and the coordination of their activities.

The Committee found that existing organisational arrangements do not include any centralised authority or responsibility for implementing the anti-trafficking measures, and the role of the interdepartmental committee is not clearly defined. The Committee **recommends** that this be formalised by the appointment of a Chairperson and charter. The charter should include:

- a statement of the IDC's formal responsibility for g coordination issues;
- a statement setting out its authority to issue recommendations to any relevant authority to address defects in the system;
- a requirement that the IDC issue a response to matters referred to it within a stipulated timeframe; and
- a requirement that the IDC review its functions after eighteen months in operation and make a recommendation on its future.

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1 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 39

## Protection and support of trafficked women

The Committee was also concerned at the adequacy of the arrangements for the protection and support of trafficked women. In general, the new arrangements are a major improvement on the old. However, of particular concern is that while the National Action Plan recognises trafficked women as victims of crime, under the Victim Support Package, women only receive benefits equivalent to the basic 'Special Benefit' level which is the same as that received by – among others – asylum seekers.

The Committee does not believe this adequately reflects the level of danger faced by women who agree to assist Australian law enforcement agencies, or the vital importance of their cooperation if Australia is to successfully investigate and prosecute traffickers.

As such, the Committee **recommends** an urgent reassessment of the benefits payable to women under the Victim Support scheme, and that women under the scheme should receive benefits benchmarked against those available to witnesses under the Witness Protection Scheme.

A related issue was the Criminal Justice Stay Visa which enables trafficked women who are witnesses in criminal proceedings to remain legally in Australia pending the finalisation of those proceedings. The Committee has received evidence that in some cases, this will involve women being unable to return to their countries of origin for many years while awaiting the finalisation of court proceedings. As such, the Committee **recommends** that the current visa provisions be reviewed. In that review, the Committee suggests that changes be considered to provide the Immigration Minister with a discretion to allow witnesses to return to their country of origin to enable contact with their families.

## Legislation

The Committee found that in general, Commonwealth law provides an effective range of offences covering trafficking. These include a number of amendments to the *Criminal Code Act 1995* which added sections concerning slavery and sexual servitude.

The Committee also notes that the government's National Action Plan includes a review of the relevant laws. The review should take place as soon as possible, and should focus particularly on the measures needed to ensure Australia's compliance with the United Nations Protocol. The Committee is aware that the ratification of the Protocol is contingent upon legislative amendment and as such, **recommends** that the review address the following matters:

- the adequacy of existing provisions of the *Criminal Code* covering recruiting transportation and transfer of women for the purposes of trafficking be examined;

- that consideration be given to amending section 270(7) of the *Criminal Code* to broaden the offence of deception to include deception regarding the kind of services to be provided, whether of a sexual nature or not; and
- that consideration also be given to adopting the use of victim impact statements in sentencing.

The Government's National Action Plan will provide the framework within which the ratification by Australia of the UN Protocol can occur. The government has already indicated its intention to ratify the Protocol and the Committee **recommends** that this occur as soon as possible.



# RECOMMENDATIONS

## **Recommendation 1** **12**

**2.28** The Committee recommends that the Australian Crime Commission focus their investigations on the methods by which people traffickers are able to circumvent Australian immigration barriers through visa fraud.

## **Recommendation 2** **35**

**3.64** The Committee recommends the formalisation of the existing Interdepartmental Committee (IDC), by the appointment of a Chairperson and charter, which should state the IDC's formal responsibility for addressing coordination issues and its authority to issue recommendations to any relevant authority to address defects in the system.

**3.65** The IDC charter should require the IDC to issue a response to matters referred to it within a stipulated timeframe.

**3.66** The IDC charter should require the IDC to review its functions after eighteen months in operation and make a recommendation on its future.

## **Recommendation 3** **41**

**3.95** The Committee recommends the urgent reassessment of benefits payable to women under the victim support scheme. Given that a precondition of participation in the scheme is the women's preparedness to assist Australian law enforcement agencies to prosecute traffickers, it would be appropriate for women under the scheme to receive benefits benchmarked against those afforded to witnesses under the Witness Protection Scheme.

## **Recommendation 4** **52**

**4.36** The Committee recommends that the following matters be examined in the legislative review announced as part of the government package:

- The adequacy of existing provisions of the Criminal Code Act 1995 covering recruiting transportation and transfer of women for the purposes of trafficking;
- amending section 270(7) of the *Criminal Code Act 1995* to broaden the offence of deception to include deception regarding not only the type of work to be done, but expressly the kind of services to be provided, whether of a sexual nature or not;
- adopting the use of victim impact statements in sentencing.

**Recommendation 5** **54**

**4.44** The Committee recommends the speedy implementation of the legislative review that forms part of the anti-trafficking measures announced in October 2003. The review should focus particularly on the measures needed to ensure Australia's compliance with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

**Recommendation 6** **54**

**4.45** The Committee further recommends that the results of this review form the basis for legislative changes that should be ready for introduction to the Parliament early in 2005.

**Recommendation 7** **54**

**4.46** That the Protocol be ratified as soon as possible.

**Recommendation 8** **57**

**4.64** The Committee recommends 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 origin.

**Recommendation 9** **60**

**4.83** The Committee recommends that the government 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 requirements.

# Chapter 1

## The inquiry

### Introduction and the role of the JPC

1.1 On 26 June 2003, the Committee adopted the following terms of reference:

That, in accordance with paragraph 55(1)(a) and (d) of the *Australian Crime Commission Act 2002*, the Parliamentary Joint Committee on the Australian Crime Commission inquire into and report on the Australian Crime Commission's response to the emerging trend of trafficking in women for sexual servitude with particular reference to:

1. the Australian Crime Commission's work in establishing the extent of people trafficking in Australia for the purposes of sexual servitude;
2. the Australian Crime Commission's relationship with the relevant State and other Commonwealth agencies; and
3. the adequacy of the current legislative framework.

1.2 The Inquiry was conducted under the authority of paragraph 55 (1)(d) of the *Australian Crime Commission Act 2002* (the Act). The paragraph states:

#### Duties of the Committee

(1) The duties of the Committee are:

...

(d) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the ACC;

1.3 The Australian Crime Commission's role is set out in section 7A of the Act which may be found at Appendix 3. At the core of the ACC's investigative role is 'federally relevant criminal activity' which involves 'serious and organised crime'. Section 4 of the Act sets out the characteristics of serious and organised crime.

### Origins of the inquiry

1.4 The Committee's inquiry stemmed in part from the emergence in the media of allegations of mishandling of cases of trafficked women by government agencies. Of particular concern was the allegation that women, who were in effect prisoners of

traffickers who forced them into the sex trade against their will, were simply deported by government agencies with no regard for their condition as victims of crime.<sup>1</sup>

1.5 During the course of the Committee's inquiry, the government announced several major initiatives to address these concerns and combat the problem of trafficking in women. These comprised first, a national program of measures released by the Australasian Police Ministers' Council (APMC), and second, a Commonwealth government package.

### ***National action plan to combat trafficking in women***

1.6 The Australasian Police Ministers' Council (APMC) committed all law enforcement agencies to the development of a National Action Plan to enhance efforts to combat these serious crimes. The APMC agreed that:

- All jurisdictions will review their legislation on sexual servitude and other offences related to trafficking.
- All jurisdictions will examine their current intelligence and information sharing practices.
- All jurisdictions will review current operational arrangements with the Department of Immigration and Multicultural and Indigenous Affairs to ensure victims of trafficking and sexual servitude are identified as victims of crime.
- The Commonwealth will work with States and Territories to develop the National Action Plan.
- Final proposals will be referred to the Board of the Australian Crime Commission for endorsement.

### ***Commonwealth Action Plan to Eradicate Trafficking in Persons***

1.7 This national approach will be led at the Commonwealth level by the development of the Commonwealth Action Plan to Eradicate Trafficking in Persons, which provides for:

- A new community awareness campaign to raise awareness of trafficking issues within Australia.
- A new 23-member Australian Federal Police (AFP) mobile strike team (the Transnational Sexual Exploitation and Trafficking Team) to investigate trafficking and sexual servitude.

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1 See for example: 'Sick and alone ... tragic end for a sex slave', *The Australian*, 13 March 03, p. 3; 'Sold at 12: nightmare ends in death', *Sydney Morning Herald*, 13 March 03, p. 7; 'Officials impotent on sex slave trade', *Weekend Australian*, 29 March 03, p. 15; 'Officials ignored sex slave's offer of help', *the Australian*, 1 April 03, p. 13.

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- A new Senior Migration Officer (Compliance) in Thailand, focused on trafficking in persons.
  - Closer links between the AFP and Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) officers in the detection and investigation of trafficking and enhanced training on trafficking issues.
  - New visa arrangements for potentially trafficked persons.
  - Comprehensive victim support measures provided through contracted case managers, including appropriate accommodation and living expenses and access for victims to a wide range of social support, legal, medical and counselling services.
  - Enhancement of arrangements, including access to additional support, for the small number of potential victims who may be required to remain in immigration detention.
  - Development of a reintegration assistance project for trafficking victims who are returned to key source countries in South East Asia.
  - Improvements to legislation to comprehensively criminalise trafficking activity.
  - Legislative amendments to make telecommunications interception available for investigating trafficking offences.<sup>2</sup>
  - Ratification, once all domestic requirements are in place, of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.<sup>3</sup>

1.8 Overall, the package is designed to 'focus on the full cycle of trafficking from recruitment to reintegration and to giving equal weight to the three critical areas of prevention, prosecution and victim support.'<sup>4</sup>

1.9 Also of relevance has been the introduction, in March 2004, of the Surveillance Devices Bill 2004, which (among other things) would enable surveillance devices to be used as part of the investigation into people trafficking and child sex tourism offences. The bill also seeks to expand the range of surveillance devices that may be used, to include data surveillance devices, optical surveillance devices and tracking devices.

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2 Made via the *Telecommunications Interception and Other Legislation Amendment Act 2003*, which came into force on 12 November 2003.

3 AGD, Submission 36 and Attachment: News Release, 'Australian government announces major package to combat people trafficking', 13 October 2003.

4 Ms Blackburn, *Proof Committee Hansard*, 26 February 2004, p. 14

### **Conduct of the inquiry**

1.10 The Committee advertised the inquiry in 'the Australian' newspaper on 26 June and 13 August 2003. In addition, the Committee wrote to a number of interested individuals and organisations, including the Australian Crime Commission, the Australian Federal Police, State and Territory police services, and non-government organisations. In response, the Committee received 39 submissions. These are listed at Appendix 1.

1.11 The Committee also held public hearings in Melbourne on 18 November 2003; in Sydney and Canberra on 25 & 26 February 2004; and a second hearing in Canberra on 30 March 2004. Details of these hearings are listed at Appendix 2.

1.12 As always, the Committee wishes to record its thanks to all those who took the time to prepare submissions to the inquiry and to those who participated in the hearings.

### **Outline of the report**

1.13 The following three chapters of this report essentially follow the terms of reference. Thus: Chapter 2 addresses the nature and extent of the problem; Chapter 3 examines the ACC's role in the overall Australian government's response to the problem, while Chapter 4 assesses the legislative framework that underpins Australia's response to the trafficking of women for sexual servitude.

1.14 Although the terms of reference focus on the role of the Australian Crime Commission, each of the chapters necessarily takes a broader view of the issues in order to ensure a thorough examination of the ACC's role in its wider context.

## Chapter 2

### The problem of sexual servitude and trafficking in women

#### Introduction

2.1 This chapter describes the trade of trafficking in women, the involvement of the sex industry and sexual servitude. The chapter then addresses the more complex issue of the size of the trade and the extent of the problem within Australia.

#### Trafficking for the sex trade

2.2 The first widely accepted and internationally agreed definition of trafficking is embodied in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (the Trafficking Protocol). This instrument is one of three Protocols supplementing the *United Nations Convention against Transnational Organised Crime*.<sup>1</sup> As Ms Gallagher, a former adviser on trafficking to the UN High Commissioner for Refugees, explains, the Protocol definition is quite complicated but can be broken down into three key elements:

1. movement (across or within borders); through
2. coercive, deceptive means; for the purpose of
3. exploitation.

In the case of trafficking in children, element 2 is unnecessary. In other words, the movement of children for purposes of exploitation is considered trafficking, irrespective of whether or not the child was coerced, deceived or otherwise lured into the situation.<sup>2</sup>

2.3 This can therefore be contrasted with 'smuggling', which is defined as 'the procurement, in order to obtain directly or indirectly a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or permanent resident.'<sup>3</sup> The two can be distinguished in that:

people smuggling is usually limited to illegally transporting person(s) to another country after which the relationship between the smuggler and smuggled person terminates. This differs from trafficking in persons, where the person(s) are delivered to organisations or individuals who have paid

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1 Adopted by resolution A/RES/55/25 of the UN General Assembly on 15 November 2000. As at 28 August 2003 the Convention had 147 signatures and 41 parties, while the Protocol had 117 signatures and 31 parties. ADG, Submission 36, p. 4-5

2 Ms Gallagher, Submission 23, p. 3

3 AFP, Submission 37, p. 1

for their delivery, after which the trafficked person(s) must repay their debt to the organisers through prostitution or forced labour.<sup>4</sup>

2.4 The trafficking of women for the purposes of sexual servitude must also be viewed in the wider context of people smuggling and trafficking generally. Ms Gallagher points out that:

Trafficking takes place for a variety of end purposes including domestic service, forced marriage and sweatshop labour. Forced sex work is the most visible end-result of trafficking especially in developed countries such as Australia but there is no hard evidence available that it is the most common.<sup>5</sup>

2.5 This fact is evident in a study of trafficked persons undertaken by Project Respect in 2004, which also found examples in the construction and hospitality industries.<sup>6</sup> From the evidence received during this inquiry, there is no evidence to suggest that males – either adults or children – are victims of trafficking in the sex trade, with trafficked men tending to end up in other industries.<sup>7</sup>

2.6 Ms Gallagher offers several other characteristics of the trade:

- By definition, a trafficked person ends up in a situation from which she or he cannot escape. Traffickers and their accomplices use a variety of methods to prevent escape including threats and use of force, intimidation, detention and withholding of personal documents.
- Most though not all trafficked persons enter and/or remain in the destination country illegally. Illegal entry increases a trafficked person's reliance on traffickers and serves as an effective deterrent to seeking outside help.
- Unlike drug trafficking or human smuggling, revenues from trafficking are ongoing and potentially long-term, as the benefits of another person's 'labour' can be appropriated indefinitely.<sup>8</sup>

### ***Source countries***

2.7 According to Project Respect, a specialist non-government organisation working to promote the human rights of women in the sex industry, most women

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4 AFP, Submission 37, p. 1

5 Ms Gallagher, Submission 23, p. 4

6 Project Respect, *One victim of trafficking is one too many: counting the human cost of trafficking*, March 2004.

7 Mr Kitson, *Proof Committee Hansard*, 26 February 2004, p. 45; Dr Moyle, *Proof Committee Hansard*, 25 February 2004, p. 59

8 Ms Gallagher, Submission 23, p. 4

trafficked to Australia come from South East Asia and China, with the majority from Thailand. However, there are also indications that women are at times trafficked from Europe and Latin America. Project Respect also has anecdotal evidence that following the recent publicity about trafficking in Thai women, fewer Thai women are being brought to Australia, being replaced with increasing numbers from South Korea<sup>9</sup> and Malaysia.<sup>10</sup>

2.8 This evidence is borne out by statistics from the Department of Immigration, and Multicultural and Indigenous Affairs (DIMIA), which show that of 257 people detected in 2002-2003 working illegally in the sex industry, the majority (100) were from Thailand:

**People detected working illegally in the sex industry 2002-03<sup>11</sup>**

Nationality	Total
Burma (Myanmar)	1
Cambodia	1
Canada	1
China, Peoples Republic of	42
Colombia	2
HKSAR of the PRC	9
Hungary	1
Indonesia	6
Korea, Republic of	39
Malaysia	49
Nepal	1
Philippines	2
Thailand	100
United States of America	2
Unknown	1
<b>TOTAL</b>	<b>257</b>

