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**Government Response to the Report of the  
Parliamentary Joint Committee on the Australian Crime  
Commission  
“Inquiry into the trafficking of women for sexual servitude”  
released in June 2004**

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**Introduction**

The Australian Government is actively and effectively combating trafficking persons. The Government's measures address the full trafficking cycle from recruitment to reintegration, and lend equal weight to the critical areas of prevention, prosecution and victim support. The Government continues to monitor the effectiveness of Australia's anti-trafficking efforts.

In June 2003, the Parliamentary Joint Committee on the Australian Crime Commission (the Committee) commenced an inquiry into the work of the Australian Crime Commission in assessing trafficking in women for the purposes of sexual servitude in Australia.

The Committee released its report in June 2004. The Committee made nine recommendations, which are addressed in turn below.

In June 2005, the Committee decided to revisit the issue of people trafficking and evaluate the progress of the implementation of its recommendations.

The Committee released a supplementary report in August 2005.

The Government will respond separately to the supplementary report.

**The Committee's Terms of Reference and the Scope of the Report**

The Committee's terms of reference were:

*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."*

Section 55(1)(a) and (d) of the *Australian Crime Commission Act 2002* sets out the context for these terms of reference:

*Section 55 - Duties of the Committee*

- (1) The duties of the Committee are:*

*(a) to monitor and to review the performance by the ACC of its functions;*

...

*(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; and*

The Committee's report was far broader than these terms of reference. Of nine recommendations, only one recommends action by the Australian Crime Commission, and only three very closely related recommendations focus on legislation. Only one chapter out of four focused on "trends and changes in criminal activities". The remaining recommendations – more than half those made – are well beyond the inquiry's terms of reference.

## **RESPONSE TO RECOMMENDATIONS**

### **Recommendation 1**

*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.*

#### **Response:**

Accepted in part.

The Australian Crime Commission's priorities are determined by the Australian Crime Commission Board, comprising the heads of Commonwealth law enforcement agencies and State and Territory Police Commissioners. The Board of the Australian Crime Commission approved a Special Intelligence Operation into People Trafficking for Sexual Exploitation in December 2003. The special intelligence operation, which allows the use of coercive powers, extended to 30 September 2006.

The Australian Crime Commission is committed to improving Australia's understanding of the nature and scope of people trafficking to Australia for the purpose of sexual exploitation. This includes assisting other agencies to examine methods used by traffickers to facilitate movement of their victims across borders. Visa fraud and the corruption of officials to facilitate people trafficking for sexual exploitation are relevant areas where the Australian Crime Commission assists other agencies investigations as requested through provision of access to its coercive powers.

Additionally, Australia is committed to a whole of government approach to combating people trafficking, smuggling and other trans-national migration crime. In this context, the Department of Immigration and Multicultural Affairs (DIMA) overseas compliance network, in conjunction with the work of other key Australian government agencies such as the Department of Foreign

Affairs and Trade (DFAT) and the Australian Federal Police (AFP), has a significant deterrent effect. The effectiveness of the overseas compliance network is demonstrated by our success in reducing the activities of people attempting to enter Australia without authority.

DIMA is the prime agency focussing on visa fraud and continues to look at profiling methods to reduce its incidence, including sex trafficking. Where such profiles can be developed, they are now included on the new safeguards systems, which alerts those processing them to inherent risks. To assist this process and to more directly address the problems of sex trafficking, a Senior Migration Officer (Compliance) was placed in Thailand in December 2003 with a specific focus on people trafficking in the South East Asia region. The role includes undertaking analyses of trends in the visa processing caseload including applicants' travel patterns, use of migration agents and the nature of claims lodged in support of applications; vetting the visa caseload for fraud that may lead to people trafficking; and liaison with local government and non-government organisations. That officer is part of a compliance network located at 22 overseas posts in 19 countries.

## **Recommendation 2**

*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.*

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

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

## **Response:**

Not accepted.

