

# Chapter 4

## Sexual servitude

4.1 This chapter considers sexual servitude and human trafficking in the context of the sex industry. It also discusses the emerging issue of cybersex trafficking, particularly of children.

### Prevalence of trafficking in the sex industry

4.2 The extent to which human trafficking, slavery and slavery-like practices occur in the Australian sex industry was the subject of contested views during the course of the inquiry. Some submitters and witnesses argued that they are not a common occurrence in the industry, while others claimed that most migrant and culturally and linguistically diverse (CALD) sex workers are subjected to some form of exploitation.

4.3 As noted in chapter 2, in 2015–16 the Australian Federal Police (AFP) received 169 new referrals in respect of human trafficking, slavery and slavery-like offences, 39 of which related to sexual exploitation.<sup>1</sup> The Attorney-General's Department (AGD) provided information about the breakdown of referrals to the AFP for sexual exploitation and exploitation in other industries since 2004:

Between 2004 and March 2017, the [AFP] referred 341 suspected trafficked people to the Australian Government's Support for Trafficked People Program (Support Program). A total of 191 of these referrals related to alleged exploitation in the sex industry. A further 113 of these referrals related to exploitation outside the sex industry.

Historically, the majority of suspected trafficked people identified by Commonwealth authorities have been women who have experienced exploitation in the sex industry. However, in recent years Australian Government statistics show that the number of suspected trafficked people identified being exploited in other industries and in intimate relationships has been comparable to those subjected to exploitation in the sex industry.

Since 2009, 117 of the 255 suspected trafficked people referred to the Support Program have been allegedly subject to exploitation in the sex work industry. The remaining 138 suspected trafficked people were allegedly subject to exploitation in industries other than the sex work industry or through forced marriage.<sup>2</sup>

4.4 However, other submitters and witnesses rejected suggestions that human trafficking, slavery and slavery-like practices were a feature of the sex industry.

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1 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20

2 Attorney-General's Department (AGD), answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 12.

4.5 For example, the Scarlet Alliance, the peak national sex worker organisation in Australia, informed the committee that, '[i]t is our assertion, along with various other sources of evidence, that trafficking is not a widespread phenomenon in the Australian sex industry'.<sup>3</sup>

4.6 The Scarlet Alliance argued that biases and misperceptions about sex workers and the sex industry were the genesis of the assumption that a large proportion of sex workers were victims of human trafficking. The Scarlet Alliance outlined the results of an investigation into the sex industry by the Department of Immigration and Border Protection (DIBP) which found that:

...between 1 January 1997 and 30 December 2012, across that five-year period, 5,378 were working in the Australian sex industry, the majority of whom were working lawfully and, of those people, 21 per cent had held student visas. Student visa holders working in the sex industry represent less than one per cent of all student visa holders. It is like the massage parlour issue. Because of the assumptions that people have, they see every Asian student on a student visa as a potential sex worker, or they see every massage parlour as an illegal sex industry premises, and that is absolutely not the case.<sup>4</sup>

4.7 The Scarlet Alliance also discussed the practice of sex workers choosing to immigrate to Australia to perform sex work, emphasising the importance of such workers knowing their rights in order to prevent exploitation.<sup>5</sup> The committee was informed that such migrants use a 'variety' of visas to enter Australia:

We did examine that in our research project [a two-year national research project of migrant sex workers in Australia, conducted in conjunction with the Australian Institute of Criminology]. We found that there was a percentage under student visas and a percentage under work visas. These are the more shorter term working visas through reciprocal arrangements that Australia has that eligible people under 30 are able to access. Spousal and partner visas are sometimes used. It was a spread across the different kinds of working visas.<sup>6</sup>

4.8 The Vixen Collective, a representative body for sex workers in Victoria and a member organisation of Scarlet Alliance, informed the committee that it had not seen evidence of human trafficking in Victoria.<sup>7</sup>

4.9 By contrast, Collective Shout stated:

...three-quarters of the Australian sex industry is located outside of the legalised regime—in Victoria and New South Wales that is. We find Asian

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3 Ms Jules Kim, Chief Executive Officer, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 32.