9 Project Respect, Submission 25, p. 7

10 Ms Hoban, School of Health Sciences, Submission 14, p. 2

11 DIMIA, Submission 37, Attachment A

## ***Recruitment***

2.9 There are three broad categories of women trafficked to Australia.

2.10 The first group comprises women who come to Australia intending to work in the sex industry. The second group come knowingly intending to work in the sex industry, but are misled by traffickers as to the conditions under which they will be working. This second group includes women who have worked in the sex industry previously in and/or abroad, as well as those who have never engaged in prostitution before. According to Ms Gallagher:

Most traffickers use varying levels of fraud or deception, rather than outright force, to secure the initial cooperation of the trafficked person. A commonly reported situation involves a girl or young woman being deceived about the cost (and repayment conditions) of the migration services being offered her, the kind of work she will be doing abroad and/or the conditions under which she is expected to work.<sup>12</sup>

2.11 Even for those with experience in the sex industry, conditions as a sex worker in Australia may be much worse than in their home countries. Project Respect told the Committee:

For example, women may be given the impression that they will be working in a karaoke bar, will be able to pick and chose who they have sex with and will only have a small number of prostitution clients.<sup>13</sup>

2.12 In these karaoke bars in Thailand for example, the women may only have one customer per night, and up to ten a month. In Australia, by contrast, they will be required to service between seven and ten customers per day.<sup>14</sup>

2.13 The third group are totally deceived about the fact that they will be required to work as prostitutes in Australia. These women are often told that they will be working in businesses unrelated to the sex industry, such as restaurants, travel services, or domestic work. Perhaps the worst aspect of this relates to child trafficking. Ms Gallagher explains in her submission that:

Traffickers use a variety of recruitment methods. Outright abduction is only very occasionally reported and often difficult to objectively verify. Child trafficking generally involves payment to a parent or guardian in order to achieve cooperation and this is often accompanied by a measure of deception regarding the nature of the child's future employment or position.<sup>15</sup>

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12 Ms Gallagher, Submission 23, p. 4

13 Project Respect, Submission 25, p. 7

14 Confidential evidence.

15 Ms Gallagher, Submission 23, p. 4

2.14 The death of a Thai sex worker in Villawood Detention Centre in 2003, brought to light an example of this in Australia. Ms Simaplee came from a hill tribe in Chiang Mai province and was sold by her parents as a 12 year old, and then smuggled into Australia on a false Malaysian passport in 1986.<sup>16</sup>

2.15 Recruitment of the women is done by spotters in the home country, often friends or acquaintances of the trafficked women, who are paid a commission or spotter's-fee. The women are asked if they would like to work in Australia. If they agree, they give their passport to the trafficker, and some time later – often months – they are contacted and told the get ready to leave.<sup>17</sup>

2.16 In the case of the increasing number of Korean sex workers coming to Australia, the Korean networks reportedly 'use recruiters to find women with debts that they buy up, promising the women to save them from debtors' prison'.<sup>18</sup>

2.17 In all cases, the size of the contract amount is very large, averaging between \$35,000 to \$40,000 and sometimes as much as \$50,000.<sup>19</sup> However, the true significance of this sum for a sex worker is the number of clients the women will need to service to complete the contract. As the Scarlet Alliance explained:

that it is an average of 700 clients for the contracts at present, but if they work in different sectors of the industry the number might be greater, because the price of the service is different. If they are working in what is called massage then the client number might be greater because the fee per service is lower and the type of service is not penetrative sexual services, whereas if they are working in what is called a full-service brothel, where the fee the client is paying is much greater, then those women are on a lower number of clients per contract.<sup>20</sup>

2.18 It is not possible to accurately determine the relative proportions of these three categories. The evidence presented to this inquiry agrees that the majority of women coming to Australia on contract do so willingly. Scarlet Alliance point to unpublished research from the Sydney Sexual Health Centre, which shows that while the contract fees are excessive relative to the things that need to be arranged:

that is the risk ... that they will take in order to have the opportunity to come here and work and perhaps go back with \$5,000, which is more money than they would ever be able to make in their lives in their home country. It is the pot of gold at the end of the road. That can be earned by a very good, very active sex worker in about two weeks, if she wishes to. So

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16 'Sold at 12: nightmare ends in death', Sydney Morning Herald, 13 March 2003, p. 7

17 Confidential evidence

18 'Deals on sex slaves in lobby of hotel', Weekend Australian, 26 July 2003, p. 3

19 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 20

20 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 20

if they are on a three-month tourist visa and they finish their contract they can make that money.<sup>21</sup>

2.19 Similarly, Superintendent Migro of the WA Police, of their experience of recent instances in which:

several Asian females residing in Australia illegally have been detained under the provisions of federal legislation. In all instances, the females were above the age of 18 and they declined to discuss their situation in any great detail. The females gave the impression that they had entered Australia fully understanding the conditions under which they would be employed and none wished to make any complaint. All appeared to be willing participants in the prostitution related matters.<sup>22</sup>

2.20 Project Respect have a more critical view, and consider that although the majority of trafficked women are willing participants in the trade, the majority are also victims of significant deception in relation to the scale of their debt and the conditions under which they will work.<sup>23</sup>

2.21 It is also important to place this evidence in a wider perspective. The Committee received evidence from the Scarlet Alliance that, based on a recent unpublished survey, the vast majority of overseas sex workers in Sydney came voluntarily with legitimate visas, quite often to study. Thus, 'the fact that they are working in the sex industry is a secondary activity to their primary purpose.'<sup>24</sup>

There were 144 women in that study, and of those only 11 had indicated that they had some kind of contractual or agent type arranged visit – so someone assisted them in exchange for money or they were actually on a contract. That is less than 10 per cent of the interviewees in that survey.<sup>25</sup>

### ***Entry to Australia***

2.22 The central challenge for those wishing to enter Australia is obtaining a visa, and it is at this point that the traffickers play the key role. The most common basis for entry is either a student or tourist visa. Project Respect explain that:

Traffickers regularly provide women with false passports and pay money into women's bank accounts to temporarily inflate their bank balance which

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21 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 23

22 Det Supt Migro, *Proof Committee Hansard*, 25 February 2004, p. 47. See also comments at p. 52

23 Project Respect, Submission 25, p. 4. This view is also taken by the Australian Section of the International Commission of Jurists, Submission 8, p. 3, quoting the UN Special Rapporteur.

24 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 18

25 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 18

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strengthens their application to Australian immigration authorities for a visa.<sup>26</sup>

2.23 Ms Maltzahn, representing Project Respect gave further detail of this during the public hearings, noting that although there are small operators in the business, consisting of opportunists dabbling and making a bit of money:

there are also very organised syndicates that are making it work, and they have resources behind them. ... what they will do is something like put \$10,000 in a woman's account. They will change the person's name, manufacture false identity documents, so that the person does not necessarily look as though they fit the profile of people who DIMIA would stop.<sup>27</sup>

2.24 Sometimes traffickers will go so far as to arrange marriages for trafficked women to strengthen visa applications to Australia. Traffickers also frequently provide escorts or 'mules' who accompany the women on their journey to Australia and through customs, sometimes posing as a partner or family member:

What typically occurs with the trafficking crime is that, in order to ensure that the woman gets across the border without trouble – and, I suppose, to protect the asset – the trafficker sends someone to accompany the trafficked victim across the border, and that person is paid a sum of money to do that.

... So they would get on the plane in Thailand, help them go through immigration at this end and at the other end, and that would be the end of their job. They sometimes get paid \$2,000, and they head back home.<sup>28</sup>

2.25 Several sources of information to the inquiry have also pointed to the role that corrupt officials, particularly in sending countries, play in assisting the visa frauds:

Trafficking is sustained and strengthened through public sector corruption, particularly of police and immigration officials who, in some countries, play a key role in facilitating illegal entry and providing protection to trafficking operations.<sup>29</sup>

2.26 The Committee remains concerned at the ease with which traffickers appear able to obtain entry visas for hundreds of women they bring into Australia each year for the purpose of sex work. This contrasts with the personal experience Committee Members have had of the difficulty encountered by many members of the community in obtaining visas for their family members to visit Australia for entirely legitimate purposes.

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26 Project Respect, Submission 25, p. 4. See also 'Officials impotent on sex slave trade', Weekend Australian 29 March 2003, p. 15

27 Ms Maltzahn & Ms Costello, *Proof Committee Hansard*, 18 November 2003, p. 34-35

28 Ms Maltzahn & Ms Costello, *Proof Committee Hansard*, 18 November 2003, p. 34-35

29 Ms Gallagher, Submission 23, p. 4; see also Project Respect, Submission 25, p. 4

2.27 At face value, this amounts to a serious anomaly, yet despite raising the issue with departmental officials, the Committee has not heard any satisfactory explanation for how the traffickers achieve their successful visa frauds. The matter remains to be answered.

### **Recommendation 1**

**2.28 The Committee recommends that the Australian Crime Commission focus their investigations on the methods by which people traffickers are able to circumvent Australian immigration barriers through visa fraud.**

#### *The trade in Australia*

2.29 The most common entry point of trafficked women into Australia is Sydney, and it is from there that the traffickers farm them out to the brothels, both legal and illegal.<sup>30</sup> Detective Senior Sergeant McKinney from the Victoria Police, told the Committee, there are four or five traffickers in Sydney and two or three in Melbourne, competing against each other for the brothel business,

And they all know each other. ... You will find that there are people here in Australia whose prime business is the recruitment of women. They get them here and then they disburse them once they are here.

2.30 This is borne out by the example of one brothel owner in Sydney who was offered trafficked women by four separate suppliers within just two weeks.<sup>31</sup> However, the model is flexible: sometimes the traffickers both supply the women and operate the brothels, while more recently there have been examples of:

contract girls being offered to small investors, those investors then being responsible for finding work for them, getting them to and from work and making sure they don't run away.<sup>32</sup>

2.31 Project Respect gave this description of the trade:

Some traffickers operate organised chains that cover the entire trafficking process – they recruit women in source countries and prostitute them in their own brothels (or through escort arrangements) in Australia. Other traffickers engage in only one part of the trafficking. For example, they may recruit women and bring them to Australia, and then sell them to another trafficker. This sale may be based on a ‘pre-order’, or involve traffickers coming to look at women once they are in Australia and picking the one/s they wish to buy. Some traffickers have many women, others may be ‘mum and dad’ traffickers who buy a half share in a woman.<sup>33</sup>

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30 Project Respect, Submission 25, p. 4

31 'Deals on sex slaves in lobby of hotel', Weekend Australian, 26 July 2003, p. 3

32 Christopher Payne, Trafficking and sexual servitude in Australia, Department of the Parliamentary Library, Vital Issues Seminar, 20 August 2003, p. 6

33 Project Respect, Submission 25, p. 8

2.32 The centre for the sex trade using these trafficked women seems to centre on Sydney – as the gateway – and Melbourne and Perth, although other state capitals are certainly involved. Investigators have found that the trade is highly mobile, with women moved rapidly between premises and across states.<sup>34</sup>

2.33 The traffickers themselves tend to dabble in a range of business interests and are not exclusively people traffickers for the sex trade. Det Snr Sgt McKinney told the Committee that his experience with the traffickers was that:

if there is money to be made in trafficking women they will traffic women. If they can at the same time run a credit card duplicating scheme they will do that as well. If at the same time they can dabble in heroin, ecstasy or ice they will do that at the same time.

... It is purely, ‘Where can I make the most money?’ and ‘What is the least risk to me?’<sup>35</sup>

2.34 This view was echoed by a Parliamentary Library briefing on the trade:

As trans-national crime is organised around profit, a diverse array of loose knit criminal organisations or individuals may simply work together opportunistically motivated by material gain.

Husbands, boyfriends, acquaintances, or family members may recruit and trade women into the international prostitution industry for profit, to repay debts or to support a family.<sup>36</sup>

2.35 This close linkage between trafficking and organised crime is of itself a matter of concern. It is also clear that the business is a very profitable one for the traffickers. The UN estimated in 2003, that trafficking in the global sex trade was worth US\$5-7 billion annually.<sup>37</sup> At a local level, this can mean a great deal of money for both traffickers and brothel owners. Det Sen Sgt McKinney related his experience of one brothel owner, to whom he linked forty women over an 18-month period. Calculated on the basis of \$100 per half hour and a contract value of 500 jobs, he would expect to make \$50,000 per woman. In this case, he paid around \$18,000 to the trafficker for the women:

So if you work on those base figures alone, without anything else, he is making \$32,000 per woman. If you base that over, say, 40 women, in 18 months there is a profit of \$1.2 million – just from the contract period and

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34 Det Supt Migro, *Proof Committee Hansard*, 25 February 2004, p. 52

35 Det Snr Sgt McKinney, *Proof Committee Hansard*, 25 February 2004, p. 40

36 Dept of the Parliamentary Library, *Trafficking and the sex industry: from impunity to protection*, May 2003, p. 3

37 Dept of the Parliamentary Library, *Trafficking and the sex industry: from impunity to protection*, May 2003, p. 3

nothing else. That does not include the 12 months afterwards or the board that they pay. It really is a profitable business, with a very low risk.<sup>38</sup>

2.36 For women working off these contracts, life can be very grim. According to Project Respect:

Women are prostituted for many hours a day, frequently seven days a week. Women report being woken and taken back to the brothel if customers arrive after they have left. Some women may be given a 'free' day during a quiet period, and will be allowed to keep a portion of this money. Women typically try to send as much of this money home to parents or children [as they can], but also use the money to pay for food and other expenses in Australia as these are often not provided by the trafficker.<sup>39</sup>

2.37 Det Snr Sgt McKinney related the conditions he found during an investigation:

they had to work for six days a week, and Monday was called their 'free day'. But their free day was not effectively their free day, because if they did not work on their free day they did not have any money at all to survive on. So the deal for them was that if they chose to work on the Monday, which was the seventh day, they were given a portion of the earnings. ... They had to work on the Monday just to buy personal items, because all they were given was a room and board – that was it, nothing else.<sup>40</sup>

2.38 The accommodation was also very poor. The women were housed in an inner city hotel, with a ground floor pub:

upstairs it was typically small, with four or five rooms. There was no common room or lounge room, as we would call it. There were two bathrooms but they were antiquated. There were bars on the windows. The outer windows that faced the street had all been nailed or painted shut – they could not open. The conditions were grotty. They were stacked in the room. ... I had trouble walking into the room because there were that many beds in the room that you had to shuffle and shimmy between the beds to get around.

In the premises there was a public area at the bottom and the private area was up the stairs. There were very large steel bars up the side of the stairwell and a big, lockable steel gate. When the girls were brought back

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38 Det Snr Sgt McKinney, *Proof Committee Hansard*, 25 February 2004, p. 39

39 Project Respect, Submission 25, p. 9

40 Det Snr Sgt McKinney, *Proof Committee Hansard*, 25 February 2004, p. 34-36. See also Scarlet Alliance, Submission 27, p. 11

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at, say, four, five or six in the morning, depending on how busy it was, they were put upstairs and the steel gate was locked.<sup>41</sup>

2.39 It is evident that, once the women were inside and the door locked, there was little chance of their escape if there was a fire.<sup>42</sup>

2.40 The effective degree of control and 'imprisonment' inflicted on the women goes far beyond the physical constraints of locked doors and someone guarding them. It is reinforced by physical violence, and the extent of the power the traffickers have over the women in other ways: the women may not speak English, they have no money or passport, and may not even know where they are. This is compounded by the women's distrust of authorities and the fear – deliberately cultivated – that the law enforcement agencies are involved with the traffickers and misinformation about the consequences of cooperating with authorities.<sup>43</sup>

2.41 Project Respect also describe what they term as the 'breaking-in' period for many newly arrived sex workers:

Women who were deceived about the fact that they would be doing prostitution are usually subject to significant and systematic violence upon arrival in Australia. This will frequently involve multiple rapes and threats of harm to the individual women and their families.

