

CHAPTER 3

OTHER ISSUES

3.1 A number of other issues arose during the course of the inquiry. This section of the report discusses:

- consultation in the development of the Bill;
- access to justice for victims of trafficking;
- victim support; and
- alternative legislative approaches.

Consultation

3.2 As part of its inquiry, the Committee examined the consultation process undertaken in the development of the Bill. This section of the report will look at:

- consultation with interested stakeholder groups; and
- consultation with states and territories.

Consultation with interested stakeholder groups

3.3 The Committee is concerned to note evidence that key stakeholder groups were not contacted by the Attorney-General's Department in the development of the legislation. HREOC, a key body in monitoring and developing policy relating to Australia's obligations under international human rights conventions and treaties, advised that it had not been asked by the Attorney-General's Department to comment on either the exposure draft of the Bill, or the Bill itself.¹

3.4 Other stakeholder groups giving evidence to the Committee also advised that they had not been consulted, and had only become aware by hearsay that an exposure draft of the Bill was available. Representatives of World Vision and of Scarlet Alliance told the Committee that they were alerted to the existence of the exposure draft through attendance at a conference on trafficking.² Both World Vision and Scarlet Alliance subsequently made submissions, but neither was contacted by the Department with feedback.³

3.5 Scarlet Alliance expressed concern that the views of contract sex workers and others affected by the legislation were not being heard.⁴ The Australian Federation of

1 *Submission 9A*, p. 1.

2 *Committee Hansard*, 23 February 2005, p. 19 (World Vision), and p. 11 (Scarlet Alliance).

3 *ibid*, p. 19 (World Vision), and p. 12 (Scarlet Alliance).

4 *ibid*, p. 11.

AIDS Organisations (AFAO) also emphasised the importance of consultation with affected groups in the community in the development of legislation. AFAO submitted that:

It is a fundamental principle in developing good public policy that communities most affected by policies and laws be intimately involved in the development and implementation of new models and approaches. It is imperative that sex worker organisations be more closely involved in further developing legislation that applies to trafficking. If the legislation is to achieve the aim of reducing rather than adding to the exploitation of persons, it is essential that sex worker groups participate extensively in formulating legislative responses.⁵

3.6 In response to Committee questioning about the consultation process, the Attorney-General's Department advised that a press release in relation to the Bill was issued by the Minister on 31 August 2004, and placed on the Department's website, along with the exposure draft. The website displayed an invitation for comment on the exposure draft. In evidence to the Committee, a representative of the Attorney-General's Department advised that the calling of the federal election (on 29 August 2004) placed the Department in caretaker mode, which 'limited the way that [the Department] could engage with stakeholders'.⁶ The election was held on 9 October 2004 and the new Ministry was sworn in soon thereafter.

3.7 The Attorney-General's Department advised of 13 submissions received on the exposure draft, from groups and individuals. In evidence to the Committee, a representative of the Department suggested that the process of scrutiny by the Senate committee process was also part of the consultation process.⁷ The representative stated:

... as part of this process of the committee inquiring into this legislation, as always policy is an iterative process and the government will consider the kind of recommendations that come out of the committee's deliberations today.⁸

Consultation with States and Territories

3.8 As well as an apparently flawed approach to consultation with stakeholder groups, the Committee is concerned with an apparent lack of adequate consultation on the Bill with States and Territories.

3.9 The Attorney-General's Department advised of a number of activities undertaken over recent years with states and territories in relation to the negotiation of the Protocol, and in the general area of trafficking in persons. These included:

5 *Submission 4*, p. 2.

6 *Committee Hansard*, 23 February 2005, p. 28.

7 *ibid.*, p. 33.