4 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 34.

5 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, pp 35–36.

6 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 33.

7 Ms Jane Green, Spokesperson, Vixen Collective, *Committee Hansard*, 4 May 2017, p. 33.

women densely populated within the industry that falls outside of regulatory measures. Around 45 per cent of these women, according to empirical research, either have poor or fair English language skills, which means, effectively, that they are not communicating at any proficient standard.

...You cannot assume that these women understood what was happening and what is happening to them now by virtue of the fact that they cannot read anything that is produced by Australian regulatory bodies, so we cannot say that they understand what is going on... We do not know what is happening [outside the legal] industry.<sup>8</sup>

4.10 Collective Shout also informed the committee that women, mostly from China and South Korea, are provided working holiday visas or student visas by 'migration agents or local pimps'<sup>9</sup> and referred to a number of studies that illustrated that Asian women were being trafficked into Australia on visas for the purpose of working in the Australian sex industry.<sup>10</sup>

4.11 Representatives of the United Nations Office on Drugs and Crime (UNODC) similarly informed the committee that there are 'significant trafficking flows from South-East Asia potentially to Australia, mainly women for sexual exploitation, but also potentially for labour exploitation'.<sup>11</sup> The UNODC continued: 'from where we sit it looks like a lot of sex exploitation cases are taking place in Australia' but generally, not many people are being forced to immigrate to Australia from South-East Asia.<sup>12</sup>

4.12 The Coalition Against Trafficking in Women in Australia (CATWA) discussed the ways in which exploitation is occurring in the sex industry:

Of the evidence we have available—which, like I say, is often quite limited—there is variation. There is not one single model, but, of what has been exposed, debt bondage is very common particularly in the trafficking of women from South-East Asia. It is less common that women would be, say, forced at the point of departure to come than that they are brought under deception, which of course under the Palermo protocol makes it trafficking. Any form of deception, coercion or even power imbalance does. In the cases identified, women often might know they are not coming to work in the sex industry. That is a very common one. They might be told they are waitressing. They might be working in a massage parlour. Then, in actual fact, once they are here, their passports are taken and they are told

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8 Dr Caroline Norma, Consultant, Collective Shout, *Committee Hansard*, 4 May 2017, pp 2–3.

9 Dr Norma, Collective Shout, *Committee Hansard*, 4 May 2017, p. 3.

10 Collective Shout, *Submission 1*, pp 2–3.

11 Mr Jeremy Douglas, Regional Representative, Southeast Asia and the Pacific, United Nations Office on Drugs and Crime (UNODC), *Committee Hansard*, 4 May 2017, p. 45.

12 Mr Benjamin Smith, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, UNODC, *Committee Hansard*, 4 May 2017, p. 45.

they owe tens of thousands of dollars—sometimes hundreds of thousands of dollars—and they have to work that off.<sup>13</sup>

4.13 Indeed, the Inner South Community Health Ltd (ISCH), which provides 'drop-in' services for sex workers in the Victorian sex industry,<sup>14</sup> stated that although representatives from ISCH are not meeting sex workers who have been trafficked into the sex industry, such people 'are more likely to be in establishments that are going to be less encouraging to allow us in in the first place'.<sup>15</sup>

4.14 In order to address the prevalence of clandestine sex trafficking into Australia, CATWA therefore recommended:

...that demand for sexual services be recognised as fuelling sex trafficking and, as such, be discouraged in line with the [*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*]. Demand for sexual services must therefore be explicitly addressed in all policy attempts to combat trafficking and that state laws regarding prostitution be consistent with these attempts. The legislative approach that best fits these needs is the Nordic Model...which decriminalises all prostituted persons but discourages demand for sexual exploitation by prohibiting pimping and sex buying.<sup>16</sup>