This violence serves two functions, one more obvious than the other. Firstly, pre-prostitution violence aims to break women's will and impress upon them their powerlessness in the face of the traffickers' demands. It aims to stop them from running away or seeking help in other ways, such as by telling customers their situation. Secondly, this rape teaches women how to do prostitution sex, and impresses on them that they must 'satisfy' their 'customer' and cannot refuse types of customers or sex (including sex without condoms).<sup>44</sup>

2.42 This evidence was supported by confidential testimony given to the Committee, in which a female sex worker related that when she refused to perform sex work, she was raped by three men, and then starved for up to a week, before she finally acquiesced.

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41 Det Snr Sgt McKinney, *Proof Committee Hansard*, 25 February 2004, p. 34-36. Mr McKinney later notes that since the introduction of the new legislation, and the publicity surrounding recent cases of sexual servitude, these conditions have become less common, with women billeted out to various households.

42 See also the example given by Christopher Payne, 'Trafficking and sexual servitude in Australia', Department of the Parliamentary Library, Vital Issues Seminar, 20 August 2003, p. 2. Note also the example of Noi, a Thai woman who was bought by a syndicate and imprisoned in a brothel in Newtown. After paying off her contract she worked on her own behalf in brothels in Sydney and Melbourne. 'Officials ignored sex slave's offer of help', the Australian, 2 April 2003, p. 13

43 Confidential evidence

44 Project Respect, Submission 25, p. 8. See also Ms Hoban, Submission 14, p. 2

2.43 As noted, a common feature of the sex work performed by trafficked women is that they have no right to refuse either clients, or particular sexual acts. Ms Maltzahn told the Committee that:

Part of what you sell with a trafficked woman is someone to whom you can do anything you want. It might be that you only want to have a particular type of sex or it might be that you want to be violent – whatever it is, fundamentally, at the guts of it, you are able to do that. So I think it is absolutely true that trafficked women are made to do a whole lot of other things that other women in the industry may be able to say no to.<sup>45</sup>

2.44 As well as the threat of violence from brothel managers if they refuse a customer or sexual act, these women suffer the further inducement that if they fail to satisfy a customer, who then complains, that job does not count towards redeeming their contract.<sup>46</sup>

2.45 Generally, the degree of freedom given to the women increases as they progress through their contract, since they become less ‘valuable’ to traffickers as they have paid off much of their contract, they are no longer ‘new faces’, and ‘women have learnt that they will be punished if they run away, and are scared that the traffickers will hunt them down even if they return home’.<sup>47</sup>

2.46 There are obvious health implications from this environment. Women are likely to suffer both psychological ill and physical ill health due to violence – internal pain, bruising, vaginal and anal bleeding, and mouth and teeth injuries – as well as drug dependency, inadequate nutrition and exercise, and forced abortions. They are also at high risk of sexually transmitted infections stemming from unsafe sex practices.<sup>48</sup>

### ***Visa abuses***

2.47 As detailed above, traffickers perpetrate a range of frauds to get women into Australia on legal visas, but their fraud games continue once the women are here and working. Traffickers, who often hold the passports and travel documents of the women, will lodge a refugee application on the women's behalf, although often without their knowledge. The logic behind this is that if a refugee application is made within 45 days of arrival, the woman is eligible for work rights until the department of immigration has resolved her protection claim – which is generally rejected, due to lack of substantiation or effort on the part of the traffickers – which is then followed by a review by the Refugee Review Tribunal. By working the system in this way, the

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45 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 48

46 Confidential evidence

47 Project Respect, Submission 25, p. 10

48 Project Respect, Submission 25, p. 12. See also Ms Hoban, Submission 14, p. 3

traffickers are able to extend the women's legal stay in Australia, giving enough time for the women pay back the contract and possibly make some money of her own.

2.48 A major disadvantage for the women though, is that rejection of the bogus protection visa applications submitted by the traffickers makes it almost impossible for the women to subsequently make a genuine application.<sup>49</sup>

### ***Detection***

2.49 'Contract girls' usually come to the attention of authorities in Australia in one of three ways: women are detected by DIMIA, women's contracts end and they are allowed to leave the traffickers' control, or they run away.<sup>50</sup>

2.50 As noted above, during 2002/2003 DIMIA located 257 persons working illegally in the sex industry.<sup>51</sup> DIMIA has compliance teams around the country who can act on information received and mount a raid on a premises within a very short period – sometimes within hours.<sup>52</sup> The information tends to come from brothel clients who, getting to know some of the women, and become aware that they have been trafficked,<sup>53</sup> or by business rivals seeking to close down their opposition (particularly where the competition are operating illegally).<sup>54</sup>

2.51 Tip-offs will also sometimes come from the women themselves, either directly or through the agency of a friend. Scarlet Alliance told the Committee that their outreach workers often have ongoing discussions with sex workers during which information is given to the sex workers about options they might have if they want to leave:

The reason they are asking is that they may intend to trigger somehow – through a client or a person in the community that they have made contact with – a call to DIMIA to raid those premises in order to get them out.<sup>55</sup>

2.52 Perhaps the most ironic of the sources of tip-offs to DIMIA are the traffickers. Project Respect report that: 'at times, traffickers themselves contact DIMIA and "dob" the woman in, if a woman is close to finishing her "contract". Once the contract is paid off, the woman is entitled to a percentage of her earnings, which therefore reduces her profitability to traffickers and brothel owners. At the same time, she may:

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49 Project Respect, Submission 25, p. 9; Det Snr Sgt McKinney, *Proof Committee Hansard*, 25 February 2004, p. 41; Ms Costello, *Proof Committee Hansard*, 18 November 2003, p. 41

50 Project Respect, Submission 25, p. 10

51 DIMIA, Submission 38, Attachment A

52 Mr McMahon, *Proof Committee Hansard*, 26 February 2004, p. 39

53 Mr McMahon, *Proof Committee Hansard*, 26 February 2004, p. 39

54 Mr Wolfe, *Proof Committee Hansard*, 18 November 2003, p. 4; Mr Miles, *Proof Committee Hansard*, 25 February 2004, p. 4

55 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 21

- 'contaminate' new contract women (for example by telling them how to seek help, by explaining to them what the Australian legal situation is etc);
- operate in competition to the contract women;<sup>56</sup>

2.53 This is particularly unfair for the women because it is only after the contract is paid off that they have the opportunity to make the money – which is of course the reason they entered into the arrangement in the first place. This in turn increases the likelihood that they will enter into further contracts with traffickers and be re-trafficked.

2.54 In a final irony, if DIMIA deports the woman, the traffickers may save on airfare and escort costs.

2.55 The third way trafficked women come to the attention of Australian authorities is when they manage to escape the brothels. Thus for example, Detective Superintendent Migro, of the WA Police Service, told the Committee that:

The existence of sexual servitude in this state first came to the attention of the police service in 1999, when three Thai nationals attended our crime headquarters in Perth seeking assistance to return home. All three claimed that they had been deceptively recruited overseas to work in the sex industry in Australia.<sup>57</sup>

2.56 Coincidentally, just such an incident occurred in Sydney on the day the Committee was taking evidence there. According to media reports, three women who were allegedly held captive at an inner-city brothel, escaped when they woke and found that neither of the brothel owners were at home. They arrived at the Surry Hills Police station and Police subsequently raided the brothel, leading to the discovery of a further six sex workers and the arrest of the husband and wife operators of the brothel.<sup>58</sup>

2.57 Possibly the more common way out is: 'by establishing a relationship with an Australian citizen who will either provide refuge to the woman or attempt to pay off the contract. Sometimes, trafficked women marry Australian citizens.'<sup>59</sup> This view was supported by confidential evidence received by the Committee.

### ***Retrafficking***

2.58 The final step in the trafficking cycle for women in Australia is to be re-trafficked under another contract, either to Australia or another country, especially if

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56 Project Respect, Submission 25, p. 10. See also Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 19

57 Det Supt Migro, *Proof Committee Hansard*, 25 February 2004, p. 47

58 'Two on sexual slavery charges', the Australian, 25 February 2004, p. 3

59 Project Respect, Submission 25, p. 10

their contract is interrupted and they are sent home before they are able to make any money for themselves. Ms McMahon, of the Scarlet Alliance, told the Committee that:

We have spoken on the telephone through our services with young women who are in Villawood, and their first questions are: 'Will my passport have a stamp in it that prevents me coming back? Do I have to get a new passport somehow if I want to come back? How long does it take to get deported before I can come back?' They are solely focused on coming back, even though they are in a contract.<sup>60</sup>

2.59 As Mr McMahon, from DIMIA, noted, the women are also 'stuck with a fundamental problem: they have a large debt, and there is only one way they can deliver on that debt and that is to continue with prostitution.'<sup>61</sup> Thus, women who are returned home are sometimes immediately taken to another country for the same purpose, or fraudulently trafficked back into Australia.

2.60 Ms Moyle, from the Human Rights and Equal Opportunity Commission, gave evidence that many women working on contract in Australia are here on a second or subsequent contract and may well have been re trafficked. A major motivating factor in this is the difficulty that women often have in returning to their homes:

from my contacts in South-East Asia, in the Mekong region particularly, it appears that a lot of the women are not able to be successfully repatriated on the programs that are available because they do not really lead to any general increasing acceptance of the women repatriating to their home communities. So there is really no place for them when they go back.<sup>62</sup>

### **The extent of the problem**

2.61 The issue that continues to vex both law enforcers, observers and the Committee is the real extent of the problem in Australia. According to the Attorney General's Department, trafficking in persons is a growing issue worldwide, but there are no universally agreed estimates of its scale due to:

- The differing definitions of trafficking. Many countries lack specific legislation governing trafficking in persons, and where it does exist, the absence of consistent definitions makes it difficult to achieve accurate comparable estimates.
- The clandestine and criminal nature of trafficking and the reluctance of victims to report their experiences to authorities or to testify in court cases contributes to these difficulties, ensuring that many instances of trafficking never become known to authorities.

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60 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 20

61 Mr McMahon, *Proof Committee Hansard*, 26 February 2004, p. 34

62 Ms Moyle, *Proof Committee Hansard*, 25 February 2004, p. 58

- Data on trafficking is often more readily available in industrialised countries than in the developing world. This may be attributed in part to the greater attention paid to this issue by governments in such countries, rather than as an indication that trafficking in persons is necessarily a greater problem in industrialised countries.<sup>63</sup>

2.62 This has led the Department to conclude that 'no consensus has been reached about the size and extent of the problem in Australia'.<sup>64</sup> Ms Gallagher, a commentator with considerable experience in trafficking of women at both national and international levels, also commented on the fundamental problems that underlie attempts to quantify the problem:

Much of the current information on trafficking is still anecdotal. It is typically presented in the form of non-statistical data and indirect indicators derived from small-scale surveys and single examples presented as case studies. There is very little quality trend evidence available and almost no cross-referencing or external verification of data. Where statistics on trafficking cases do exist, their value has been seriously undermined by the lack of a consistent definition of trafficking and the absence of uniform collection procedures. Rather than acknowledging or confronting these inadequacies, much contemporary trafficking research unquestioningly accepts and promulgates unverified data.<sup>65</sup>

2.63 Recognising these problems, the Committee is cautious in attempting any definitive conclusions in this respect. The Committee notes estimates by the Attorney General's Department that estimates of the annual worldwide traffic vary widely from 700,000 to four million persons.

A recent US Government estimate puts the figure between approximately 800,000 and 900,000 people and indicates that between 18,000 and 20,000 of these are trafficked into the United States. Other estimates suggest that around 50,000 women and children are trafficked into the United States in any one year. In Europe the figure is estimated between 200,000 and 500,000 women and children. In South Asia between 200,000 and 225,000 women and children are estimated to be trafficked to the rest of the world.<sup>66</sup>

2.64 In Australia, Project Respect estimates that there are up to one thousand women in Australia under contract at any one time,<sup>67</sup> an estimate they claim is supported by the findings of a six week research period, which documented the cases of approximately 300 individuals trafficked into Australia including a large number of

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63 AGD, Submission 36, p. 2

64 AGD, Submission 36, p. 4

65 Ms Gallagher, Submission 23, p. 3

66 AGD, Submission 36, p. 4

67 Project Respect, Submission 25, p. 7

women.<sup>68</sup> This accords with confidential evidence to the Committee suggesting that in Sydney alone, there are at least thirty trafficked women seeking to escape the sex industry.

2.65 Conversely, Scarlet Alliance present a much lower estimate, stating:

that there are less than 400 sex workers entering Australia in any one year on a contract, the majority of whom knowingly consent to the work. Our organisations have collectively had direct contact with less than ten women in the last year who have been deceptively recruited.<sup>69</sup>

2.66 Similarly, the Australian Federal Police were only able to provide firm evidence of ten identified victims of slavery and sexual servitude to date.<sup>70</sup>

2.67 The difference between these two estimates may be partly explained by differing definitions. In particular, it is likely that the key point of difference lies in the matter of 'informed consent'. As outlined above, Project Respect consider that the majority of women who entered contracts, although agreeing to work in the sex industry, were deceived as to conditions of work and the size of the contractual repayments. As such, they fit within the UN definition of trafficked women.<sup>71</sup>

2.68 The Australian Chapter of the International Commission of Jurists, implicitly support this view in pointing out that:

the particular vulnerability of women and girls in developing countries to offers of employment in rich countries like Australia means that agreements to procure their services in the entertainment or sex industry can seldom be considered as agreements entered into by equals. Rather, they are frequently the result of coercion or deception, or even of sheer desperation.<sup>72</sup>

2.69 The assumption that the majority of contract women are victims of deceptive recruiting or essentially unable to exercise any meaningful freedom of choice is disputed by the Scarlet Alliance. Ms Futol, an outreach worker to the sex industry in Melbourne, argued that in her experience the contract women should be viewed as 'transnational citizens in a world that is particularly globalised', and that 'it fascinates me how they are construed as victims'.<sup>73</sup>

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68 Project Respect, *'One victim of trafficking is one too many': counting the human cost of traffickers*, March 2004.

69 Scarlet Alliance, Submission 27, p. 7

70 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 4

71 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 39

72 Australian ICJ, Submission 8, p. 3

73 Ms Futol, *Proof Committee Hansard*, 18 November 2003, p. 74

## **Conclusion**

2.70 While it seems to be generally accepted that approximately 300 women are trafficked into the country each year for sex work, the number of these who can be considered to be in servitude is likely to be relatively small. Whether the figure is as low as Scarlet Alliance's estimate of ten, or as high as Project Respect's estimate of one thousand, is impossible to accurately determine. As the Hon Mr Kerr observed during hearings, contract women who have been trafficked into Australia represent a continuum of those who enter with full knowledge and consent; those who enter with consent but are deceived as to conditions; and those who enter Australia completely deceived as to their work in the sex industry.

2.71 However, the Committee agrees with Ms Maltzahn that, whatever the final proportions represented in each category:

It is a significant enough problem that we need to take it seriously. I do not think it is just a few aberrations that we are finding.<sup>74</sup>

2.72 In any case, this uncertainty underlines the continuing importance of the ACC's intelligence gathering and analysis role for informing the Australian government's response to the problem.

2.73 This uncertainty also poses problems for Australian policy in determining whether a contract woman detained by authorities is an illegal worker who should be returned to their country of origin, through the normal operation of the law, or whether they should be treated primarily as a victim of a particularly unpleasant crime.

2.74 A focus on immigration compliance runs the risk that cases of sexual slavery will be missed, with the tragic results that became public in 2003. This approach may also indirectly operate more to the detriment of the trafficked women than the traffickers. Confusing or equating the two categories – sex workers with sex slaves – can also lead to a disproportionate increase by authorities of regulation and enforcement of an industry that represents only 0.9 percent of the illegal workers detected each year. As Scarlet Alliance comment 'this hardly represents a problem of the scale the community might imagine.'<sup>75</sup>

2.75 Resolving this question in many ways comes down to the fundamental question of the legitimacy of the sex trade, which is discussed further in chapter 4.