8 *ibid.*

-
- July 2000 meeting of the Standing Committee of Attorneys-General (SCAG): paper outlining the status of Protocol negotiations prepared;
 - November 2000: National Anti-Crime Strategy Lead Ministers briefed on the Protocol;
 - May 2001 and November 2003: the Convention was discussed at the Commonwealth-State Standing Committee on Treaties (SCOT);
 - Australian Crime Commissioners' Forum activities, including the endorsement of the National Policing Strategy to Combat Trafficking in Women for Sexual Servitude for 2004-06 in July 2004; and
 - Australian Police Ministers' Council activities.⁹

3.10 The Committee commends this ongoing dialogue with states and territories in the area of trafficking in persons, but notes evidence that there has been no consultation with states and territories **on the Bill itself**. Representatives of the Attorney-General's Department told the Committee that states and territories were not directly consulted. Moreover, there was no need to do so as the Government had the constitutional power to proceed with the legislation and there was no need for the enactment of complementary State or Territory legislation.¹⁰

3.11 The Committee notes the long-standing recognition that there is a need for clear and complimentary federal and state laws and responses to criminal activity, including trafficking. This recognition is reflected in the establishment in the early 1990s of a Commonwealth-State body to develop model criminal laws to be adopted in by the Commonwealth and the States and Territories. This body is currently known as the Model Criminal Code Officers Committee (MCCOC).

3.12 The Castan Centre expressed concern that the MCCOC does not appear to have been consulted in relation to the new offences proposed in the Bill. This is despite the involvement of the MCCOC in previous consultations regarding debt bondage, and despite MCCOC's previous key role in changes to the Criminal Code relating to slavery and sexual servitude.¹¹ For example, the Attorney-General's Department advised that the MCCOC's 1998 report on sexual servitude and slavery was the source of the definition of 'sexual services', on which the Bill will rely.

3.13 The Castan Centre noted that the MCCOC had cautioned that new offences aimed at sex slavery should be consistent with the general principles of criminal law. The MCCOC had also noted that prostitution is subject to different and volatile legal regimes in the states and territories.¹²

9 *Submission 17*, pp. 1-2.

10 *Committee Hansard*, 23 February 2005, pp. 28-29, *Submission 17*, p. 1.

11 *Submission 15*, p. 3.

12 *ibid*, p. 4.

3.14 In this respect, the Committee notes the concerns (discussed earlier in this report) that the proposed debt bondage offences may have the effect of criminalising employment arrangements that are legitimate under various state and territory laws. Such a discrepancy may have implications for the ability of State and Territory authorities to administer and enforce prostitution laws. As such, it would appear to be a matter where consultation with States would be appropriate. Similarly, the Committee also notes advice from the Attorney-General's Department that laws in relation to non-commercial sexual exploitation such as servile marriages are the responsibility of States and Territories, and that the measures in the Bill complement State and Territory legislation.¹³ The Committee considers this is another example where consultation with the States and Territories would have been appropriate.

3.15 A representative of the Attorney-General's Department advised that MCCOC had not been consulted on the Bill, giving the following reason:

The reason is primarily that the Model Criminal Code Officers Committee's main focus is the development of legislation that is designed particularly to be implemented by the states and territories, whereas we have a very clear scope to enact legislation covering the field of trafficking persons into Australia.¹⁴

3.16 The Committee notes, however, the view of the Castan Centre, that the Bill should be referred to the MCCOC:

In our view, it is imperative that the current Bill be referred to the MCCOC to be considered via its standard consultation and reporting process so as to avoid any discrepancies with general principles of criminal law and to maintain the project of crafting a consistent and model Criminal Code.¹⁵

The Committee's view

3.17 The Committee commends the work being done by government departments and agencies to address the issue of trafficking in persons. The Committee is concerned, however, that in the preparation of the Bill proposing to introduce new trafficking offences, there has been an inadequate process of consultation. An exposure draft of the Bill was produced, yet interested stakeholder groups were not contacted. The Committee notes that concerns have been raised that the proposed new offences may cut across prostitution laws in States and Territories. These concerns were not been answered during the inquiry and still exist. Yet, the Bill was not referred to MCCOC, the body which has the responsibility to develop consistent model criminal laws across Australia.

3.18 The Committee is also concerned at the suggestion by the Attorney-General's Department that the Senate committee process is apparently part of or a substitute for

13 *Submission 17A*, pp. 7-8 (as discussed earlier in this report).

14 *Committee Hansard*, 23 February 2005, p. 28.