4.15 This legislative approach, discussed further in paragraphs 4.27-4.40, was also recommended by Nordic Model Australian Coalition (NorMAC) as a way to address sex trafficking into Australia.<sup>17</sup>

### ***Committee view***

4.16 Despite the conflicting evidence about the prevalence of human trafficking, slavery and slavery-like practices in the Australian sex industry, a consistent message was that this is an issue that is, for obvious reasons, difficult to quantify. The evidence from the Scarlet Alliance and the Vixen Collective suggests that in the regulated sex industry, trafficking of sex workers may not be a regular occurrence. However, as other submitters and witnesses highlighted, unscrupulous and deceptive operators who traffic people for the purpose of sex work are more likely to operate outside the regulated industry. Similarly, migrant and CALD sex workers, on account of cultural and language differences, as well as fear about reprisal and/or their migration status, may not know where they can seek support and advice, or may be unwilling to do so.

4.17 The committee believes that the lack of comprehensive and up-to-date data on the prevalence of sex trafficking both to and within Australia is a problem. Only once

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13 Dr Meagan Tyler, Member of the Executive Committee, Coalition Against Trafficking in Women in Australia (CATWA), *Committee Hansard*, 4 May 2017, p 14.

14 Inner South Community Health Service Ltd (ISCH), *Submission 12*, p. 2.

15 Mr Alan Murnane, General Manager, ISCH, *Committee Hansard*, 4 May 2017, p. 2.

16 CATWA, *Submission 3*, p. 8.

17 Nordic Model Australian Coalition, *Submission 22*, p. 3.

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accurate data is available will the quantum of the problem be apparent, and consideration can be given to how it should be addressed. As such, the committee recommends that balanced and constructive research into the prevalence of sex trafficking into and within Australia is conducted, in collaboration with organisations such as Scarlet Alliance given their expertise and networks.

### **Recommendation 13**

**4.18 The committee recommends that the Commonwealth government commission balanced and constructive research into the prevalence of sex trafficking into and within Australia.**

4.19 The committee is concerned by the evidence of Collective Shout and CATWA that some women are trafficked into the Australian sex industry on the promise of other types of work and/or under the guise of a student visa. The committee shares these concerns, and suggests that such exploitation can be reduced by strengthening Australia's visa systems such that there is less opportunity for third parties to abuse the visa process for the purpose of sex trafficking into Australia.

### **Recommendation 14**

**4.20 The committee recommends that the Commonwealth government strengthens visa systems to prevent involuntary human trafficking into the sex industry in Australia.**

### **International engagement**

4.21 The Scarlet Alliance described some of its work with sex workers intending to immigrate to Australia.

4.22 Ms Jules Kim, Chief Executive Officer of the Scarlet Alliance discussed the benefits of engaging with sex workers destined for Australia through the Scarlet Alliance Migration Project. The project funds the Empower Foundation, which enables the Scarlet Alliance to disseminate information to sex workers in Thailand considering travelling to Australia about their rights and responsibilities in Australia.<sup>18</sup> Ms Kim elaborated:

That has been incredibly successful and we have been able to disseminate a lot of information to Thai sex workers. It has been borne out in the reduction in numbers of Thai sex workers who have experienced exploitation. Part of the rationale behind funding that particular partnership was, earlier in the response, Thai sex workers were overrepresented in the numbers that were coming to the attention of the AFP and to anti-trafficking efforts. We did a consultation with people that had experienced exploitation or had been involved in trafficking investigations to ask them, 'What could we have done differently, or what support could have allowed you to make different choices at that point?' Through that initial consultation, a lot of the information was, 'Well, we didn't know what our rights were.' Immigration does not exactly translate information, for the

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18 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 35.

most part, either. It was like, 'If we had simple information on our rights and responsibilities in terms of migration and legal information, that would be a huge step in being able to reduce any vulnerabilities to exploitation.'<sup>19</sup>

4.23 The Scarlet Alliance considered the project to be 'a cost-effective, practical way for the government to support trafficking prevention efforts in Australia'.<sup>20</sup>

### *Committee view*

4.24 The committee acknowledges the importance of the work undertaken by the Scarlet Alliance Migration Project to combat sex trafficking and the potential exploitation of these migrant sex workers in Australia. The committee is supportive of this project and the model it demonstrates, which could also be effective if replicated in other countries, particularly those identified as source countries for victims of sex trafficking into Australia such as China and South Korea.