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74 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 39

75 Scarlet Alliance, *Submission 27*, p. 12

# Chapter 3

## The response of Australian governments

### Introduction

3.1 This chapter examines the response of Australian governments – Commonwealth, state and territory – to the problem of trafficking of women, as well as focusing on the first and second terms of reference:

- (1) The Australian Crime Commission's work in establishing the extent of people trafficking in Australia for the purpose of sexual servitude.
- (2) The Australian Crime Commission's relationship with the relevant State and other Commonwealth agencies;

3.2 In considering the role of the ACC and its relationship with other agencies, the chapter begins with an overview of the various roles and jurisdictional responsibilities of the many players involved in combating the trafficking of women for sexual servitude.

3.3 The chapter then addresses a number of issues that emerge from these relationships. In particular, the coordination of action and information sharing between the numerous relevant agencies, and the provision of support for, and protection of the victims of trafficking. The chapter also examines the wider adequacy of the Commonwealth government anti-trafficking package.

### Overview of agency responsibility

3.4 Combating the trafficking of women is necessarily a complex task involving a number of agencies across the federal and state jurisdictions, as well as cooperation across portfolios. Listed below are the principal players.

#### *Australian Crime Commission*

3.5 In the context of combating the trafficking of women for sexual servitude, the ACC the role is threefold relating to threat assessment, intelligence coordination and crime investigations. These are detailed in the ACC submission:

- ACC Support to Defining National Criminal Intelligence Priorities (NCIP). In May 2003, the ACC produced a classified Overview Threat Assessment designed to support ACC Board decisions on NCIPs. It contained a general assessment of the regional and Australian people trafficking context. As part of deliberations on over 56 threat issues, the ACC Board designated 'illegal and indentured prostitutes' as a Category B NCIP.

- Production of a Strategic Criminal Intelligence Assessment. The ACC is finalising a classified assessment on the nature and future of trafficking of people to Australia for sexual exploitation.
- ACC Operational Activity. The ACC is currently conducting an intelligence probe in cooperation with partner agencies and on 4 December 2003, received a Board Authorisation and Determination to conduct a special intelligence operation specifically in relation to people trafficking. It collected additional information in the course of operations under the 'Midas' special investigation.<sup>1</sup>

3.6 As Australia's national criminal intelligence agency, the ACC maintains the Australian Criminal Intelligence Database (ACID), and the Australian Law Enforcement Intelligence Net (ALEIN).<sup>2</sup>

### ***Australian Federal Police***

3.7 As the Commonwealth government's primary law enforcement agency, the AFP focuses on investigating offences under Commonwealth law, which includes complex and serious transnational criminal activity, smuggling, and trafficking. Of particular relevance to this inquiry are investigations of offences created by the *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*.

3.8 To conduct these investigations, the AFP established a Transnational Sexual Offences Team (TSOT) in December 2002, within the Transnational Crime Coordination Centre (TCCC). As part of the government's new package, the TSOT has been enlarged, becoming the Transnational Sexual Exploitation and Trafficking Team (TSET). Still part of the TCCC, the TSET is a mobile force comprising 23 officers and focuses on both trafficking of women for sexual servitude and child sex tourism.<sup>3</sup> The TSET comprises an intelligence team in Canberra within the TCCC, with mobile investigations teams based in Sydney and Melbourne. The Team thereby aims to provide an 'intelligence driven, flexible and mobile' response to investigations.<sup>4</sup>

3.9 A crucial strength of the AFP is its International Liaison Network, which provides for the exchange of information with other law enforcement agencies, and includes AFP officers based in 23 countries.<sup>5</sup>

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1 ACC, Submission 29, p. 3. Mr Milroy, *Proof Committee Hansard*, 26 February 2004, p. 41. 'Midas' is the ACC special investigation into money laundering.

2 AFP, Submission 37, p. 6

3 AFP, Submission 37, p. 1-2

4 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 2

5 AFP website [www.afp.gov.au](http://www.afp.gov.au) accessed 21 April 04.

3.10 Another AFP role is the provision of specialist training for investigations into trafficking offences. The first of these training programs commenced on 16 February 2004, and is a three week residential course delivered at the AFP College in Canberra. The course includes content provided by non-government organisations and experts such as Mr Paul Holmes, the former head of operations at Britain's New Scotland Yard and an expert in combating people trafficking.<sup>6</sup>

3.11 Although the first course was limited to twenty AFP personnel, future courses will be offered to officers of other agencies, including state and territory police forces.<sup>7</sup>

3.12 The Committee also notes that the AFP has for some time had an active interest in people trafficking in the sex industry, with the 1992 'Operation Paper Tiger' described as the first sustained attempt by police to combat the 'contract girl' rackets in Sydney.<sup>8</sup>

### ***Commonwealth Department of Immigration, Multicultural and Indigenous Affairs***

3.13 DIMIA is responsible for the administration and enforcement of the *Migration Act 1975* including the detection and detention of unlawful non-citizens, plus investigation of people smuggling and migration fraud related offences.<sup>9</sup>

3.14 By reason of raids by the DIMIA compliance teams, targeting unlawful non-citizens working in brothels (as well as other work places), DIMIA is often the agency that first encounters trafficked women.<sup>10</sup> As such, DIMIA's sensitivity to the problem is crucial to the successful detection and prosecution of traffickers.

3.15 DIMIA has developed guidelines to assist its officers identify possible instances of trafficking. As part of the interview process, all sex workers located are questioned in relation to the circumstances of their recruitment, working conditions and freedom of movement in Australia,<sup>11</sup> as well as being asked a number of more

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6 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 2

7 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 2 & 10; Ms Fagan, *Proof Committee Hansard*, 26 February 2004, p. 7

8 'Man bailed on sex slave charges', Sydney Morning Herald, 20 June 2003, p. 2. 'Trafficking and Sexual Servitude in Australia', Presentation by Christopher Payne, Department of the Parliamentary Library, 20 August 2003, p. 1.

9 DIMIA, Submission 38, p. 2

10 There are indications of a long term awareness of the problem by DIMIA, which as early as 1996 published a discussion paper on trafficking in women, which another task force reported in December 2002. 'Immigration knew of sex slave trade', Australian, 15 May 2003, p.3

11 DIMIA, Submission 38, p. 3

indirect questions designed to get behind prepared stories.<sup>12</sup> The guidelines have been distributed to DIMIA Compliance and Investigations staff around the country.

3.16 These are to be reinforced by formal training sessions as well as by a network of sex industry contact staff that has been put into place in all State and Territory offices to provide the first point of contact for all DIMIA sex industry related activities.<sup>13</sup>

3.17 Supporting the compliance teams, DIMIA also has its own Intelligence Analysis Section that is DIMIA's link into the wider intelligence community.<sup>14</sup>

3.18 The Committee notes that a number of women who may have been trafficked are deported within a short timeframe. While not wishing to criticise or impede the efficient administration of the law by DIMIA, the Committee is concerned that women should not be detained, processed and then deported so quickly that their full circumstances and stories are missed. This is certainly foreseeable where the raid, questioning and detention occur in the space of a few hours, potentially in the middle of the night.

3.19 While recognising the new lower referral triggers used by DIMIA (discussed below), authorities should ensure that women are not questioned in ways that would lessen the chances of their true circumstances emerging, leading to the possible failure to identify victims of sexual trafficking and the loss of evidence to the Commonwealth.

### ***State and local governments***

3.20 As the submission from the Attorney General's Department states:

Regulation of the sex industry is a State and Territory Government responsibility. It is important that each State and Territory Government address the issue of trafficking in persons into the sex industry, whether legal or illegal in that jurisdiction, through the relevant regulatory processes. A number of commentators and experts on trafficking in Australia have highlighted the importance of State and Territory Governments ensuring that their sex industries are not a haven for traffickers.<sup>15</sup>

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12 Mr McMahon, *Proof Committee Hansard*, 26 January 2004, p. 32

13 DIMIA, Submission 38, p. 3

14 DIMIA, Submission 38, p. 3

15 AGD, Submission 36, p. 10

3.21 The eight state and territory police services, as the frontline of community policing across the country, have an obviously crucial role.<sup>16</sup>

3.22 The local councils, especially in the inner city suburbs of the major cities like Sydney and Melbourne, are also significant – albeit indirect – players in combating trafficking of women by reason of their role in enforcing planning and workplace safety laws. As such, together with DIMIA officers, local government inspectors are the government officials most likely to have reason to inspect brothels, and therefore likely to discover trafficked women.

3.23 Thus for example, the City of Yarra enforce the planning scheme in the *Planning and Environment Act*, and the provisions in the *Prostitution Control Act*. According to one Council official:

We have a major role to play. We are at the coalface, if you like. ... I personally have been in at least 32 illegal brothels and all our legal brothels at least twice in the last 16 months. I know how they operate; I know who is in there. I know what they are doing.<sup>17</sup>

3.24 He comments that Council officers are frequently on site before the Police or DIMIA, in part because they will be often the ones to receive tips from legal brothel rivals seeking to get rid of illegal rivals.<sup>18</sup>

### ***Commonwealth Attorney General's Department***

3.25 The Commonwealth Attorney General's Department has three principal roles in relation to combating the trafficking of women.

3.26 First, it is responsible for coordinating the efforts of the various portfolios involved in the government response. As such, an officer of the department also chairs the Interdepartmental Committee on People Trafficking for Sexual Servitude.

3.27 Second, the department has primary responsibility for assessing the adequacy of the legislative framework that underpins the government response to the trafficking of women, as well as sponsoring amendments where necessary.<sup>19</sup>

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16 This includes the Community policing role of the Australian Federal Police in the Australian Capital Territory.

17 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 2

18 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 4. Note also Consumer Affairs Victoria which administers the brothel licensing system via the Victorian Administrative Tribunal, while WorkCover New South Wales have legislative powers that focus on health and safety in workplaces in NSW. Mr Miles, *Proof Committee Hansard*, 25 February 2004, p. 7, and "'Sex slaves' tell of trickery and terror", the Age, 22 August 2003, p.7

19 Ms Blackmore, *Proof Committee Hansard*, 26 February 2004, p. 15

3.28 Finally, the AGD is tasked with the development of the community awareness strategy that forms part of the Commonwealth Action Plan.<sup>20</sup> The plan is discussed in detail below.

### ***Office of the Status of Women***

3.29 The Office of the Status of Women, sitting within the Department of the Prime Minister and Cabinet, is responsible for the planning and administration of the Victim Support package (detailed below), and is also a member of the Inter-Departmental Committee. Importantly, while officers of the OSW developed the support package, the agency is not responsible for the delivery of the package, but rather the administration of the contract to supply the support services.

### ***AusAID***

3.30 The Australian Agency for International Development (AusAID), manages the Australian Government's official overseas aid program and, in the context of combating the trafficking of women, has been given the role of providing the overseas component of the victim support measures.

3.31 For those women who have been returned to their country of origin, voluntarily or otherwise, the AusAID programs will try to replicate offshore the Australian based Victim Support package. This assistance will aim at the reintegration of the women into their own country, particularly in relation to skills training that will minimise the women's vulnerability to being re-trafficked.<sup>21</sup>

3.1 Little detail of how the AusAID component of the package will operate has been provided to the Committee. It is clear that AusAID has a vital potential role in tackling the supply of sex workers at its source. As the International Commission of Jurists explained:

To deal effectively with the problem of trafficking it is necessary to understand the underlying causes, the most important of which are poverty and lack of education. The Protocol identifies poverty, underdevelopment and lack of equal opportunity as factors making persons, especially women and children, vulnerable to trafficking.<sup>22</sup>

3.32 Nevertheless, the reasons behind the economic migration of workers, in the sex industry and other areas, is part of a global phenomenon and one that is beyond either AusAID's or Australia's capacity to rectify.

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20 Ms Blackmore, *Proof Committee Hansard*, 26 February 2004, p. 15

21 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 15 & 18

22 Australian ICJ, Submission 8, p. 2. See also the comments of Ms Moyle, *Proof Committee Hansard*, 25 February 2004, p. 58.

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## **Agency coordination and the whole of government approach**

3.33 As is evident from the summary of relevant agencies set out above, an effective response to the problem of trafficking in women requires the effective coordination of policy, information and resources across all levels of government. The need for this coordination is well understood – Ms Blackburn of the Attorney General's Department telling the Committee that the government package specifically aims to provide 'a comprehensive and coordinated whole of government approach'.<sup>23</sup>

3.34 This section examines how this coordination process takes place and then assesses the effectiveness of the outcomes.

### ***Overview of coordination mechanisms***

3.35 There are a number of coordination mechanisms in place, ranging from general high level policy coordination, down to the operational level of individual investigations.

3.36 At the international level, the Australian government is involved in a number of regional diplomatic efforts to improve intergovernmental cooperation to combat trafficking, including two Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crimes (the Bali conferences). The Ministers for Foreign Affairs, Immigration and Multicultural and Indigenous Affairs, and Justice and Customs, led Australia's delegation to both these conferences. Senior officials also participated in:

legislative workshops which aim to assist countries develop suitable legislation to address trafficking in persons. With China, for example, Australia prepared model legislation on trafficking in persons. With Thailand, Australia is co-ordinating the next legislative workshop on 10-11 November 2003 which will have a specific focus on trafficking in persons. The head of the Office of the Status of Women led Australia's delegation to the Expert Group Meeting on the Prevention of International Trafficking and Promotion of Public Awareness Campaigns in the Republic of Korea on 22-23 September 2003.<sup>24</sup>

3.37 The AFP continue to negotiate Memoranda of Understanding with regional countries on developing police cooperation to combat transnational crimes, including trafficking of women.<sup>25</sup> Similarly, a senior officer of the ACC has recently conducted a seven-country tour of discussions on intelligence sharing. Mr Kitson commented that:

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23 Ms Blackburn, *Proof Committee Hansard*, 26 February 2004, p. 14

24 AGD, Submission 36, p. 11

25 AGD, Submission 36, Attachment: News Release, 13 October 2003, p. 15

In the countries I visited recently there was a widespread recognition of the nature of the problem, the scale of it and the need for international cooperation to address the issue. ... We have seen agencies in the countries that I have visited, which included the Philippines, Thailand, Malaysia, Singapore, Hong Kong and Korea, indicate to us that they are prepared to push intelligence through the AFP to us in areas where they may not previously have done so ...<sup>26</sup>

3.38 At the national level, there are five groups relevant to this inquiry and which consider (among other things) the trafficking of women for the sex trade:

- The Australian Police Ministers Conference (APMC).
- The Australian Crime Commission Board, which comprises the Commissioners of each of the State and Territory Police Forces, chaired by the Commissioner of the AFP, and including the Director-General of ASIO.
- The Australasian Crime Commissioners' Forum (ACCF).
- The Heads of Criminal Intelligence Agencies.
- The National Information Sharing Working Group.<sup>27</sup>

3.39 Within the context of the ACCF, the AFP is leading the development of the Australian Policing Strategy to Combat People Trafficking. The strategy will be finalised by the APMC in July 2004. The framework for this strategy has six focus areas: prevention, capacity and resources, victim assistance, partnerships, training and education, and regulation and legislation.<sup>28</sup>

3.40 At the Commonwealth level, and specific to the issue of the trafficking of women, is the interdepartmental committee comprising representatives of twelve agencies across the Commonwealth. This Committee was tasked with the development of the Commonwealth action plan and has a continuing responsibility to monitor and report on its implementation and to evaluate its effectiveness.<sup>29</sup>

3.41 At a more operational level, ACC officers have conducted briefings with state and territory police to ensure that they fully understand the ACC's powers and how to access them, which promises to improve the effectiveness of law enforcement agencies across all areas of their activities. The ACC also briefs local police

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26 Mr Kitson, *Proof Committee Hansard*, 26 February 2004, p. 48

27 AFP, Submission 37, p. 6

28 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 2 & 11. See also AFP, Submission 37, p. 3

29 Ms Blackburn, *Proof Committee Hansard*, 26 February 2004, p. 30

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commanders on ACC Board determinations and the type of information that the ACC is looking for.<sup>30</sup>

3.42 Mr Clark, the ACC General Manager of Intelligence Services, told the Committee that these efforts have seen the creation of an informal network that should ensure that the ACC's special investigative powers are used to best effect and that agencies such as the AFP and DIMIA get the best possible information.<sup>31</sup>

3.43 There have also been recent refinements to the relationship between DIMIA and the AFP. A key document covering the relations between DIMIA and the AFP in relation to the investigation of the trafficking in women is the February 2002 Service Agreement which puts in place formal arrangements for the referral of investigations by DIMIA to the AFP.