15 *Submission 15*, p. 4.

formal community consultation processes. The Committee believes that effective consultation with stakeholder groups should occur prior to legislation being introduced into Parliament. This ensures that Bills are fully informed by the views of those who are affected by proposed legislation. The Committee believes that the Senate committee process is not a substitute for a sound consultation process. This is especially so, given that very short timeframes for committee inquiries are often imposed by the Senate, which can allow little time for full participation by stakeholder groups.

3.19 The Committee supports calls that the Bill be referred to the MCCOC in order that State and Territory Government and MCCOC have the opportunity to examine the proposed new offences and ensure that consistent model criminal code legislation is maintained.

Recommendation 11

3.20 The Committee recommends that the provisions of the Bill be subject to further and wider consultation, including with State and Territory governments.

Recommendation 12

3.21 The Committee recommends that in the process of consulting State and Territory governments, the Bill also be referred to the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General for comment.

Access to justice for victims of trafficking

3.22 World Vision suggested several measures should be adopted in the Bill to increase access to justice for trafficking victims.¹⁶ These proposed measures included:

- the use of victim impact statements in sentencing; and
- particular provisions and procedures relating to children.

Victim impact statements in sentencing

3.23 World Vision expressed support in their submission for the recommendation by the PJCACC that 'consideration also be given to adopting the use of victim impact statements in sentencing'.¹⁷ The PJCACC noted that:

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 ... Given the nature and effect of the

16 *Submission 12*, p. 6.

17 *ibid*, p. 6; see also PJCACC, *Australian Crime Commission's response to trafficking in women for sexual servitude*, June 2004, pp. 52-53.

sexual trafficking offences on the victim, there is a compelling reason to require that victim impact be considered when sentencing offenders.¹⁸

3.24 In response to the Committee's questions on notice on this issue, HREOC supported the use of victim impact statements. It noted that their use would be consistent with Australia's international obligations, such as the Convention on the Rights of the Child, and the terms of the Protocol.¹⁹

3.25 However, again in response to the Committee's questions on notice, the Attorney General's Department noted that:

Section 16A(2)(d) of the *Crimes Act 1914* (Crimes Act) provides that in determining the sentence to be imposed on a person in respect of a federal offence, the court must take into account the personal circumstances of any victim of the offence.

3.26 The Department continued:

Evidence given to the court ... may include a statement by the victim of the offence about his or her experience of the impact of the offence.²⁰

The Committee's view

3.27 The Committee's view is that consideration should be given to the greater use of victim impact statements in the sentencing of federal offenders for certain types of offences, especially sexual offences involving children. The Committee notes the growing number of federal offences that can involve child victims. The Committee also considers that federal, State and Territory sentencing regimes ought to be consistent in this regard. The need for uniformity is another reason why greater consultation with State and Territory Governments, particularly through MCCOC, ought to have occurred.

Proceedings involving children

3.28 World Vision urged the adoption of child sensitive police and court procedures in trafficking prosecutions, based on the child's best interest.²¹ World Vision observed that trafficking is an 'extremely serious form of child abuse'²² and that

18 PJCACC, *Australian Crime Commission's response to trafficking in women for sexual servitude*, June 2004, p. 52.

19 *Submission 9A*, p. [8].

20 *Submission 17A*, p. 6.

21 *Submission 12*, p. 7; see also Ms Kayte Fairfax, World Vision, *Committee Hansard*, 23 February 2005, p. 18.

22 *Submission 12*, p. 6.

the 'risk of retraumatisation during an investigation or court case is very high'.²³ Ms Kayte Fairfax from World Vision explained:

... any child that has been trafficked has a great risk of traumatised and has already been traumatised severely, with a range of effects. Added to that, any trafficking victim—whether adult or child—has a very real fear of retribution from traffickers.²⁴

3.29 World Vision commended the United Nations International Children's Emergency Fund (UNICEF) guidelines for the protection of the rights of child victims of trafficking in south-eastern Europe. According to World Vision, these guidelines set out a number of important principles that should underpin Australian trafficking law and policy relating to children.²⁵ These emphasise, for example, that the best interests of the child shall be the overriding consideration:

In all actions concerning child victims, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration.²⁶

3.30 World Vision outlined a number of measures that could be taken in the conduct of criminal proceedings relating to child victims.²⁷ In particular, World Vision submitted that:

Penal procedural codes should allow for videotaping of the child's testimony and presentation of videotaped testimony in court as official evidence in all trafficking related cases (not just sex trafficking offences). Police, prosecutors, judges and magistrates should apply child-friendly practices.²⁸

3.31 More specifically, World Vision pointed to the current provisions in Part IAD ('Protection of children in proceedings for sexual offences') and Part IIIA ('Child Sex Tourism') of the *Crimes Act 1914* (Crimes Act).²⁹ It was suggested that:

... there should be specific sections in the Criminal Code that deal with the provision of evidence by children ... Under the Crimes Act, the sections are specific to the interviewing of children for sexual offences, whereas we feel

23 *Submission 12*, p. 7; see also Ms Kayte Fairfax, World Vision, *Committee Hansard*, 23 February 2005, p. 18.

24 *Committee Hansard*, 23 February 2005, p. 22.

25 *Submission 12*, Attachment A, p. 6; see also Ms Kayte Fairfax, *Committee Hansard*, 23 February 2005, p. 18.

26 For a full list of relevant principles, see World Vision, *Submission 12*, Attachment A, p. 6.

27 *Submission 12*, Attachment A, p. 11.

28 *ibid*, p. 11.

29 *Submission 12*, p. 7; see also Ms Kayte Fairfax, World Vision, *Committee Hansard*, 23 February 2005, p. 18.

that, in the case of trafficking, it is important that these sorts of provisions also exist for non-sexual offences.³⁰

3.32 World Vision explained that the possible protection provided by the above includes: the use of video evidence and closed-circuit television; disallowance of inappropriate cross-examination; a bar on a child's other sexual experiences being used against him/her, and the exclusion of certain persons from the courtroom; and a bar on the publication of the child's name or any names which would identify the child.³¹ Ms Lee-May Shaw further observed that such provision could also 'improve the quality of evidence and the ability of witnesses to provide evidence in courts'.³²

3.33 World Vision recommended that the Bill be amended to ensure that the provisions contained in Part IAD of the Crimes Act apply to evidence given in relation to offences brought under the proposed trafficking offences in the Bill.³³ World Vision also specified that these provisions should be extended to protect all child victims of trafficking, not just victims of sex trafficking.³⁴

3.34 In response to the Committee's questions on notice, the Attorney-General's Department also pointed to Part IAD of the Crimes Act, submitting that:

Australia also has existing protection for child witnesses and child complainants, in proceedings for all federal sex offences (including sexual servitude and deceptive recruiting) to ensure that children are able to testify freely and effectively as possible. Some of those protections are contained in Part IAD of the Crimes Act...³⁵

3.35 However, the Committee notes that section 15Y of the Crimes Act states that the special protections in Part IAD only apply to proceedings for certain offences. This section specifically states, for example, that Part IAD applies to proceedings for offences against Division 270 of the Criminal Code (slavery, sexual servitude and deceptive recruiting) and against Part IIIA of the Crime Acts (child sex tourism). However, there does not appear to be any provision for the protections in Part IAD to apply to proceedings for offences under the proposed new Division 271 contained in the Bill.

30 Ms Lee-May Saw, Australian Women Lawyers (appearing in conjunction with World Vision), *Committee Hansard*, 23 February 2005, pp. 21-22.

31 *Submission 12*, p. 7.

32 Australian Women Lawyers (appearing in conjunction with World Vision), *Committee Hansard*, 23 February 2005, p. 22.

33 *Submission 12*, p. 7; see also Ms Kayte Fairfax, World Vision, *Committee Hansard*, 23 February 2005, p. 18.

34 *ibid.*

35 *Submission 17A*, p. 9.

Presumption that a victim is a child

3.36 World Vision further proposed that there is a need for a presumption that a victim is a child in certain circumstances:

... where the age of a victim is uncertain and there are reasons to believe she/he is a child, the presumption should be that they are a child and pending verification of the victim's age, the victim should be treated as a child and accorded all relevant special protection measures.³⁶

3.37 The Committee received little other evidence on this particular issue. However, it notes that the proposal appears to have merit.