4.25 Consistent with its view and recommendations in relation to other types of migrant workers (see paragraphs 3.17 to 3.21), the committee believes Australian governments should support and fund initiatives to inform migrant sex workers about their legal rights and obligations both pre-departure and post-arrival in Australia.

### **Recommendation 15**

**4.26 The committee recommends that Australian governments support and fund initiatives to inform migrant sex workers about their legal rights and obligations both pre-departure and post-arrival in Australia.**

### **Criminalisation of the sex industry**

4.27 The costs and benefits of criminalising the sex industry in Australia was also a source of contention during the course of the inquiry. The committee heard conflicting evidence from submitters and witnesses supportive of criminalising the sex industry as a means by which to combat human trafficking, and on the other hand, those that supported decriminalisation.

4.28 For example, Collective Shout encouraged the committee to:

...fundamentally understand that prostitution is a business of trafficking and to tackle it accordingly by criminalising the sex industry's customers, criminalising the sex industry's business people, and joining countries like Ireland, Northern Ireland, Canada, France, Norway, Iceland, Korea and Sweden in doing so.<sup>21</sup>

4.29 The approach taken by the countries to which Collective Shout referred is commonly known as the 'Nordic model'. The committee received a number of

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19 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 35.

20 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 34.

21 Dr Norma, Collective Shout, *Committee Hansard*, 4 May 2017, p. 2.

submissions in favour of the Nordic model.<sup>22</sup> In its submission, CATWA described the model and outlined its benefits:

The Nordic Model constitutes asymmetric decriminalisation: it directly addresses demand for prostitution and trafficking by criminalising sex buyers and third parties who profit from prostitution, while simultaneously supporting the victims/survivors of prostitution and trafficking.

The Nordic Model...is a legislative approach which recognises that prostitution is a form of violence against women and, more broadly, undermines women's equality.

The Nordic Model functions by decriminalising prostituted persons but prohibiting pimping, brothel owning and the purchase of sex.<sup>23</sup>

4.30 However, the Scarlet Alliance emphasised that the previous Special Rapporteur on trafficking in persons, especially women and children, stated that she found no evidence that this model reduces trafficking.<sup>24</sup> The Scarlet Alliance also stated that:

...trafficking can be prevented within the existing infrastructure in Australia. However, a prevention approach needs to continue to be invested in, and in fact a significant investment needs to occur within government for the prevention approach to trafficking. Australia predominantly has maintained a criminal justice approach to trafficking, focusing on police and surveillance, but increasing regulation, policing and surveillance are not effective approaches to combating trafficking or exploitation. We need to shift to a comprehensive, multifaceted and evidence-based prevention approach which supports culturally and linguistically appropriate sex worker peer education, in-country partnerships with sex worker organisations in countries of origin, decriminalisation of sex work and the accessibility of civil remedies for those who have experienced exploitation.

... There is no evidence that criminalisation will reduce trafficking. In fact, we believe it does the opposite by eroding the human and civil rights of sex workers, including migrant sex workers, by reducing sex worker control over our work and workplaces. Criminalisation of our work, our clients or our workplaces makes us vulnerable to exploitation.<sup>25</sup>

4.31 Similar evidence was given by the Vixen Collective, which argued against the type of criminalisation established under the Nordic model, on the basis that:

...it comprehensively cuts off the ability of sex workers to access assistance from police when we are subject to violence, which is of significant concern; and it cuts off access to justice through the courts. It also cuts off access to those remedies for potential victims of human trafficking, and has

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22 See, for example, The Nordic Model Australia Coalition, *Submission 22*, p. 1; Mr Peter Abetz MP, *Submission 19*, p. 10.