3.44 This agreement was tightened in May 2003, with the signing of a protocol:

The May 2003 protocol has been designed with very low thresholds for referral to the AFP. In practice this translates to any possible trafficking-related matters that come to DIMIA attention being immediately referred to the AFP for further investigation regardless of whether elements of sexual servitude offences are detected. This is a change in practice as previously DIMIA staff investigated matters more thoroughly to establish and validate facts before referring to the AFP.<sup>32</sup>

3.45 In return, the agreement also requires the AFP:

to advise DIMIA whether the matter is accepted for investigation. Where a matter is not accepted for investigation, the AFP is required to advise DIMIA why the matter was not accepted and, where appropriate, to recommend alternative methods of handling the matter.<sup>33</sup>

### ***Effectiveness of the coordination and communication***

3.46 It is evident from the amount of coordination work, that the need for coordination is well understood by Australian law enforcement agencies. As Detective Superintendent Migro of the Western Australia Police Service told the Committee:

One of the big things we need to be effective as law enforcement is for us all to be linked, working together.<sup>34</sup>

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30 Mr Milroy, *Proof Committee Hansard*, 26 February 2004, p. 47

31 Mr Clark, *Proof Committee Hansard*, 26 February 2004, p. 45

32 DIMIA, Submission 38, p. 2

33 DIMIA, Submission 38, p. 2

34 Det Supt Migro, *Proof Committee Hansard*, 25 February 2004, p. 51

3.47 However, in the course of the inquiry two problems have become apparent. Firstly, at a national level, the objective of a 'whole of government approach' may be undermined by the absence of any single final authority responsible for the outcome. Secondly, at the operational level, it seems likely that there are still gaps in the 'trip wires' that set off investigations.

*where does 'the buck stop'?*

3.48 During the questioning of agencies during public hearings, it became apparent to the Committee that a problem with existing organisational arrangements is the absence of any single officer who is ultimately answerable for the Commonwealth government response to the trafficking of women.<sup>35</sup> Government officials argued that, given that the package is a 'whole of government response', involving a number of different agencies, there is not – and cannot be – any single point of authority since 'there is no single Commonwealth government or state agency that is capable of delivering that whole range of services.'<sup>36</sup>

3.49 Thus, the focus is on the coordinating mechanism between agencies – the Interdepartmental Committee, that includes representatives from twelve agencies. Each of the agencies is responsible for their relevant part of the overall package, and while the Attorney General's Department is the coordinating agency, it does not have any operational authority over other agencies on the committee. As Ms Flanagan of the Office of Status of Women explained, the interdepartmental committee continues to meet and monitor the program as it is implemented:

I would have thought – and it has happened with other interdepartmental committees that I have worked on over the years – that if there are issues that go across a number of portfolios the appropriate place to address those is within the interdepartmental committee or in discussions between officers so that we can try and come up with solutions.<sup>37</sup>

3.50 The Committee accepts the need for these coordinating efforts, but remains concerned with any system that ultimately depends on 'management by Committee'. The problems with such a system are legendary and derive from the fact that, while each agency represented at the interdepartmental committee has its particular responsibilities and focus, there is no-one who is responsible for making sure that the overall system actually works.

3.51 Realistically, it is too early in the implementation of the program to make any final judgements, but the Committee notes that this problem has characterised much of the government's approach to trafficking in the past. As Project Respect commented:

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35 see for example, the discussion with officers of the Attorney General's Department in the *Proof Committee Hansard*, 26 February 2004, p. 29 et seq; and with the Office of the Status of Women, *Proof Committee Hansard*, 30 March 2004, p. 2-7.

36 Ms Blackburn, *Proof Committee Hansard*, 26 January 2004, p. 29

37 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 7

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Traffickers are resourceful, flexible and opportunistic. They operate across state and international borders. To challenge traffickers, it is necessary to show some of the same qualities. However, at present, government agencies often operate in isolation, and key responsibilities are divided across local, state and federal government. ...

At present, there is no one body receiving trafficking-related information or coordinating responses to traffickers nationwide.<sup>38</sup>

3.52 Similarly, former police officer Christopher Payne explained to a Parliamentary seminar that the basic problem has always been one of systems:

Federal Police are a scarce resource so are saved for organised crime. Scooping up illegal immigrants is not organised crime so this function was given to immigration compliance officers.

When compliance officers encounter organised crime, they are supposed to report it to the AFP, who will then determine if they will investigate it or not, depending on resource demands at the time.<sup>39</sup>

*gaps in the fence?*

3.53 The second problem is more operational, and relates to agency cooperation. As was evident in the preceding chapter, the first challenge for law enforcement agencies is often becoming aware of the potential existence of women being held in a given location. Since prostitution is legal in most states and territories in Australia, police no longer routinely enter or search brothels. They therefore rely on information from agencies, groups or individuals that do routinely go inside brothels to alert them to the possible presence of trafficked women. Most prominent of these sources are DIMIA, state and local government agencies, and groups such as Scarlet Alliance or Project Respect.

3.54 However, the evidence suggests that at least some of the time, the necessary cooperation and information sharing does not happen. In Victoria, for example, the Yarra Council gave evidence of the need for effective backup for Council officers:

There seems to be a major disjunction between us – we have all the access but no real capacity to deal with the problem – and the people who now have legislative and other mandates to police brothels but who cannot be in every brothel, legal and illegal, in Australia twice a year to keep an eye on the problem. Not that we want to take on those powers, not that we want to

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38 Project Respect, Submission 25, p. 13.

39 Mr Christopher Payne, 'Trafficking and Sexual Servitude in Australia', Department of the Parliamentary Library – Vital Issues Seminar, 20 August 2003, p.4 [Transcript] See also ABC Radio National, The Law Report, 'Human Trafficking', 15 November 2000, p. 4

get involved; we would just like to be able to phone a help line and have the whole thing dealt with.<sup>40</sup>

3.55 However, the City of Yarra Council has no formal protocols for information exchange with the Victoria Police, the AFP, or DIMIA. Despite the City of Yarra including areas containing a high number of brothels, and with Council workers having routine contact with these businesses, DIMIA has reportedly shown no interest in working collaboratively.<sup>41</sup>

3.56 The key problem is one of jurisdiction. Each agency focuses on its own particular task which may not have anything to do with detecting trafficked women. Since an agencies powers are granted and limited by legislation, this focus is to a large extent appropriate, however it can lead to frustrating institutional myopia. For example in the City of Sydney, which includes within its new boundaries perhaps the highest concentration of brothels and sex workers in Australia, evidence given to the Committee suggests that council officers see their role exclusively in terms of planning approvals and have little interest in trafficking issues.<sup>42</sup> In contrast, organisations such as the Sex Worker Outreach Project in Sydney, which have almost unparalleled access to sex workers, are hampered by the fact that they rely on the cooperation of the brothel owners and cannot be seen to take an enforcement or compliance role.<sup>43</sup>

3.57 Similarly, DIMIA's jurisdiction and role is limited by law to a person's migration status. As Mr McMahon noted: 'once people have a legal status, we have no interest in them other than as to whether or not they are meeting the conditions of their visa.'<sup>44</sup>

3.58 In enforcement terms, this also means that DIMIA's legal task is to remove unlawful non-citizens from the country in accordance with the requirements of the Migration Act, not to develop a case for prosecution under the criminal law.<sup>45</sup> As became evident in the past, this can have the perverse result that trafficked women are efficiently deported from Australia before they could be protected or their evidence used in prosecutions.

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40 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 3

41 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 11

42 See generally the evidence given by Mr Miles, *Proof Committee Hansard*, 25 February 2004, p. 1

43 Ms McMahon, *Proof Committee Hansard*, 25 February 2004, p. 16-17

44 Mr McMahon, *Proof Committee Hansard*, 26 February 2004, p. 38

45 a point noted by the Hon Mr Kerr, *Proof Committee Hansard*, 25 February 2004, p. 45

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## ***Conclusion***

3.59 The Committee accepts that many of these problems are inevitable and in a complex jurisdictional environment, sometimes insoluble. Nevertheless, much can be done to minimise the impact of traffickers slipping through the jurisdictional cracks.

3.60 The Committee commends the government for the creation of the interdepartmental taskforce. Bringing together all key agencies is a necessary first step in coordinating a 'whole of government approach', and the evidence suggests that this has already resulted in significant progress. However, the Committee is still concerned at the absence of a more formalised final responsible authority at the Commonwealth level.

3.61 The Committee considers that a useful, but administratively feasible, reform would be the formalisation of the Interdepartmental Committee (IDC), with the appointment of a Chairperson, and a committee charter or terms of reference. This committee would have formal responsibility for addressing coordination issues on an ongoing basis and have the capacity (and obligation) to issue recommendations to the relevant authority (at any level of government) to address defects in the system. While the IDC would not have any direct power, a formalised responsibility would have the benefit of ensuring that problems were tackled and the relevant agency alerted to their responsibility to respond.

3.62 Importantly, the IDC should be obliged to respond to issues referred to it within a set timeframe – reflecting the response timeframes operating in other parts of the system such as the AFP/DIMIA communications protocol.

3.63 Finally, to ensure that the IDC does not outlive its usefulness and become a bureaucratic irrelevance, it should review its functions after eighteen months in operation, and make a recommendation on its future.

## **Recommendation 2**

**3.64 The Committee recommends the formalisation of the existing Interdepartmental Committee (IDC), by the appointment of a Chairperson and charter, which should state the IDC's formal responsibility for addressing coordination issues and its authority to issue recommendations to any relevant authority to address defects in the system.**

**3.65 The IDC charter should require the IDC to issue a response to matters referred to it within a stipulated timeframe.**

**3.66 The IDC charter should require the IDC to review its functions after eighteen months in operation and make a recommendation on its future.**

## **Protection and support of trafficking victims**

3.67 A central change introduced by the Commonwealth action plan is the victim support measures for the victims of trafficking. As noted above, responsibility for these measures was given to the Office of the Status of Women. In order to make the support measures available as soon as possible after the announcement of the package, an interim support package was arranged with Centrelink, which operated from 5 January 2004, while tender specifications for the main contract were released on 6 December 2003, with a closing date of 29 January 2004. In April 2004, a contract was awarded to Southern Edge Training.<sup>46</sup>

3.68 The Victim Support package comprises two phases.

3.69 Phase 1 goes for a maximum of 30 days and is triggered after the person has been assessed by the police as being a victim or a suspected victim of trafficking offences and of interest to them for the investigation or prosecution of a trafficking offence. They are then given a bridging visa, which, once granted, entitles them to access the victim support. This period is designed to give the women a 'breathing space' or 'reflective delay' to recover mentally and physically, in which they can consider their situation and options in a place of safety, and was an aspect of victim support recommended by a number of submissions.<sup>47</sup>

3.70 Officers of the OSW told the Committee that benefits under the first phase are modelled on programs such as those for humanitarian settlement, asylum seekers and refugees and aims to provide a flexible and tailored package of assistance. It includes:

- a one-off start-up allowance to buy toiletries and clothing;
- accommodation and a food and living allowance;
- immediate availability of medical and pharmaceutical treatment and counselling;
- access to various forms of training, such as English language training and other training that might be deemed to be suitable; and
- up to three appointments with a legal practitioner.

3.71 Assistance provided under the first phase is intended to be flexible and entirely driven by the case managers' assessment of their needs. As Ms Flanagan of the OSW explained:

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46 Senator the Hon Kay Patterson, Media Release 20 April 2004, 'Trafficking victim support contract awarded.'

47 Eg Victorian Immigrant and Refugee Women's Coalition, Submission 12, p. 1; Darwin Centre Against Rape, Submission 16, p. 2

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It relies on the individual case manager, who speaks to you as a victim and asks, ‘What do you need? Do you have to learn how to go shopping?’ Centrelink has been taking people shopping, showing them how to catch a bus and how to buy a bus ticket – things which we would consider to be basic living skills but which these people have not had the opportunity to learn in Australia.<sup>48</sup>

3.72 It may also involve the case manager arranging for and accompanying the person to meet with a migration officer.<sup>49</sup>

3.73 Moving to phase 2 depends on whether it has been established that the victim may be able to assist in the prosecution of offenders. At that stage a Criminal Justice Stay Visa is granted and a different range of support measures come into effect. As such, the victim support package is driven by the visa regime.

3.74 In phase 2 the victim is able to access special benefit and rent assistance (currently around \$12,600 per year including rent assistance, and set at the same level as the unemployment benefit<sup>50</sup>), and continue to have access to medical, pharmaceutical, counselling and training assistance.

3.75 Women under the program also have work rights in Australia while under Phase 2.<sup>51</sup>

### ***The need for protection and support***

3.76 The basic reasoning behind the Victim Support package is clear and twofold.

3.77 The first is underpinned by the recognition that trafficked women are victims of crime – in many cases including rape, violence, and incarceration. As described in chapter 2, women coming out of these situations are also likely to suffer significant mental and physical health problems. As such, these women have a fundamental right to receive care and a right that 'is crucial to women's recovery from the violence and exploitation they have experienced.'<sup>52</sup> Ms Maltzahn of Project Respect reiterated this view to the Committee during hearings:

The first issue is the most fundamental: that is, the issue of victim support ... We would argue very strongly that victim support should be seen not

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48 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 13

49 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 14

50 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 8

51 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 5

52 Project Respect, Submission 25, p. 16. See also Miss Wczfwski, Submission 3, p. 1; WRANA, Submission 33, p. 1

simply as a way of encouraging women to give evidence but as something of value in itself.<sup>53</sup>

3.78 Mr Iselin, a former AFP officer, argued in his submission that the core of the government's response must be restorative justice:

In trafficking, adopting a restorative justice approach is what occurs often now in rape and child abuse responses where the emphasis is on helping the victim first. If a criminal prosecution can be launched then that is all the better but it is secondary to helping the victim.<sup>54</sup>

3.79 The second issue is that the cooperation of the victim is crucial to the success of investigations and successful prosecutions:

Victim led prosecutions will continue to be the case for the foreseeable future while law enforcement agencies in countries such as Australia begin to acquire the capabilities and resources for proactive, intelligence-led investigations.<sup>55</sup>

3.80 As Mr Iselin points out, the cooperation of the trafficked woman is closely linked to her protection:

Paramount in a victim's mind is not what will happen to the trafficker, but what will happen to them. All effort put into a case that deals with trafficked victims will result in nought if the investigating staff cannot help to answer this obvious question of the victim. If there is doubt in the mind of the victim that they will be safe and secure after trial and in a better position than before, we will absolutely not achieve viable criminal justice outcomes.<sup>56</sup>

3.81 For law enforcement agencies a further consideration is that, while sex workers may be willing to talk, their evidence cannot be used in a trial unless the women are prepared to testify in court, since the defence must have the opportunity to test the evidence in cross examination. This means that women providing evidence must either remain in Australia for the duration of the trial process – which can take years – or undertake to return to Australia for court appearances. The Committee heard evidence of one example in which a trafficked woman was identified in around 1998, but the whole trial and appeal process was not finished until as late as mid-2002.<sup>57</sup>

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53 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 31

54 Iselin Consulting, Submission 6, p. 5

55 Ms Gallagher, Submission 23, p. 8

56 Iselin Consulting, Submission 6, p. 9

57 Detective Senior Sergeant McKinney, *Proof Committee Hansard*, 25 February 2004, p. 42

3.82 According to Project Respect, UK research finds that only a small minority of trafficking victims testify:

the rest ask to be deported, preferably within 48 hours, ‘fearful that their exploiters will think they have given evidence against them, and carry out threats made to themselves and their families.’ Clearly trauma from violence experienced also impacts on their choices.<sup>58</sup>

3.83 However, proper protection of the women can significantly improve these outcomes. Again quoting UK research, Project Respect point out that in countries where there are specialist non-government organisations who offer support, up to 50 per cent of women testify.<sup>59</sup>

### *Scope of protection*

3.84 Notwithstanding these imperatives, providing adequate protection presents significant problems. Protection must begin with physical security for the woman in Australia, but must also extend to the provision of accommodation, food, access to medical services, legal and immigration advice, and interpreters. Given that trafficked women will frequently view law enforcement authorities with suspicion and fear,<sup>60</sup> it is also desirable that these support services be provided by non-police or better still, non-government organisations.

