

Human Rights and Equal Opportunity Commission

1 March 2005

Mr Owen Walsh
Secretary
Legal and Constitutional Committee
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Sir

Re: Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004

At the hearing held 23 February 2005, the Commission took a number of questions on notice from Senator Ludwig. I am advised that the answers to the Honourable Senator's questions are as set out below.

As in the Commission's original, submission we have used the following defined terms:

- the **Bill** means Criminal Code Amendment (Trafficking in Persons) Bill 2004;
- the **Criminal Code** means the *Criminal Code Act 1995* (Cth) and
- the **Trafficking Protocol** means the *Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime*.

1. Consultation process

At Hansard page 4, Senator Ludwig asked:

You are going to check whether the Attorney-General's Department contacted you or sent you an invitation to comment on the exposure draft. I think the exposure draft was released in September and available on their web site. Following that, they introduced the bill, I think, on 6 December, though I could be corrected on that. At some time in that period, this bill was introduced. I would also like to know whether or not, even during that period, or after that date, the Attorney-General's Department contacted you for comment in respect of the bill.

The Commission has not been asked by the Attorney-General's Department to comment upon either the exposure draft or the Bill.

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2. Position of children and the definition of sexual services

This issue was raised in the submission prepared by World Vision Australia ('World Vision'), where it was stated:

The definition of "sexual services" contained in the existing Division 270 of the Criminal Code and unchanged by the Bill, does not capture forms of sexual exploitation which are not paid for. Especially in relation to children, sexual exploitation, even if unpaid, should be prohibited. An example of non-commercial exploitation would be a person trafficking a child from overseas to use in making pornography for their personal use and/or sharing with friends - whether of an incestuous nature (the child is related to the perpetrator) or otherwise. Accordingly, it is recommended that the definition of "sexual services" should be amended to include non-commercial use and exploitation in cases of cross-border trafficking of children into Australia for the purpose of non-commercial sexual exploitation.

At Hansard p5, the following exchange took place between Senator Ludwig and Mr Lenehan:

Mr Lenehan—As World Vision have pointed out, there may be a lacunae in the bill as it currently stands which would not extend to that form of exploitation of children ['non-commercial sexual exploitation'].

Senator LUDWIG—Could you have a look at that?

Mr Lenehan—Certainly.

Mr Lenehan had addressed that issue in the Commission's opening statement:

We also note that the committee has expressed interest in the fact that the definition of sexual services in the bill is confined to the commercial use or display of the body of the person providing the service. The trafficking protocol refers more generally to relevant forms of exploitation, including, among other things, the prostitution of others and other forms of sexual exploitation. The term 'other forms of sexual exploitation' does not appear in our view to be limited to a commercial context. As has been suggest in the written submission World Vision has made to the committee, this may require closer scrutiny of the matters covered by the bill, particularly in relation to trafficking for the purpose of forced or servile marriages and the trafficking of children for so-called personal use.

The issue was also discussed during the evidence of the Attorney General's Department:

CHAIR—If a person is trafficked to participate in the production of the sort of pornography that I think Ms Fairfax referred to that is done within a so-called family environment or within a home and a commercial product is not being produced, is that form of trafficking still covered?

Ms Bishop—Provided that there was force or threats that resulted in the person being trafficked under the first offence.

CHAIR—What about a child?

Ms Bishop—Either you could look to whether the child was otherwise exploited or you could rely on the basic offence.

CHAIR—That would probably be adequate exploitation to satisfy the offence, wouldn't it?

Ms Bishop—I am sorry, Chair?

CHAIR—That scenario which Ms Fairfax drew would probably be adequate exploitation to satisfy the offence, wouldn't it?

Ms Bishop—It is probably going to be—again, depending on the circumstances.

There are some possible difficulties with the view of the Attorney-General's Department.

The offence of child trafficking is to be in the following terms (see proposed section 271.4):

A person (the *first person*) commits an offence of trafficking in children if:

(a) the first person organises or facilitates the entry or proposed entry into Australia, or the receipt in Australia, of another person; and

(b) the other person is under the age of 18; and

(c) in organising or facilitating that entry or proposed entry, or that receipt, the first person:

(i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or

(ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

It appears that the Attorney's Department may be of the view that the term 'otherwise exploited' in section 271.4(c)(i) and (ii) extends the offence to cover the circumstances raised by World Vision. The Explanatory Memorandum indicates that 'exploited' in this context is the defined term to be inserted in the Dictionary of the *Criminal Code* by the Bill:

The definition of *Exploitation* that applies to this offence is inserted into the Dictionary of the *Criminal Code* by item 13.

This appears to be a typographical error – the definition of 'exploitation' to be inserted in the Dictionary appears in item 11 of the Bill, which states:

exploitation, of one person (the *victim*) by another person (the *exploiter*), occurs if:

(a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; or

(b) the exploiter's conduct causes an organ of the victim to be removed and:

(i) the removal is contrary to the law of the State or Territory where it is carried out; or

(ii) neither the victim nor the victim's legal guardian consented to the removal and it does not meet a medical or therapeutic need of the victim.