The Committee's view

3.38 The Committee recognises that it is important to ensure trafficking victims are able to receive appropriate access to justice. The Committee acknowledges the evidence from the Attorney-General's Department that there is potential for victim impact statements to be used in sentencing for the proposed offences under the Bill.

3.39 The Committee also recognises that special procedures are desirable to protect children who are victims of trafficking in court proceedings. The Committee is concerned that Part IAD of the Crimes Act and the protection for children provided by that Part may not apply to proceedings for offences proposed under the Bill.

Recommendation 13

3.40 The Committee recommends that the Bill be amended to ensure that Part IAD of the Crimes Act 1914 applies to offences against the proposed Division 271 of the Criminal Code inserted by the Bill.

Victim support

3.41 A number of submissions raised concerns in relation to support for victims of trafficking. It was noted that Australia's treaty obligations in relation to the Protocol relate not only to the deterrence of criminal activity but also extend to the area of victim support.³⁷ Article 6 of the Protocol requires parties to the Protocol to provide to victims of trafficking, physical, psychological, and social support, including housing, medical and employment assistance. Article 7 of the Protocol refers to measures enabling victims of trafficking to remain in country, stating that:

... each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

36 *Submission 12*, Attachment A, pp. 10-11.

37 Law Council of Australia, *Submission 7*, p. 2.

3.42 The Action Plan³⁸ refers to the Protocol, and outlines Australia's response, including measures to support victims, and visa arrangements for victims. The Action Plan states that:

A management approach is used, and suspected victims who are granted a Bridging F Visa can receive intensive support for the period of the Visa's validity or until they wish to leave Australia, whichever occurs first. This support includes temporary accommodation, access to Medicare and medical services, counselling and legal services, training, and social support. Victims who are subsequently granted a Criminal Justice Stay Visa can continue to receive support.

Additionally, victims who, as a result of their contribution to an investigation or the prosecution of people-trafficking offenders, are deemed at risk of harm if they return to their home country may be eligible for a temporary or permanent Witness Protection (Trafficking) Visa.³⁹

3.43 Responsibility for the planning and administration of the victim support package lies with the Office For Women.⁴⁰ It coordinates the Support for Victims of People Trafficking Programme.⁴¹

Link between visas, and provision of assistance to police

3.44 Arrangements for the issuing of visas to trafficking victims were raised as a concern by several submitters. Of particular concern was the apparent linkage of a victim's eligibility for a visa, with the assistance of the victim in the investigation and prosecution of trafficking offences. HREOC's submission argued that restricting support programs only to those women whose evidence is useful to the prosecution is inconsistent with a human rights approach to trafficking. HREOC stated:

Restricting access to recovery and support programs to those women who undertake to assist the investigation or prosecution of trafficking offences and to those women whose evidence is considered to be of value, means that many victims of trafficking would not be eligible for any assistance despite suffering significant human rights abuses. From a human rights point of view, access to these programs should be on the basis of need.⁴²

3.45 Mr Craig Lenehan of HREOC told the Committee:

38 *Australian Government Action Plan to Eradicate Trafficking in Persons*, plan presented jointly by Attorney General, Minister for Foreign Affairs, Minister for Immigration and Multicultural and Indigenous Affairs, Minister for Justice and Customs, and Minister Assisting the Prime Minister for the Status of Women, 2004.

39 Action Plan, pp. 13-14.

40 Formerly the Office of the Status of Women.

41 See Office For Women website accessed 1 March 2005.
http://ofw.facs.gov.au/international/combating_people_trafficking/index.htm

42 *Submission 9*, p. [7].