3.85 These elements, although they can be expensive, are relatively easy to provide.

3.86 Much more complex is the situation in which a woman returns to her country of origin either before, during or after the trial of those who trafficked her. Given the international nature of the trade, it is readily foreseeable that criminals will be aware that a woman has provided assistance to Australian law enforcement authorities and will seek retribution. As Detective McKinney commented:

You have this network of people who recruit women from overseas. They know where they live; they know their families; they know everything about them – that they are bar girls or whatever.<sup>61</sup>

3.87 However it is almost impossible for Australian authorities to offer guarantees of safety for the women once they have left the country. Equally, even where a woman remains in Australia and is protected, Australian authorities cannot provide

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58 Project Respect, Submission 25, p. 15

59 Project Respect, Submission 25, p. 16

60 Mr Wolfe, *Proof Committee Hansard*, Melbourne, 18 November 2003, p. 6 & 10

61 Detective Senior Sergeant McKinney, *Proof Committee Hansard*, 25 February 2004, p. 43

any guarantee of safety to the woman's family or friends in the home country, who may also be the targets of retribution.<sup>62</sup>

3.88 This problem is to some extent insoluble, since effective protection in these cases involves taking action in countries outside of Australian legal jurisdiction. Detective McKinney told the Committee of an example in which a witness had agreed to assist with the prosecution, but then wanted to return home:

She was here for 14 or 15 months and we were in contact with her regularly. Her brother had a car accident and she wanted to go home to see her brother and her mum – because, again, she was a young girl. So she left the country. ... The trial date was not set for another 10 or 11 months. We stayed in contact with her up until then. You go through all your preliminary hearings and all your filing hearings and so forth until you actually get to a trial date. As soon as the trial date was set, we rang to tell her that we would have to arrange tickets for her to be back here on such-and-such a date. She was gone. She was nowhere to be found.

Her sister got a letter from her that said, 'I'm in America. I'm being held in America. I'll be home soon.' We do not know whether she is being held against her will or held in detention.<sup>63</sup>

### ***The adequacy of the victim support package***

3.89 The Committee commends the government for its recognition of the need for thorough victim support and the provision of the victim support package.

3.90 However, a matter of concern to the Committee is the adequacy of the payments made to women in the victim support program. It is the Committee's view that there are obvious problems setting the support payments at the 'Special Benefit' level of around \$12,600 per year, out of which women in the scheme must also pay for their accommodation.<sup>64</sup> At the heart of this issue is equating trafficked women who are assisting police inquiries – potentially at great personal risk – with categories such as asylum seekers and refugees. This matter was put to government officials by the Hon Mr Kerr:

You are saying to them that they can have a very reduced standard of living, the threat of retribution, circumstances where they may be the subject of threats and intimidation, the prospect that at some stage the prosecution may not proceed and their abuser will still be out there ready to take revenge, ultimately they may have to go home into circumstances where they will be in danger and so on. What are we being told? The

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62 a point noted by the Women Lawyers of Western Australia, Submission 18, p. 3. see also Iselin Consulting, Submission 6, p. 4

63 Detective Senior Sergeant McKinney, *Proof Committee Hansard*, 25 February 2004, p. 43

64 Support for victims of people trafficking programme, Attachment D, Communication and operation protocol, p. 31

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framework that is so attractive to these folk is a maximum of \$12,500 ...  
Frankly, you are asking an awful lot of people.<sup>65</sup>

3.91 Furthermore, it is readily foreseeable that someone who has been trafficked into the sex industry and is facing an indefinite future in Australia with relatively few skills and meagre means is likely to continue as a sex worker while under the protection of the scheme:

They have been placed into a situation – whether or not they were in it beforehand – where they have learnt that their bodies are marketable commodities. When they do not get sufficient resources to support themselves through other means, they fall back on something that they have, sadly, learnt to do.<sup>66</sup>

3.92 If the proposed level of financial benefits is considered inadequate, what should the program provide instead? It is relevant to note that people coming within the National Witness Protection Program or similar State or Territory programs<sup>67</sup> may be given financial assistance of varying amounts. The increased benefits paid to trafficked women in these circumstances would not add substantially to the overall costs of the program given the small number of women involved. At the same time, these additional costs may be a modest price to pay relative to the significant public policy benefits that the program aims to deliver – the conviction of organised crime people traffickers.

3.93 The Committee notes the view of the Office of the Status of Women that the program, in the short time it has been in operation, has enjoyed a 100% success rate, 'in that all of the victims who have been identified are still with the program'.<sup>68</sup> This implies that participants themselves consider the program to be attractive.

3.94 Nevertheless, it is also the case that the bulk of trafficked women who come to the attention of Australian authorities – many of whom are deported – do not wish to stay in the country or assist police with their investigations. Provision of a more adequate level of financial support may go far in assisting some of these women to agree to stay in Australia and testify.

### **Recommendation 3**

**3.95 The Committee recommends the urgent reassessment of benefits payable to women under the victim support scheme. Given that a precondition of participation in the scheme is the women's preparedness to assist Australian law enforcement agencies to prosecute traffickers, it would be appropriate for**

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65 The Hon Mr Kerr, *Proof Committee Hansard*, 30 March 2004, p. 9

66 The Hon Mr Kerr, *Proof Committee Hansard*, 30 March 2004, p. 12

67 Established for example, under the *Witness Protection Act (1994)* Cth, or the *Witness Protection Act (1995)* NSW.

68 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 10

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**women under the scheme to receive benefits benchmarked against those afforded to witnesses under the Witness Protection Scheme.**

***Police and DIMIA handling of trafficked women***

3.96 A matter that is virtually a prerequisite for the effectiveness of both the government program in general, and the victim support measures in particular, is the sensitivity and adequacy of police and DIMIA handling of trafficked women. It is obvious that women who have fallen victim to this crime will often be traumatised, disorientated and vulnerable.

3.97 The Committee heard evidence that criticised the AFP handling of individual cases, which related in particular to intimidating and insensitive police interviewing techniques.<sup>69</sup>

3.98 In response, the AFP stressed that many of the issues that are involved with dealing with trafficked women, including the need for interpreters and social workers, are no different to police dealings with many victims of crime, especially the victims of sexual assaults. As such, the police – both AFP, State and Territory police services – have well established training and protocols for dealing with these situations. As Mr Keelty told another Committee:

Part of the core training of investigators in the organisation is how to deal with these witnesses and also how to access assistance for witnesses in terms of some of the welfare agency services that they can access. That does occur, and it occurs in a whole range of offences, not just this one.<sup>70</sup>

3.99 It is also AFP policy that female sex workers would always be interviewed either by a female police officer or at least with a female present.<sup>71</sup>

3.100 Nevertheless, it is also clear that there is an important role for non-government organisations in providing support to trafficked sex workers. One witness, with wide experience of the industry and the treatment of these women by authorities, argued that each of these women should have access to an entirely independent support person who is neither police nor government.<sup>72</sup> Support organisations such as Project Respect and the Scarlet Alliance are likely to be particularly effective in these support roles, by reason of their deep understanding of the industry. According to the Project Respect:

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69 Confidential evidence

70 Mr Keelty, Legal and Constitutional Legislation Committee, *Estimates Committee Hansard*, 27 May 2003, p. 335

71 Mr Keelty, Legal and Constitutional Legislation Committee, *Estimates Committee Hansard*, 27 May 2003, p. 333

72 confidential evidence

The principle of providing independent support and advice to victims of crime is clearly recognised across Australia. In Victoria (as in other states), in relation to sexual assault, this is expressed through a protocol between Victoria Police and Centres against Sexual Assault (CASAs) that requires the police to contact CASAs if women make allegations of recent sexual assault.<sup>73</sup>

3.101 The Committee acknowledges the important role of non-government organisations play in providing overall support for victims, and notes that this role will be provided by the independent case worker provided under the victim support scheme.

### ***Linking victim support to prosecution***

3.102 A criticism of the adequacy of the victim support arrangements is that access to it depends on both a woman's cooperation with law enforcement agencies, together with these agencies' judgement that the woman will be of assistance to their investigation. As a government official explained, the proposed system is tied into the visa system: those who stay, do so under a Criminal Justice Stay Visa which is only granted on the basis of the person's role in a prosecution. If a victim of trafficking is found, but for whatever reason is not considered useful to the prosecution, they will be deported.<sup>74</sup>

3.103 Under some circumstances, this arrangement is likely to be in conflict with the principle (discussed above) that as victims of crime, these women deserve protection and support irrespective of their role in the prosecution. As Ms Maltzahn from Project Respect told the Committee:

If we have a position that says we should support victims because we need them for prosecutions, in some ways we are replicating the experience they have already had – which is about being used for somebody else's gain.<sup>75</sup>

3.104 At a practical level, it is also possible that the focus on a woman's usefulness to the prosecution may lead to iniquitous results. For example, a woman may agree to provide evidence in an investigation, but for various reasons, a prosecution does not eventuate. This woman would be liable to return to her country despite having given assistance and as a result, is vulnerable to retaliation by traffickers.

3.105 Further, since the criminal justice visas are only temporary, the women are liable to be returned to their home country once court proceedings are complete.

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73 Project Respect, Submission 25, p. 17. See also Scarlet Alliance, Submission 27, p. 15; WRANA, Submission 33, p. 1

74 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 15

75 *Committee Hansard*, 18 Nov 2003, p.31

3.106 It is also clear that the offshore protection and support arrangements, to be provided by AusAID, are not capable of guaranteeing any meaningful levels of safety to returned women or their families.

3.107 Finally, Mr Brian Iselin argues that:

there is good reason not, in our common law system with adversarial criminal justice processes, to link residency with testimony. There is a very obvious point to be scored for defence lawyers if in fact residency is granted conditional to testifying, for the intent behind the testimony comes into question and is easily turned to discredit the victim. It is in this regard also important not to link the two.<sup>76</sup>

3.108 However, it must also be recognised that the alternative – automatic assistance and visas for all women identified as having been trafficked – may be counterproductive, with the perverse effect of creating an incentive for women to come to Australia and claim to have been trafficked as a 'backdoor' way to secure entry. This may also inadvertently increase demand for the services of people traffickers.

3.109 As concluded in chapter 2, it is also likely that many of the trafficked women who are detected by DIMIA or police, have voluntarily come to Australia with the intention of working in the sex industry, and cannot be considered victims of sexual servitude. It is also recognised that where there are concerns relating to the return of women who have been on a criminal justice visa, the women may be granted a protection visa allowing them to remain in Australia.<sup>77</sup>

3.110 The Committee concludes that it is appropriate for assistance under victim support scheme to be tied to their cooperation with, and value to, the prosecution.

### **Awareness raising program**

3.111 As noted above, the Commonwealth Action Plan includes a community awareness raising program worth \$630,000, to be delivered by the Attorney General's Department. According to the Department, the project will have two major streams:

First, it will target the legal sex industry, the community health and welfare sectors, and non-government organisations with a specific focus on these issues. Second, it will provide accurate information on this issue to encourage informed community debate and raise awareness of the issue. In both streams, the goal will be to raise awareness and alertness to the issue of trafficking in persons for sexual servitude, helping the identification of potential victims or potential traffickers, and highlighting channels for

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76 Iselin Consulting, Submission 6, p. 10 – a point also made by Project Respect, Submission 25, p. 25

77 Note that the issue of detention and removal of trafficked women is considered separately in Chapter 4.

reporting information to the relevant authorities for further investigation. The project will also raise awareness about the range of victim support measures, to encourage victims themselves to come forward. The project will be carefully designed in close consultation with the sex industry, outreach and advocacy organisations, service providers and professionals in the community health and welfare sector, and the media.<sup>78</sup>

3.112 Further details of the package were provided by Senator Ellison, Minister for Justice and Customs:

The strategy comprises four stages over four years at a total cost of \$0.4 million from the Government's overall \$20 million package of anti-trafficking initiatives announced on 13 October 2003. The tender process for stage one, exploratory and developmental research, is now underway. In accordance with Australian Government requirements for communication activities, five consultants have been selected and asked to submit a proposal. ... The successful tenderer will be assisted by a specialist project advisory group and will be required to directly consult and liaise closely with key non-government organisations.<sup>79</sup>

3.113 Project Respect warned that this awareness raising must be tightly focused to be effective. According to Project Respect, the most important priority for awareness raising is for women in the sex industry. Although accessing women in some situations can be very difficult, once the message is put out into the sex worker community:

people talk. It may only be one in a hundred or one in a thousand, but those women may be able to get information. So, if you can get information out there that has a hotline number, they may be able to access it.<sup>80</sup>

3.114 The second priority is men who go to prostitutes, as it is often the customers who help women escape.<sup>81</sup> The awareness campaign may also be able to play a valuable role in getting men who use sex workers to actively ensure that they are not buying women who are trapped in these situations.<sup>82</sup> An illustrative example of the current environment was given by Project Respect of an interviewer who asked one of the sex workers:

about how men approached her, and she said that out of the 500 customers she had, because it was a 500-job contract, four men had asked her if she was okay. It is interesting that obviously 496 people approached her as if

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78 AGD, Submission 36, p. 12

79 The Hon Senator Ellison, Minister for Justice and Customs, Senate Hansard, 30 March 2004, p 21984

80 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 36-37

81 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 36-37

82 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 49

her welfare was entirely irrelevant to what they were buying and as if their right to whatever service they wanted overrode how she was as a person, whether that was in terms of the violence of trafficking or other things. So addressing the demand is, I suppose, saying that men have a responsibility to ensure that they are not buying women in these situations ... .<sup>83</sup>

### **Conclusion: the effectiveness of the Commonwealth government response**

3.115 It is evident that the Commonwealth government has implemented a substantial and wide ranging response to the problem of trafficking. Although it is too early in the program to make any realistic judgements as to the effectiveness of the program, it seems likely that it will go a considerable way to addressing earlier limitations in Australia's response to the problem of trafficking of women for sexual servitude.

3.116 While there have been no prosecutions or convictions since the enactment of the Commonwealth sexual slavery laws in 1999,<sup>84</sup> as at February 2003, the AFP had commenced 62 investigations, with fifteen current investigations resulting in ten arrests and 35 charges.<sup>85</sup> As well, at the time of writing, five women were receiving benefits under the victim support scheme.<sup>86</sup>

3.117 The Committee commends the government for its initiatives and its progress to date.

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83 Ms Maltzahn, *Proof Committee Hansard*, 18 November 2003, p. 49. See also the comments of Ms Costello, same page, and Project Respect, Submission 25, p. 11

84 The only successful prosecution having occurred in Victoria, although not under the sexual slavery laws. Det Snr Sgt McKinney, *Proof Committee Hansard*, 25 February 2004, p. 33 et seq

85 Mr Lawler, *Proof Committee Hansard*, 26 February 2004, p. 3. See also Mr Keelty, Legal and Constitutional Legislation Committee, *Estimates Committee Hansard*, 27 May 2003, p. 331

86 Ms Flanagan, *Proof Committee Hansard*, 30 March 2004, p. 20

# Chapter 4

## Australia's legal response

### Introduction

4.1 This final chapter addresses the third term of reference: 'the adequacy of the current legislative framework.'

4.2 In doing so, the chapter necessarily commences with a survey of existing relevant law in Australia, and then analyses the extent to which it is adequate to meeting operational requirements, Australia's international legal obligations, and the needs of the victims of the trafficking trade.