The Interdepartmental Committee (IDC) is formalised. It was created by the Minister for Justice and Customs, Senator the Hon Chris Ellison, in March 2003 with the approval of the Prime Minister. The IDC first met on 9 April 2003. Its mandate was to examine the issue and develop a whole of government strategy. It completed that task and now continues to monitor the implementation of the Australian Government's measures to combat trafficking.

The Committee's objectives of co-ordinated oversight of anti-trafficking measures can be achieved using the existing IDC, without the need for further formalisation of structures. The IDC is an overall steering group which also

discusses emerging issues, particularly those which cross portfolios. The Chair of the IDC is a senior officer of the Attorney-General's Department (AGD).

Individual agencies are responsible for the delivery of their parts of the package. This structure does not mean that "the objective of a 'whole of government approach' may be undermined by the absence of any single final authority" or that "there is no-one responsible for making sure that the overall system actually works". On the contrary, the structure ensures that the overall strategic direction of Australia's anti-trafficking measures is carefully monitored, while agency experts implement individual components. Problems arising are taken up, when appropriate, in the IDC. Solutions are developed, and individual agencies implement them.

The Management Advisory Committee Report *Connecting Government: Whole of Government Responses to Australia's Priority Challenges* provides further discussion of the nature and role of Interdepartmental Committees (pages 26 to 29).

### **Recommendation 3**

*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.*

#### **Response:**

Not accepted.

The level of financial support provided on the Programme is parallel to that provided to Australian citizens in receipt of income support payments such as age pensioners and sole parents. In addition, victims receive access to specialised services that help them deal with and overcome their experiences. These services include intensive case management and counselling, training such as English lessons and vocational training where appropriate, and assistance with adjusting to a different living pattern or daily routine.

### **Recommendation 4**

*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.*

**Response:**

Accepted in part.

The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (the Act) commenced on 3 August 2005.

This legislation was developed after a review of the existing trafficking offences and consideration of public submissions in response to an Exposure Draft of the Bill.

The Act inserted into the *Criminal Code*:

- offences of trafficking persons into or out of Australia by means of force, threats or deception or where the trafficker is reckless as to whether the victim will be exploited (maximum penalty: 12 years imprisonment)
- an aggravated offence of trafficking persons into or out of Australia where the person intends that the victim will be exploited, subjects the victim to cruel, inhuman or degrading treatment, or the victim is endangered (maximum penalty: 20 years imprisonment)
- offences of trafficking children into or out of Australia where the person is reckless as to whether the victim will be exploited or used to provide sexual services (maximum penalty: 25 years imprisonment)
- offences of domestic trafficking in persons by means of force, threats or deception or where the trafficker is reckless as to whether the victim will be exploited (maximum penalty: 12 years imprisonment)
- an aggravated offence of domestic trafficking in persons where the person intends that the victim will be exploited, subjects the victim to cruel, inhuman or degrading treatment, or the victim is endangered (maximum penalty: 20 years imprisonment)
- an offence of domestic trafficking in children under 18 years where the person is reckless as to whether the victim will be exploited or will be used to provide sexual services (maximum penalty: 25 years imprisonment)
- a new debt bondage offence to supplement the existing broad slavery offence in section 270.3 of the *Criminal Code* (maximum penalty: 2 years imprisonment for an aggravated offence).

The Act significantly extended the scope of the deceptive recruiting for sexual services offence in section 270.7 of the federal *Criminal Code*.

The amended offence not only includes deception about the fact that the person will be working in the sex industry, but deception about the exploitative conditions of that employment.

The new offence covers deception about:

- the extent to which the person will be free to leave the place or area where the person provides sexual services,
- the nature of the sexual services to be provided (for example, whether those services will require the person to have unprotected sex),
- the extent to which the person will be free to leave the place or area where the person provides sexual services,
- the extent to which the person will be free to cease providing sexual services,
- the extent to which the person will be free to leave his or her place of residence,
- if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement – the quantum, or the existence, of the debt owed or claimed to be owed, or
- the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person’s travel or identity documents.