23 Coalition Against Trafficking in Women Australia, *Submission 3*, p. 4.

24 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 30.

25 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, pp 30–31.

the tendency to push sex work underground and make it less visible to police when things are going wrong both for sex workers and for victims of human trafficking, which is not advantageous.<sup>26</sup>

4.32 Indeed, Scarlet Alliance, Vixen Collective and a number of other organisations advocated for the full decriminalisation of the sex industry.<sup>27</sup> Vixen Collective defined decriminalisation as:

...the removal of all criminal laws relating to the sex industry, allowing sex work to be regulated like other work - this does not mean no regulation, but that sex work should be regulated like any other work.<sup>28</sup>

4.33 The Vixen Collective also listed a number of benefits of decriminalisation, including:

- Decriminalisation recognises sex work as work, helping to break down stigma against sex workers and reduce discrimination.
- It has been shown that [sexually transmitted infection] rates and safe sex outcomes are maximised under decriminalisation.
- Under decriminalisation there is less waste of police resources on enforcement and sex workers are better able to access assistance when in need because of improved relations with police.
- It has been shown that sex work as regulated under decriminalisation has little to no amenity impacts.
- Access to justice is improved for sex workers under decriminalisation, including an improved ability to pursue criminal cases against those who perpetrate violent or sexual offences against sex workers, but also civil protections (such as restraining orders).
- Decriminalisation would give sex workers better access to workplace safety, including state apparatus such as WorkSafe Victoria and the Fair Work Ombudsman.
- Decriminalisation would give sex workers greater ease to access health services, without the requirement to 'out' themselves - as is required due to mandatory testing under current licensing regulations - which has been shown to lead to discriminatory treatment and exclusion from medical services.<sup>29</sup>

4.34 ISCH submitted that 'Commonwealth advocacy for decriminalisation of sex work by the States would also be an effective strategy to minimise trafficking of sex workers', referring to a 2015 Amnesty International report that stated:

...there is no evidence to suggest that decriminalisation results in more trafficking. To the contrary, it finds that when sex work is decriminalised,

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26 Ms Green, Vixen Collective, *Committee Hansard*, 4 May 2017, p. 32.

27 See, for example, Sex Workers Outreach Project, *Submission 2*, p. 3; Scarlet Alliance, *Submission 5*, p. 4; Vixen Collective, *Submission 20*, p. 4; ISCH, *Submission 12*, p. 4.

28 Vixen Collective, *Submission 20*, p. 7.

29 Vixen Collective, *Submission 20*, p. 8.

sex workers are better able to work together and demand rights, leading to better working conditions and standards and greater oversight of the commercial sex industry and potential trafficking within it. When they are not threatened with criminalisation, sex workers are also able to collaborate with law enforcement to identify traffickers and victims of trafficking.<sup>30</sup>

4.35 By contrast, Collective Shout argued in its supplementary submission:

A 2015 study carried out in NSW surveyed 309 men as customers of the sex industry, and found these men had mostly been prostituting women even before the sex industry was decriminalised in that state: ‘the average length of time men had been procuring sexual services was 21 years’. In other words, the men, in general, had previously ignored prevailing laws in NSW. They were frequent customers of the NSW sex industry: ‘almost 59 per cent of the men who answered this question (based on n =262) stated they purchased sex weekly, fortnightly or monthly (n =154)’. Furthermore, the ‘[m]en were asked if they would stop purchasing sexual services if it was recriminalized in New South Wales. The majority of men indicated that they would not (69.3 per cent, n =180)’.<sup>31</sup>

4.36 Regulation of the sex industry was also raised as an important issue. The Scarlet Alliance made the following comments about regulation of the sex industry:

Regulatory tools that have been used to monitor, regulate, and license the sex industry in Victoria have disadvantaged sex workers, insufficiently protected the rights of marginalised groups and enabled the unfair treatment of sex workers by Victorian Police, Immigration, and the AFP. This has not resulted in safer or fairer workplaces; these bodies have not found evidence of human trafficking despite regular compliance checks of licensed brothels, and have managed only to deport migrant sex workers working of their own volition.<sup>32</sup>

4.37 Indeed, the Scarlet Alliance considered that as violations of sex industry regulations are not trafficking offences, they should not be treated in this manner, as this harms sex workers ‘and is the result of police acting on perceptions rather than responding to evidence’.<sup>33</sup>

4.38 ISCH argued against regulation specific to the sex industry, on the basis that the human trafficking offences in the *Criminal Code Act 1995* (Criminal Code) are effective to address any such offences that might arise in the sex industry:<sup>34</sup>

A non-universal response directly related to trafficking for sex work would further encourage ‘the stereotype that exploitation and the sex industry are inherently linked and therefore migration for sex work equals trafficking’

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30 ISCH, *Submission 12*, p. 4, citing *Policy to Protect the Human Rights of Sex Workers*, 2015.

31 Collective Shout, *Submission 24*, p. 2.

32 Scarlet Alliance, *Submission 5*, p. 9.

33 Scarlet Alliance, *Submission 5*, p. 19.

34 ISCH, *Submission 12*, p. 3.

(Kim and Jefferies, 2013), which is widespread and often recycled in the media.<sup>35</sup>

### ***Committee view***

4.39 The committee has not formed a view about the appropriateness or otherwise of implementing the Nordic model in Australia. The committee acknowledges the opposing and often passionately held views of submitters and witnesses on this issue, and stresses that any consideration of criminalised or decriminalised models for regulating the sex industry as a means of addressing sex trafficking must take into account the:

- benefits and harms likely to result for sex workers; and
- extent to which any model will reduce human trafficking in the sex industry.

4.40 The committee also reiterates the need for balanced and constructive research into the prevalence of sex trafficking into and within Australia so that the quantum of the problem can be properly understood before possible solutions are proffered.

### **Cybersex trafficking**

4.41 International Justice Mission Australia (IJM), which partners with local authorities and organisations to combat 'slavery, sex trafficking, online sexual exploitation of children, sexual violence, police abuse of power, property grabbing and citizenship rights abuse',<sup>36</sup> raised particular concerns about the increasing prevalence of cybersex trafficking.

4.42 IJM defined cybersex trafficking as 'the live streaming sexual exploitation of children viewed over the internet', noting that it was 'unimaginable before the digital age' and 'involves different criminals and different, often younger, victims' than 'traditional trafficking'.<sup>37</sup> IJM elaborated:

Before the proliferation of the internet, customers had to physically go to a bar or brothel to purchase sex from victims who were often young women or teenagers. Now paedophiles and abusers located anywhere in the world but typically from countries like our own can exploit children without ever leaving the comfort of their own home.<sup>38</sup>

4.43 In its submission, IJM stated that '[n]ot enough is currently being done to address these crimes in the Australian intergovernmental response to human trafficking'.<sup>39</sup> For example, IJM considered that cybersex trafficking should be directly

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35 ISCH, *Submission 12*, p. 3–4.

36 International Justice Mission Australia (IJM), *Submission 31*, p. 1.

37 Ms Kimberly Randle, Director, Corporate and Legal, IJM, *Committee Hansard*, 5 May 2017, p. 7.

38 Ms Randle, IJM, *Committee Hansard*, 5 May 2017, p. 7.

39 IJM, *Submission 31*, p. 2.

addressed by the existing strategies within the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*.<sup>40</sup>

4.44 IJM provided detail about the global growth of cybersex trafficking, including in Australia. For example, IJM noted that:

- There has been an increase in the number of convictions under ss 474.26 and 474.27 coming before courts in NSW and Victoria. Data from NSW and Victoria from 2010 to October 2016 indicates that there have been at least 279 convictions for offences under s 474.26. Data from Victoria alone indicates there were 124 convictions under s 474.27 from 2010 to 2015. By contrast from October 2008 to November 2013, there were only 150 cases involving s 474.26 or s 474.27 in NSW Higher Courts; and
- In February 2015, the AFP reported receiving 5617 referrals of online child sexual exploitation in the 12 months prior, an increase of 54% from the period before. The figure for the whole of 2015 was 11,000.<sup>41</sup>

4.45 One of the recommendations made by IJM was, therefore, that the AFP should be adequately resourced 'to improve their investigation of cybersex trafficking cases, particularly through the use of covert personas'.<sup>42</sup>

4.46 The committee also heard about the existing legal framework used to prosecute these offences. IJM referred to the current provisions relating to a carriage service to procure persons under 16 years of age at sections 474.20 and 474.26 of the Criminal Code as being inadequate to address cybersex trafficking, as:

...the average sentence is significantly lower than that maximum sentence, and the maximum sentence for human trafficking offences under the Commonwealth Criminal Code is significantly higher than that 15 years.

4.47 In response, the IJM made a number of recommendations to the committee in respect of legislative reform.<sup>43</sup> For example, IJM recommended that consideration should be given 'to legal avenues by which to prosecute cybersex trafficking offences as a sexual servitude or slavery offence, or as aiding or procuring such offences'.<sup>44</sup>

4.48 The committee also heard from representatives of the UNODC about the prevalence of cybersex trafficking. Specifically, Mr Benjamin Smith informed the committee that:

...it is our understanding that the numbers are quite high. You are particularly looking at situations where you have, say, children in the Philippines or even now in Thailand—children based here—who are being

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40 IJM, *Submission 31*, p. 2.

41 IJM, *Submission 31*, p. 9 (citations omitted). Section 474.26 of the *Criminal Code Act 1995* addresses using a carriage service to procure persons under 16 years of age, and section 474.27 addresses using a carriage service to 'groom' persons under 16 years of age.

42 IJM, *Submission 31*, p. 2.

43 For those recommendations, see: IJM, *Submission 31*, p. 2.

44 IJM, *Submission 31*, p. 2.

sexually exploited on webcams. These webcams are then streaming the content live to countries all over the world, including Australia. That sort of trafficking is taking place in that way.<sup>45</sup>

4.49 Mr Jeremy Douglas added:

We have worked with a couple of countries in the region to start to criminalise online child pornography. In late 2015, we were successful in getting Thailand to criminalise this. But there are still quite a few countries here in the region that have not criminalised this offence, so there is a very significant gap in the laws within the region. It is particularly across the Mekong. It is easy for people to set up with very little criminal implication within these countries and, as Benjamin said, to stream this all over the world. We are actually looking right now at taking the lessons that we had from the Thai experience and the law that was developed here and trying to promote that within some of the neighbouring countries.<sup>46</sup>

### *Committee view*

4.50 The committee shares the concerns raised by IJM and the UNODC about the growing prevalence of cybersex trafficking, particularly as babies and children are the most common victims. The committee considers that more should and must be done by the Commonwealth government to address this horrific crime where it is perpetrated by an Australian or within the Australian jurisdiction (irrespective of the location of the victim).

4.51 On the basis of the evidence presented to it, the committee recommends that the Commonwealth government investigates the adequacy of current legislative provisions and criminal offences to address cybersex trafficking and makes legislative amendments as necessary where current arrangements, including the provisions of the Criminal Code, are ineffectual.

### **Recommendation 16**

**4.52 The committee recommends that the Commonwealth government investigates the adequacy of current legislative provisions and criminal offences to address cybersex trafficking and makes legislative amendments as necessary where current arrangements, including the provisions of the *Criminal Code Act 1995*, are ineffectual.**

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45 Mr Smith, UNODC, *Committee Hansard*, 4 May 2017, p. 47.

46 Mr Douglas, UNODC, *Committee Hansard*, 4 May 2017, p. 47.