### Offences under current law

4.3 The law which applies to sexual servitude and trafficking in women has a strong Commonwealth focus, but there are some state offences which apply.

### *Commonwealth offences*

4.4 The Commonwealth legislation includes provisions principally under the *Criminal Code Act 1996* ('the Code').

4.5 The Committee notes that the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 added the offences set out in Division 270 of the Code. These offences include sexual servitude, slavery, sexual slavery and deceptive recruiting. Sexual servitude is defined in the Code as 'the condition of a person who provides sexual services and who, because of the use of force or threats is not free to cease providing sexual services; or is not free to leave the place or area where the person provides sexual services'.

4.6 The offence of causing another person to enter into or remain in sexual servitude (s.270.6) attracts maximum custodial penalties varying from 15 years (offences involving adults) to 19 years (for offences involving people under the age of 18).

4.7 Slavery is also defined in the Code at section 270(1) as 'the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.' There is a maximum custodial penalty of 25 years imprisonment for this offence.

4.8 Section 270(7) states that the deceptive recruiting offence is committed where a person deceives another about the fact that the work they will be doing includes sexual services. The recruiter is a person who:

with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about the fact that the engagement will involve the provision of sexual services ...

4.9 The penalty is seven years imprisonment, and nine years where the victim is under 18 years.

4.10 The submission from the Attorney General's Department observes:

Both the deceptive recruiting and sexual servitude offences apply to Australian citizens and residents who commit the offences overseas, persons who commit the conduct overseas where the sexual services are to be provided in Australia, and persons who commit the conduct in Australia where the sexual services are to be provided overseas.<sup>1</sup>

4.11 The Committee notes that this is consistent with the relevant offence provisions for child sex tourism under part IIIA of the *Crimes Act 1914*.

4.12 The Code also contains the offences of people smuggling,<sup>2</sup> aggravated people smuggling (for circumstances in which the exploiter's conduct causes the victim of people smuggling to enter into slavery or sexual servitude),<sup>3</sup> and enforced prostitution.<sup>4</sup> In addition, the making, providing or possessing of false travel or identity documents is prohibited under Section 73(8) of the Code, with similar provisions in the *Migration Act 1958*, concerning the presenting of false documents, or misleading statements.<sup>5</sup>

4.13 The submission from the Attorney General's Department points out that the people smuggling offences can capture many instances of trafficking, although there is a distinction between people smuggling and people trafficking:

It is important to distinguish between people smuggling ... and people trafficking. The Protocol Against the Smuggling of Migrants by Land, Sea and Air, which also supplements the United Nations Conventions against Transnational Organised Crime, defines 'smuggling in migrants' as: 'the procurement, in order to obtain directly or indirectly a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.'<sup>6</sup>

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1 AGD, Submission 36, p. 6

2 Section 73(1)

3 Section 73(2)

4 Section 268(16)

5 Section 233A

6 AGD, Submission 36, p. 7

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### ***Recent developments***

4.14 Apart from the Commonwealth Action Plan as noted in Chapter 1 there are other proposals before the Parliament which would support the work of other agencies in this area.

#### *Australian Crime Commission Amendment Bill*

4.15 During the process of preparing corresponding State legislation, the *Australian Crime Commission Act 2002* was found to have a number of limitations which inhibited the functioning of the Commonwealth/State co-operative scheme and the conferral of functions, duties and powers on the ACC under State legislation.

4.16 To address these issues, the ACC Amendment Bill was introduced into Parliament in late 2003. The Bill enables the ACC to investigate and conduct intelligence operations in relation to serious and organised crimes that are offences under State legislation.<sup>7</sup> The implications for the offences in Division 270 and of the Criminal Code are that when similar State offences such as those relating to sexual servitude under Division 10A of the *Crimes Act 1900 (NSW)* are involved, the ACC will be able to investigate the full range of activity in co-operation with the state police, without the need for more complex arrangements.

#### *Telecommunications Interception Amendment Bill 2004*

4.17 The Telecommunications Interception Bill 2004 contains provisions which clarify the application of the *Telecommunications (Interception) Act 1979* to:

both users of the Australian telecommunications system whose communications are intended to be protected by the Act, and to those law enforcement and investigative bodies who may require access to communications in the course of the performance of their functions.<sup>8</sup>

4.18 There are specific amendments which address the issue of stored communication and delayed message services such as SMS messaging. The provisions specify when a communication is passing over a telephone system – and therefore when an interception warrant is required.

4.19 For law enforcement agencies, the amendments clarify the agencies' capacity to gain access to data transmitted via telephones, and thereby assist investigations into organised crime networks including those involved in trafficking for sexual servitude.

### ***State provisions***

4.20 Queensland, Victoria and Tasmania have no specific sexual servitude provisions but there are generalised criminal offences which can be applied to

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7 Australian Crime Commission amendment Bill 2003, Explanatory Memorandum, p. 2

8 Australian Crime Commission amendment Bill 2003, Explanatory Memorandum, p. 6

trafficking. For example, in Victoria, Part 2 of the *Prostitution Control Act 1994* prohibits forcing a person into, or remaining in prostitution against their will.

4.21 The remaining states (with the exception of Western Australia, where the *Criminal Code Amendment Act 2004*, covering sexual servitude offences, commences on 22 May 2004) have legislated against sexual servitude offences within their respective jurisdictions. The Attorney General's Department submission notes that the penalties are compatible with those imposed by the Commonwealth,<sup>9</sup> although it should be noted that these offences cover 'purely domestic activity'.

### **International law**

4.22 The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children is the primary international source of international law relating to the issue.<sup>10</sup> The principal requirements of the Protocol are that:

- states criminalise trafficking and provide assistance to victims;
- victims be allowed to stay in the state temporarily or permanently;
- repatriation of victims should preferably be voluntary; and
- states undertake to establish public education programs for prevention and for victim protection.<sup>11</sup>

4.23 Although Australia has signed the Protocol, it has not yet ratified it, and a number of submissions called for Australia's ratification of the Protocol as an essential step in dealing with trafficking in women for sexual servitude.<sup>12</sup>

4.24 Human rights instruments such as the *International Covenant on Civil and Political Rights* and the *Convention on the Elimination of all Forms of Discrimination Against Women* may also be relevant to informing Australia's obligations. The Australian section of the ICJ points out that since children may also be victims of sexual trafficking, the provisions of the *Convention on the Rights of the Child* will also apply in certain circumstances.<sup>13</sup>

### **Adequacy of Commonwealth law**

4.25 In the context of the legal framework set out above, several issues emerge in relation to the adequacy of current Commonwealth laws. These include whether:

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9 AGD, Submission 36, p. 8

10 Australian ICJ, Submission 8, p. 1

11 Australian ICJ, Submission 8, p. 2-3

12 See for example, submissions 8, 9, 13, 16 and 17.

13 Australian ICJ, Submission 8, p. 3. Australia is a signatory to all three of these international instruments.

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- existing provisions are broad enough to cover the criminal activity involved in the trafficking of women;
  - Australia's laws and procedures comply with its international legal obligations; and
  - the operation of the Migration Act is appropriate to trafficked women.

4.26 In answering these questions, the Committee notes that many of the points raised in submissions to this inquiry have been overtaken by events and have been addressed within the Government's package, announced in October 2003.

### ***Commonwealth laws and the trafficking crime***

4.27 Although the enactment of the sexual servitude laws in 1999 represented a clear advance on the existing legislation, evidence to the inquiry suggests that the legislation contains several limitations to its effectiveness.

4.28 The first problem is that the structure of the offences contained in the Criminal Code may not adequately match the operational methods of the trafficking trade, as described in Chapter 2. In particular, the Commonwealth legislation does not expressly provide offences that cover the recruitment, transportation and transfer of the trafficked women, although the Committee notes that each of these is included in the definition of 'trafficking' contained in the Protocol.<sup>14</sup> As Chapter 2 demonstrated, the criminal groups that organise the trafficking of women rely on a network of 'helpers' to identify and recruit the women in their home country, organise their departure (including document fraud and bribery of officials), and in some instances, to accompany the women to Australia and through the Australian customs barrier.

4.29 The second issue relates to the nature of the offence of deceptive recruiting. Subsection 270(7) of the Code provides:

A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about the fact that the engagement will involve the provision of sexual services is guilty of an offence.

4.30 The Australian Chapter of the International Committee of Jurists points out that this definition does not appear to cover:

deception as to the conditions of work which apply to the victim unless this can be considered as conduct causing a person to enter into sexual servitude. This is an important issue, as some women are deceived about the circumstances in which they would have to work in Australia.<sup>15</sup>

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14 Australian ICJ, Submission 8, p. 6

15 Australian ICJ, Submission 8, p. 6

4.31 As was concluded in Chapter 2, although a number of women are undoubtedly deceptively recruited on the misapprehension that they are to work in jobs outside of the sex industry, it is clear that the majority of trafficked sex workers understand the nature of the work they are to do in Australia. However, the majority of the deception that occurs relates to the size of the women's debt, the numbers of clients they must see, and the range of sexual services that they must perform. It is essential therefore, that the offence of deception extends to cover these issues.

4.32 Thirdly, Ms Costello of Project Respect argued that the current legislation does not address aspects of migration fraud common to trafficking, including the situation where traffickers withhold a woman's travel documents, where a woman is deceived about her migration status, or where an application for a protection visa is lodged on her behalf without her knowledge.<sup>16</sup>

4.33 Finally, there is also no express requirement to consider the impact on the victim in sentencing. The NSW Young Lawyers noted in their submission that:

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.<sup>17</sup>

4.34 State legislation (such as the *NSW Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004*) provides for the Court to accept Victim Impact Statements in certain serious matters, after conviction, and before sentencing. The offences under the sexual servitude provisions of the Code are undeniably serious, carrying substantial penalties of up to 25 years imprisonment in some cases. Given the nature and effect of the sexual trafficking offences on the victim, there is a compelling reason to require that victim impact be considered when sentencing offenders.

### *Conclusion*

4.35 The Committee considers that the Australian criminal laws enacted to counter the trafficking of women for sexual servitude do not adequately reflect the realities of the trafficking trade. These issues should therefore be a focus for the legislative review that was announced as part of the government's anti-trafficking package.

## **Recommendation 4**

**4.36 The Committee recommends that the following matters be examined in the legislative review announced as part of the government package:**

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16 See chapter 2.

17 Human Rights Committee – NSW Young Lawyers, Submission 9, p. 4

- **The adequacy of existing provisions of the Criminal Code Act 1995 covering recruiting transportation and transfer of women for the purposes of trafficking;**
- **amending section 270(7) of the *Criminal Code Act 1995* to broaden the offence of deception to include deception regarding not only the type of work to be done, but expressly the kind of services to be provided, whether of a sexual nature or not;**
- **adopting the use of victim impact statements in sentencing.**

### *International standards*

4.37 A second consideration is the way in which Australia's criminal law fits with international standards.

4.38 As noted, the principle source of law in this area is the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, which Australia has signed but has yet to ratify (although the Committee notes that the government has indicated that it will ratify as soon as possible, consistent with the call of many submissions to this inquiry, which were written prior to the Government's announcement of the new package in October 2003).

4.39 The Committee considers that many of the responsibilities contained in the Protocol require non-legislative responses, such as inter-governmental task forces to collect data, bilateral agreements with the countries of origin to ensure safety of the returned victim, as well as educational, social and economic programs.<sup>18</sup>

4.40 While many aspects of trafficking have already been criminalised in Australia,<sup>19</sup> to comply with the Protocol additional and comprehensive people trafficking offences as provided in Canadian, New Zealand and US legislation may be required.<sup>20</sup> Changes could include the incorporation of a definition of 'trafficking', which the Australian Federation of University Women observed is currently absent from legislation.<sup>21</sup>

4.41 The Attorney General's Department noted that this general trafficking offence could be supplemented by further specific offences including deception regarding the contracts and working conditions, a specific offence dealing with trafficking in children and an offence of debt bondage, where a person is forced to pay off the debt but with no powers of ownership attaching.<sup>22</sup>

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18 Australian ICJ, Submission 8, p. 12-14

19 AGD, Submission 36, p. 6

20 AGD, Submission 36, p. 8-9

21 Australian Federation of University Women, Submission 19, p. 2

22 AGD, Submission 36, p. 9

4.42 The Committee notes that there is no timeframe associated with the initiatives announced in October last year, nor with any legislative change which is necessary to implement and ratify the Protocol.

4.43 If Australia is to honour its international obligations at the co-operative intelligence level as well as in the implementation of the Protocol, it will be necessary to review, introduce, pass and implement legislation as soon as possible as a means of achieving these objectives.

#### **Recommendation 5**

**4.44 The Committee recommends the speedy implementation of the legislative review that forms part of the anti-trafficking measures announced in October 2003. The review should focus particularly on the measures needed to ensure Australia's compliance with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.**

#### **Recommendation 6**

**4.45 The Committee further recommends that the results of this review form the basis for legislative changes that should be ready for introduction to the Parliament early in 2005.**

#### **Recommendation 7**

**4.46 That the Protocol be ratified as soon as possible.**

#### ***Criticisms of the operation of the Migration Act***

4.47 A difficult issue that emerges in combating trafficking of women for the sex trade is the manner in which the operation of the Migration Act may have harsher outcomes for the trafficked women than for the traffickers themselves. Women sex workers who are detained by DIMIA are ordinarily placed in a detention facility and will be returned to their country of origin, in the same way as any other illegal non-citizen working in Australia.

4.48 Given that these women should in many cases be regarded as victims of crime, the operation of the law gives rise to two questions. Firstly, should illegal sex workers, who may be victims of trafficking, be detained in the same way as other illegal non-citizens? Secondly, should they be liable to deportation?

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*Detention of sex workers who may have been trafficked*

4.49 According to the Department of Immigration submission, in 2002-2003, 257 people were detected working illegally in the sex industry,<sup>23</sup> and it is probable that the majority of these were detained, if only briefly, and deported.

4.50 A number of submissions and witnesses criticised this procedure, principally on the grounds that trafficked women should first and foremost be treated as victims of crime, rather than criminals (a point discussed in Chapter 3).<sup>24</sup> Those critical of detention point to several deaths of sex workers in detention,<sup>25</sup> and that a detention centre is not an appropriate place to provide the support services required by the women. There is also the issue of privacy for these women. The nature of their work could, if it became known, make them vulnerable to physical and emotional abuse, and stigmatisation among other detainees, further complicating their return to their own country. As such, witnesses called for trafficked women either not to be detained at all,<sup>26</sup> or to be given separate, private accommodation.<sup>27</sup>

4.51 In considering this criticism, it is important to be clear about which groups of women are being referred to (and recognising that some of the comments referred to above were written before the new package was announced). Following the new government program, women who are suspected of having been trafficked and judged to be of interest for the investigation or prosecution of trafficking offences, will not be put into detention.

4.52 The only exception to this is when authorities cannot determine a person's identity.<sup>28</sup> Nevertheless, officials stressed that trafficked women under the victim support program would still receive, wherever possible, all the elements of the support package even in detention.<sup>29</sup>

4.53 However, all other women working in the sex industry who are found to be illegal non-citizens will be detained. Setting aside the debate over the rights and wrongs of the detention policy, this practice is consistent with the treatment of all other illegal workers detected by authorities. Secondly, under the new arrangements between DIMIA and the AFP, including the low referral threshold, any women

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23 DIMIA, Submission 38, Attachment A

24 See also: Ms Maltzahn, *Committee Hansard*, 18 November 2003, p. 31; Det Snr Sgt McKinney, *Committee Hansard*, 25 February 2004, p34

25 NSW Public Health Association, Submission 1, p. 6

26 Australian Federation of University Women, Submission 19, p. 1; and Centre Against Sexual Assault House, Submission 21 p. 3

27 Ms Vichie, Proof *Committee Hansard*, 18 November 2003, p. 51

28 Mr McMahon, Proof *Committee Hansard*, 26 February 2004, p. 33

29 Ms Blackburn, Proof *Committee Hansard*, 26 February 2004, p. 19

suspected of being a victim of trafficking should be referred to police for investigation and, where appropriate, receive assistance under the victim support program.