The Act also inserted into the *Criminal Code* new offences of trafficking by deception. New subsection 271.2(2) makes it an offence to organise or facilitate the entry of another person into Australia where there is deception about the fact that the entry will involve the provision of sexual services, exploitation, debt bondage or the confiscation of the other person’s travel or identity documents.

New subsection 271.2(2A) is similar to subsection 271.2(2) but applies where a person organises or facilitates the exit from Australia.

Paragraphs 16A(2)(d) and 16A(2)(e) of the *Crimes Act 1914* provide that, in sentencing a person for a Commonwealth offence, the court must take into account the “personal circumstances of any victim of the offence” and “any injury, loss or damage resulting from the offence.” Evidence given to the court as to the matters in either of these paragraphs may include a statement by the victim of the offence about his or her experience of the impact of the offence. This applies to the new trafficking offences.

The Australian Law Reform Commission recently reviewed Part 1B of the *Crimes Act 1914*, which deals with the sentencing and administration of federal offenders. Any proposed amendments to Part 1B dealing with victim impact

statements will be dealt with in the context of that review. The Government is currently considering the recommendations in the ALRC's report.

#### **Recommendation 5**

*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.*

#### **Response:**

Accepted.

The Government conducted the review as a matter of priority. The need for rapid passage of the new law was balanced with the need for careful drafting of complex legislation, the necessary consultation to ensure the laws are as effective as possible, and the fact that already existing legislation has supported numerous prosecutions.

*The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 comprehensively criminalises trafficking in persons activity, fulfilling Australia's legislative obligations under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Protocol).*

#### **Recommendation 6**

*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.*

#### **Response:**

Accepted.

*The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 commenced on 3 August 2005.*

#### **Recommendation 7**

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

#### **Response:**

Accepted.

Australia ratified the Protocol on 14 September 2005.



## **Recommendation 8**

*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.*

### **Response:**

Not accepted.

Criminal Justice Stay (CJSV) holders who contribute to the prosecution or investigation of an alleged people trafficking offence, and who may be in danger if they return home, may be able to stay in Australia temporarily or permanently through grant of Witness Protection (Trafficking) visas.

The Witness Protection (Trafficking) (Temporary) visa may be offered to persons who hold a Criminal Justice Stay Visa where the Attorney-General has certified that the person is either:

- i. one who has made a major contribution to and cooperated closely with the prosecution of a person who has trafficked or forced others into exploitative conditions; or
- ii. one who has made a significant contribution to, and cooperated closely with, an investigation in relation to which the Director of Public Prosecutions has decided not to prosecute a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions.

The person must not be the subject of any related prosecutions, and the Minister for Immigration and Multicultural Affairs must be satisfied that the person would be in significant personal danger were they to return to their home country.

A Witness Protection (Trafficking) (Permanent) visa will be offered to persons who have held the corresponding temporary visa for at least two years and who continue to meet the criteria for the Witness Protection (Trafficking) (Temporary) visa.

In addition, legislative changes are being brought forward to enable persons offshore who are assisting the criminal justice process relating to trafficking to also access the Witness Protection (Trafficking) visa regime.

It would not be feasible to allow a CJSV holder to remain in Australia simply on the basis of having held this type of visa. As an investigation progresses it may be found that a CJSV holder was not in fact trafficked or that they were not a genuine witness. In these circumstances it is appropriate that arrangements are made for their removal from Australia. The current arrangement has also been designed to avoid encouraging people to become involved in sex trafficking and avoiding fraudulent claims.

The Government's approach is focussed on stamping out this practice, not on removal, and has provided scope for dealing with both those who cannot return and those whose return is appropriate. Accordingly, Australia has developed a special reintegration package for those victims of trafficking who are not eligible for the Witness Protection (Trafficking) Visa to choose to return home. This package, managed by AusAID, is designed to reduce the danger of the person being trafficked again by linking victims returning home to domestic government and NGO sources of support and counselling, support networks and vocational training. This complements a wide range of regional preventative efforts conducted by AusAID with partners in the region.

### **Recommendation 9**

*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.*

### **Response:**

Accepted in part.

Current legislation already provides means to facilitate return.