

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.

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.¹

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.

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.