Assessment for visas should be made on the basis of the status of a person as a victim of trafficking and on the need to ensure their safety. This is, after all, a human rights issue.⁴³

3.46 World Vision also supported removing links between visas and the provision of assistance to prosecutors. World Vision advocated for an extension of visa eligibility to the children and siblings of trafficking victims:

The Federal Government should increase eligibility for visas for trafficking victims beyond the current bridging visa F and trafficking witness protection visas. Victims of trafficking should have the right to stay in Australia because of their needs, circumstances and risk profile, rather than only for reasons of their usefulness to Australian police and prosecutors. Visas should be available to all trafficking victims in Australia, not only those who have been trafficked to Australia (i.e. should cover those seeking safety in Australia having been trafficked elsewhere), and should be available to the children and siblings of trafficking victims.⁴⁴

3.47 It was observed that the credibility of evidence given in court by a trafficking victim may be subject to attack by the defence on the basis that the evidence was fabricated in order to obtain a visa and accompanying support. HREOC argued that de-linking visa eligibility with the provision of evidence of value to the prosecution would remove the ability of a defence lawyer to undermine evidence:

... if a person's evidence is required to be of a sufficient standard to allow them to receive support, it could well be argued during criminal proceedings that the evidence was fabricated in order to achieve that standard. Whereas, if the support is provided as a matter of course because the person needs that support, it de-links it from the ability of defence lawyers to claim that the evidence is not as credible as it sounds.⁴⁵

3.48 Project Respect observed that many trafficked women are reluctant to assist police because of fears that to do so may have adverse consequences for their families. Project Respect submitted that:

... some women are choosing not to access support because they are frightened of the repercussions of being a witness in a prosecution. In one case, a woman in Melbourne decided not to contact the police because she feared for her family. She made the point that while the police may be able to keep her safe (and even this point worried her), they could not protect her family in her home country. She believed she did not have the right to imperil her family, and so elected not to contact the police. This meant she was excluded from accessing the support services offered by the federal government to trafficking victims.⁴⁶

43 *Committee Hansard*, 23 February 2005, p. 3.

44 *Submission 12*, Attachment A, p. 9.

45 Ms Moyle, HREOC, *Committee Hansard*, 23 February 2005, p. 9.

46 *Submission 6*, p. [2].

3.49 A representative of DIMIA explained to the Committee that 'the visa system is indifferent to the success of the prosecution.' He advised that:

When you look at the government's package overall, it has created more distance from that sort of accusation than there was before because previously the prosecuting agencies had to support the person. The support arrangements are now quite separate.⁴⁷

3.50 However, the representative confirmed that the visa system 'does require assistance in respect of the investigation, and possibly in respect of the prosecution'.⁴⁸ In response to questions placed on notice by the Committee, DIMIA defended the linkage between visas and assistance to police. It contended that, to grant access to residency to every person who claims to be trafficked, may increase the level of fraudulent claims. DIMIA stated:

It is not reasonable to expect that every person who claims to be trafficked should be allowed to stay in Australia and it is very difficult to test such claims if there is no judicial process. Some trafficking claims have not been substantiated and in some cases people may have been both trafficked and participated in trafficking. Allowing ready access to residence may facilitate trafficking or increase the level of fraudulent claims, diverting criminal justice resources.⁴⁹

3.51 In evidence to the Committee, Project Respect and HREOC made comparisons with other jurisdictions, observing that in the United States and Italy, provision of support to victims is not tied to a victim giving police useful information.⁵⁰ In response, DIMIA advised the Committee:

In developing the visa regime consideration was given to trafficking visa models in other countries. The model developed has a strong focus on stopping the traffickers who perpetuate this insidious trade while protecting those who assist in their investigation and prosecution.⁵¹

What happens afterwards?

3.52 Another matter raised with the Committee was the question of what happens to trafficking victims once they have assisted police, and a criminal justice process has been completed. HREOC expressed concern that a trafficking victim who has assisted police may remain at risk:

47 *Committee Hansard*, 23 February 2005, p. 38.

48 *Committee Hansard*, 23 February 2005, p. 38.

49 *Submission 16*, p. [3].

50 Project Respect, *Submission 6*, p. [2]; Ms Sally Moyle, HREOC, *Committee Hansard*, 23 February 2005, p. 24.

51 *Submission 16*, p. [5].