4.54 While Committee members may hold varying views on the issue of the mandatory detention policy in general, the Committee does not support treating illegal sex workers differently from any other category of illegal workers.

4.55 For the same reasons, the Committee also disagrees with the proposals put by several submissions for sex workers in detention to be held in separate facilities. Within the context of the policy of mandatory detention, illegal sex workers should be treated in the same manner as other illegal workers. Separate housing would in all likelihood be counterproductive and result in the isolation and stigmatisation of the detained women, further hampering their return to their home countries.

#### *Deportation by DIMIA*

4.56 The Committee noted that on one view, deportation of a trafficked person amounts to a breach of human rights because of the potential for the person to suffer retaliation on return to her country.<sup>30</sup> The issue of deportation was one which concerned a number of witnesses, as well as the Committee, particularly in view of the potential for harm to the victim and her family.

4.57 The Committee was told by Ms Osborn, a policy officer from the NSW Public Health Association of the likely consequences of deportation:

... the people that organised the trafficking in the country they came from would make sure that their life was miserable. Their families might have sold them to the trafficking organisation. There are a number of those sorts of cases. It could be very difficult for them to go back to their country if they are deported. Their families will lose out.<sup>31</sup>

4.58 The major risk returned women face is that of re-trafficking.<sup>32</sup> According to Mr Iselin:

The victim knows, as do many law enforcement officers working on trafficking that deportation means re-trafficking. Sending the victim women back to their country of origin places them in a position of extreme vulnerability and at great risk of being re-trafficked. Often they will simply be recaptured by their original trafficker and trafficked to another destination.<sup>33</sup>

4.59 Ms Anne Gallagher agreed:

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30 See discussion in Chapter 3.

31 Ms Osborne, *Committee Hansard*, 25 February 2004, p. 10

32 Project Respect, Submission 25, p. 24

33 Iselin Consulting, Submission 6, p.9

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Trafficking responses that do not place the victim at their centre are likely to contribute to further violations of victim's rights and to re-trafficking: consequences which will also have a negative impact on the investigation, apprehension, and prosecution of traffickers.

4.60 A second category of women of concern are those who have agreed to help Australian investigators and stayed in Australia for a period of potentially several years under a Criminal Justice Stay Visa. Once the trial process is completed, the reason for the grant of the visa no longer exists, and these women are likely to be returned to their home countries in the normal way.

4.61 Having helped Australian authorities, these women face an altogether more serious threat should they be returned. Ms Sally Moyle from the Office of the Status of Women observed in evidence, that:

It will be important to monitor the use of trafficking visas that have been made available. A woman giving evidence in any trafficking prosecution takes a great risk. As the industry is a small one, a woman who gives evidence is generally easily identifiable. The visas should be adequate to assure the longer term safety of the subject and ensure that accepting such a visa is not an overwhelmingly bad gamble for the woman.<sup>34</sup>

4.62 While the Committee accepts that there is a danger that a number of women who are returned to their home countries are likely to be re-trafficked, it does not consider that this is of itself sufficient to justify a blanket exclusion of trafficked women from the rules requiring deportation. On the evidence received, probably the majority of these women voluntarily entered into arrangements to be trafficked to Australia for sex work, and if deported, would similarly seek to enter voluntarily into new arrangements to return to Australia or elsewhere.

4.63 Of some concern to the Committee is the group of women who, once they have assisted Australian prosecutions, are in danger of retribution from traffickers should they be returned home. As concluded in the preceding chapter, Australian authorities cannot give any meaningful guarantees of their safety once they leave the country. The Committee strongly believes that once a trafficked woman has agreed to assist Australian authorities, she should not be returned to her home country against her will.

### **Recommendation 8**

**4.64 The Committee recommends 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 origin.**

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34 Ms Moyle, Proof *Committee Hansard*, 25 February 2004, p. 55

## **Undercutting traffickers – options for wider reform**

4.65 While much of the above discussion focuses on the existing legal framework, the Committee also heard arguments in favour of more fundamental legal reform aimed at undermining the role for traffickers bringing women into Australia for the sex trade.

4.66 However, the nature of these proposals differed profoundly, with some witnesses arguing for a change to visa rules to enable easier entry to Australia for sex workers, while others sought changes that would reduce demand for sex workers.

### ***Work visas for sex workers***

4.67 The Committee was told that one solution to the trafficking problem would be to reduce migration barriers to entry and work rights for women who want to come to Australia to work in the sex industry.

4.68 As the Scarlet Alliance point out, the majority of overseas women involved in sex work arrive legally and are in Australia on working holiday or student visas.<sup>35</sup> While women from Korea, Malaysia and Japan are able to take advantage of easier visa arrangements,<sup>36</sup> trafficked women tend to originate from countries from which it is extremely difficult to obtain such visas, such as Thailand and China, and it is in these circumstances that the traffickers are able to find their market.

4.69 In the view of the Scarlet Alliance, enabling women from these countries to come in on working holiday visas, or to be sponsored by an employer, would 'pull the carpet from under' the traffickers.<sup>37</sup> At the same time, legal work status would improve the chances of these sex workers operating in a work environment that is better regulated by employment and occupational health and safety laws.

4.70 In their submission, the Scarlet Alliance argued:

The granting of employment rights for these workers ... [would] remove the criminality attached to these individuals and their work [and] it would effectively remove the current need for them to be 'underground'. This would result in these highly marginalised workers having increased access to information, support, health services, protection from exploitation and access to victim of crime support services.<sup>38</sup>

4.71 While not doubting the benefits legality of employment would bring, it will not necessarily resolve the problems which surround the deception of the women

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35 Ms McMahon, Proof *Committee Hansard*, 25 February 2004, p. 18 et seq

36 Ms McMahon, Proof *Committee Hansard*, 25 February 2004, p. 27

37 Ms McMahon, Proof *Committee Hansard*, 25 February 2004, p. 24

38 Submission no 27, p. 23

involved. Because many work in illegal brothels the trafficker may not want to engage in any – even partly – legitimate process which might open him or her to scrutiny.

### ***Attacking demand***

4.72 Other submissions took virtually the opposite approach, arguing that the best way to reduce the incidence of the trafficking of women for sexual servitude is to reduce demand for prostitutes. This argument is underpinned by the view that decriminalisation of prostitution drives an increase in demand for prostitution, and when supply of sex workers in Australia cannot meet that demand, there is an inevitable increase in the probability of trafficking. In their submission, the Australian Chapter of the International Commission of Jurists said:

Some take the view that the decriminalisation of prostitution not only makes it easier to operate the commercial sex industry but also helps to promote and support international trafficking. NGOs in the US have emphasised the need to avoid legitimising the sex industry and to provide real employment alternatives for women rather than making the industry safe and legal.<sup>39</sup>

4.73 The Catholic Women's League (CWL) argued in their submission that: Efforts to legalise prostitution must be understood as inhibitors to the prosecution of those running illegal brothels and trafficking women. ...<sup>40</sup>

4.74 The Coalition Against Tracking in Women (CATWA) expressed a similar view:

Legalisation leads to trafficking in two ways: the massive illegal industry, which always accompanies legalisation – for instance, in Victoria an estimated 100 legal and 400 illegal brothels employ trafficked women; and the legal industry, which also uses trafficked women.<sup>41</sup>

4.75 The Committee also noted that both the CWL and CATWA refer to the alternate model offered by Swedish legislation which criminalises the purchase of prostitution services while decriminalising the supply. According to these groups, the legislation has had the effect of causing 60% of women to leave the industry and there has been no increase in the number of trafficked women since the implementation of the legislation.<sup>42</sup>

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39 Australian ICJ, Submission 8, p. 5

40 Catholic Women's League, Submission 20, pp. 2-3

41 Professor Jeffries, Proof *Committee Hansard*, 18 November 2003, p. 57. See also CATWA, Submission 39

42 Catholic Women's League, Submission 20, pp. 3

### *Conclusion*

4.76 The two approaches detailed above reflect a fundamentally opposed view of the legitimacy of the sex industry. On one view, prostitution is a legitimate career choice, which should remain legalised and properly controlled. On the other view, prostitution is a form of exploitation, which should never be legitimised.

4.77 This is a somewhat broader (and older) debate, that the Committee does not intend to enter into and which is, in any case, beyond its terms of reference.

4.78 Similarly, the suggestions aimed at addressing the demand for prostitution involve judgements about the legalisation of brothels, which are a matter for state and territory governments rather than the Commonwealth.

4.79 The Committee notes that part of the initiatives announced in October last year was to place a senior DIMIA officer in Bangkok, to focus on the trafficking issue. The Committee believes that it is more appropriate to put personnel in key centres, such as Bangkok, to assist in tracking and deterring traffickers and the trafficked at the beginning of the process.

4.80 In relation to the suggestions of the Scarlet Alliance, the Committee accepts that changes to the current restrictions on working visas may do much to enable women wishing to come to Australia for sex work to do so without recourse to the services of traffickers. At the same time, the Committee considers that even a substantial widening of the visa rules would not of itself solve the trafficking problem, since there will always be those who wish to enter Australia but cannot, and who will therefore fall victim to traffickers.

4.81 However, the Committee is concerned that the prosecutions, which require the attendance of a trafficked woman as a witness, can take years to reach the stage of hearing. To require the woman to remain Australia without contact from family over that period could discourage her from providing important prosecution information, and the Committee is aware of the possibility of losing a witness in such a process.

4.82 Currently, a witness who is on a Criminal Justice Stay visa cannot leave Australia and return, since to do so requires a different visa: the Criminal Justice Entry visa. It should also be remembered that women in this situation, as foreign nationals, can return to their home country at any time, so it is important that Australian migration arrangements do not create impediments to the return of witnesses.

### **Recommendation 9**

**4.83 The Committee recommends that the government 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 requirements.**

**The Hon. Bruce Baird MP**

Committee Chair



# **APPENDIX 1**

## **List of Submissions**

1. NSW Public Health Association NSW
2. Queensland Police Service QLD
3. Miss Shirley Wczewski (private capacity) VIC
4. Department of Police and Public Safety Tasmania TAS
5. Ms Margaret Farmer (private capacity) VIC
6. Iselin Consulting SWEDEN
7. Western Australia Police Service WA
8. Australian Section of the International Commission of Jurists WA
9. Human Rights Committee of the NSW Young Lawyers NSW
10. Ms Helen Cooke (Private capacity) VIC
11. Northern Territory Police NT
12. Victorian Immigrant and Refugee Women's Coalition VIC
13. Ms Kate Harriden (private capacity) QLD
14. School of Health Sciences VIC
15. Department of Police and Public Safety Tasmania TAS
16. Ruby Gaea Darwin Centre Against Rape NT
17. National Council of Women of Australia NSW
18. Women Lawyers of Western Australia (Inc.) WA
19. Australian Federation of University Women Inc. VIC
20. Catholic Women's League Australia Inc. ACT
21. Centre Against Sexual Assault House VIC
22. Soroptimist International of Victoria (Australia) VIC
23. Ms Anne Gallagher (private capacity) BANGKOK

24. Emma, Jan and Simon Woodley (private capacity) QLD
25. Project Respect VIC
26. CONFIDENTIAL
27. Scarlet Alliance ACT
28. Australian Bahá'í Community ACT
29. Australian Crime Commission ACT
30. Immigrant Women's Speakout Association NSW
31. Maribyrnong Detention Centre VIC
32. National Association of Services Against Sexual Violence
33. Women's Rights Action Network of Australia VIC
34. Australasian Council for Women and Policing Inc. ACT
35. City of Yarra VIC
36. Attorney-General's Department ACT
37. Australian Federal Police ACT
38. Department of Immigration and Multicultural and Indigenous Affairs ACT
39. Coalition Against Trafficking in Women

## **APPENDIX 2**

### **Witnesses who appeared before the Committee at public hearings**

*Tuesday, 18 November 2003*

*Melbourne Convention Centre, Melbourne*

#### **City of Yarra**

Mayor Greg Barber

Mr Ken Wolfe, Team Leader, Community Amenity

**Ms Margaret Farmer** (Private capacity)

#### **Soroptimist International, Victoria**

Ms Jocelyn Hanby, President

#### **Victoria Police**

Mr Simon Overland, Acting Deputy Commissioner (Operations), Legal Policy Unit

Mr Conor Flanagan, Legal Policy Adviser, Legal Policy Unit

Inspector Stephen Leane, Manager, Legal Policy Unit

Detective Senior Sergeant Chris O'Connor, Legal Policy Unit

#### **Project Respect Inc.**

Ms Kathleen Maltzahn, Director

Ms Georgina Costello, Project Officer

#### **Maribyrnong Detention Centre**

Ms Stancea Vichie, Chaplain

#### **Coalition Against Trafficking in Women Australia**

Associate Professor Sheila Jeffreys

#### **Victorian Immigrant and Refugee Women's Coalition**

Ms Melba Marginson, Chairwoman

#### **Centre Against Sexual Assault**

Ms Marg Darcy, Manager

Ms Maria Chalke, Coordinator, Victorian Sexual Assault Crisis Line

**Scarlet Alliance and Inner South Community Health Service,  
Resourcing Health and Education Program**

Ms Julie Futol, International sex worker liaison spokesperson for Scarlet Alliance and community health worker for the Inner South Community Health Service

*Wednesday, 25 February 2004  
Commonwealth Parliament Offices, Sydney*

**City of Sydney**

Mr Andrew Miles, Sex Industry Liaison Officer

**Public Health Association of Australia**

Ms Mary Osborn, Policy Officer, New South Wales Branch

**Scarlet Alliance**

Ms Janelle Fawkes, President

Ms Maria McMahon, Manager, Sex Workers Outreach Project

**Immigrant Women's Speakout Association**

Ms Monica Mazzone, Domestic Violence Policy Officer

**Victoria Police**

Detective Senior Sergeant Ivan McKinney, Asian Squad

**Western Australia Police Service**

Detective Superintendent James Migro, Organised Crime Division

**Human Rights and Equal Opportunity Commission**

Dr Sally Moyle, Sex Discrimination Unit

*Thursday, 26 February 2004  
Parliament House, Canberra*

**Australian Federal Police**

Ms Audrey Fagan, Chief of Staff

Mr John Lawler, Acting Deputy Commissioner

Mr Mike Phelan, National Manager, Border and International Network

**Attorney-General's Department**

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Mr Richard Fairbrother, Principal Legal Officer, Transnational Crime Unit

Ms Margaret Joseph, Senior Legal Officer, Criminal Law Reform Unit

Ms Kerin Leonard, Senior Legal Officer, Transnational Crime Unit

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**Department of Immigration and Multicultural and Indigenous Affairs**

Ms Yole Daniels, Assistant Secretary, Compliance and Analysis Branch, Border Control and Compliance Division

Mr Stephen Davis, First Assistant Secretary, Unauthorised Arrivals and Detention Division

Mr Vincent McMahon, Executive Coordinator, Border Control and Compliance Division

Mrs Sharon Watts, Acting Director, Migration Fraud and Investigations Branch, Border Control and Compliance Division

**Australian Crime Commission**

Mr Alastair Milroy, Chief Executive Officer

Mr Kevin Kitson, Director, Intelligence

Mr Lionel Newman, Director, Executive Services

Mr Chris Clark, Head of Operations - People Trafficking, and General Manager, Intelligence Services

*Tuesday, 30 March 2004*

*Parliament House, Canberra*

**Office of the Status of Women**

Ms Jenny Bourne, Assistant Secretary, Strategic Policy and Development Branch

Ms Kerry Flanagan, First Assistant Secretary