... the witness remains at risk after she has given evidence, but it is unclear if any kind of assistance will be available once the criminal justice stay [visa] expires.⁵²

3.53 Project Respect argued in favour of the establishment of an adequate mechanism for establishing that it is safe for trafficked women to return home:

... there is no independent process for establishing if it is safe for women to return to their home country. It is not only women who appear as witnesses who may be at risk if they return home. Women who are known to have cooperated with police (even if this did not lead to a prosecution) may be unsafe, but there is currently no clear process for establishing this.⁵³

3.54 The Law Council expressed the view that the Bill should reflect the Government's responsibilities under Article 7 of the Protocol, relating to permitting trafficking victims to remain, and not be repatriated. The Law Council noted that PJCACC had recommended 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.⁵⁴

The Committee's view

3.55 The Committee acknowledges concerns relating to the tying of victim support to assistance to police and prosecutors. It also notes concerns regarding the fate of victims once they have assisted in a criminal justice process. The Committee recognises there are difficulties involved in crafting policy to address problems relating to trafficking in persons, whilst at the same time attempting to protect the victims of trafficking.

3.56 The Committee considers that further consideration ought to be given to the arrangements for the protection and support of victims of trafficking, especially in light of the imminent ratification of the Protocol and its international obligations in area of victim support. The Committee notes that Australia is only one country among many dealing with this issue. It also notes DIMIA's advice that trafficking visa models of other countries were considered in the development of Australia's visa regime. The Committee believes there is merit in regular review of developments of other countries in their approaches to trafficking in persons.

52 *Submission 9*, p. [7].

53 *Submission 6*, p. [3].

54 PJCACC, *Inquiry into trafficking of women for sexual servitude*, June 2004, recommendation 8, p. 57.

Alternative legislative approaches

Decriminalising supply and criminalising demand

3.57 Some submissions argued that the most effective way to reduce demand and end trafficking is to prohibit the purchase of sexual services. CATWA advised that Sweden has taken such an approach, and recommended that Australia should take similar measures.⁵⁵

Work visas for sex work

3.58 The Sexual Service Providers Advocacy Network (SSPAN) advocated reforming the visa system to allow sex workers from other countries to apply for visas and to work within the legal sex industry in Australia. Scarlet Alliance argued that new visa categories would remove the environment enabling the exploitation of the labour of trafficked women.⁵⁶

3.59 AFAO supported such proposals, submitting that:

Enabling sex workers to work legally in Australia for short periods of time could help to remove ‘traffickers’ from the picture. For example, an alternative approach to that of increasing criminal penalties is one of encouraging women to work legally through developing an employer sponsored working visa category for sex work, which would remove the criminal elements involved in existing contract labour arrangements.⁵⁷

3.60 The AFAO emphasised the benefits of a legalised framework for sex work, arguing that a requirement of a working visa could be that a sex worker could be required to maintain contact with health promotion services.⁵⁸

3.61 Other submitters, such as CATWA, argued against proposals for a working visa category for sex workers:

Issuing work visas would not end the traffic, but simply create a two tier system in which women who held visas would be prostituted across borders with the approval of the Australia government. Traffickers would apply for working visas, as they now do for refugee visas, on behalf of the women and then carry on in their usual way i.e. debt bondage, various degrees of coercion and force. Few, if any, women will travel independently because

55 *Submission 13*, p. [4]. The Catholic Women's League put forward a similar view in its submission to the PJACC's 2004 inquiry into the trafficking of women for sexual servitude. (See *Submission 14* to this inquiry, p. 3.)

56 *Submission 2*, p. 11.

57 *Submission 4*, p. 2.

58 *ibid.*

of the expense, difficulties of language and so on. Visas for sex workers will simply legitimise trafficking.⁵⁹

The Committee's view

3.62 The Committee acknowledges the concerns raised, and the often differing views expressed. In general, the issues are of a broader nature, and beyond the scope of this inquiry. The Committee considers that the concerns raised are not sufficient to prevent the passage of the Bill.

Recommendation 14

3.63 Subject to the preceding recommendations, the Committee recommends that the Bill proceed.

Senator Marise Payne

Chair

59 *Submission 13*, p. [3].