Organ removal is obviously not relevant for the purposes of the circumstances raised by World Vision. The definition of 'sexual servitude'¹ provides, inter alia, that it is the condition

¹ See Dictionary and section 270.4 of the Criminal Code.

of a person who provides ‘sexual services’. As such, it requires the commercial use or display of the body² and will not include the non-commercial sexual exploitation of children.

A conviction for the offence in proposed section 271.4 in the circumstances raised by World Vision would therefore depend upon proving that:

- the child had been subjected to a form of ‘slavery’. Slavery is defined in section 270.1,³ and is essentially the condition of exercising the power of ownership over another person; or
- the child had been subject to ‘forced labour’. The Bill will insert a new definition in the Dictionary of the Criminal Code which will refer to the definition of forced labour in section 73.2 of the Criminal Code. That definition provides:

forced labour means the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

- (a) is not free to cease providing labour or services; or
- (b) is not free to leave the place or area where the person provides labour or services.

In the Commission’s view, difficulties might arise in bringing a prosecution on either basis.

It will not necessarily be the case that children in the non-commercial sexual exploitation situations discussed by World Vision will be subject to the condition of slavery. A child can be exploited without the ‘exploiter’ exercising the power of ownership, particularly where such exploitation involves a number of people.

The definition of ‘forced labour’ might also raise complications, particularly given the exclusion of ‘sexual services’ from that definition. One might anticipate that defence lawyers would argue that services or labour of a sexual nature are governed by a specific and exclusive definition (inserted by item 15 of the Bill) and should not be held to be within the wider definition of ‘forced labour’.

As Ms Bishop observed in her evidence, the prosecution might instead rely upon the ‘basic offence’, which we understand to be a reference to the offence of trafficking by force or threats in s271.2(1) or the offence of trafficking by deception in s271.2(2). However, as is noted in the Explanatory Memorandum to the Bill:

The new trafficking in children offence reflects Article 3(c) of the Trafficking Protocol, which provides that:

the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons, even if it does not involve any of the means set forth in subparagraph (a) of this article [including force threats or deception].

(see further the distinctions between action, means and exploitative purpose in the context of the Trafficking Protocol discussed in section 3 below).

² See definition of ‘sexual service’ to be inserted in the Dictionary of the Criminal Code by item 15 of the Bill.

³ See the Dictionary of the Criminal Code.

The use of the ‘basic offences’ will introduce a requirement to prove those ‘means’ elements (force, threats or deception) in offences involving children, which would represent a further departure from the Trafficking Protocol. In addition, use of the ‘basic offences’ would not reflect the view expressed in the second reading speech that a relatively higher penalty should apply to trafficking offences involving children.⁴

In the Commission’s view, a simpler means of avoiding the possible difficulties outlined above (and more fully meeting the obligations Australia would assume if it ratified the Trafficking Protocol) would be to include non-commercial sexual exploitation for the purposes of the offence of trafficking in children. That could be achieved by adding to the end of proposed section 271.4:

- (d) For the purposes of this section, sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

3. Servile marriages

At Hansard page 4, Senator Ludwig asked:

Are you saying that [trafficking into servile marriage] is being dealt with under that area or that there should be an addition to the bill?

As Mr Lenehan noted in his oral evidence (Hansard pages 3-4), the Trafficking Protocol contemplates that trafficking into servile marriages will be the subject of criminal sanctions. To understand why, it is necessary to recall that the definition of trafficking in the protocol consists of three elements:

- An **action** consisting of recruitment, transportation, transfer, harbouring or receipt of persons;
- By **means** of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- For an **exploitative** purpose. Exploitation is defined to include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or **practices similar to slavery**, servitude or the removal of organs.

The term ‘practices similar to slavery’ is not defined in the Trafficking Protocol. However, the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*⁵ indicates that ‘servile marriages’ involve such practices. Servile marriages are defined as follows:

Any institution or practice whereby:

⁴ See Second Reading Speech, Senator Ellison, *Senate Hansard*, 8 December 2004, page 4.

⁵ 226 U.N.T.S. 3, entered into force April 30, 1957. See further A Gallagher, ‘Human Rights and the New UN Protocols on Trafficking and Migrant Trafficking: A preliminary analysis’, 23(4) *Human Rights Quarterly* 2001, p975 at 987, particularly fn 75.

- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person.⁶

Servile marriage has not yet registered in Australia as a widespread practice of concern, although the “mail order bride” phenomenon, in which women migrated to Australia for marriage and found themselves in situations of exploitation,⁷ arguably involved similar factors. Internationally, however, servile marriages are of real concern, particularly in China,⁸ where young women migrating from rural areas in search of employment are kidnapped or tricked by the promise of a job and find themselves sold for marriage and unable to escape. Once the woman becomes pregnant, her ability to return to her home becomes severely limited and she has little option but to remain in the marriage. The circumstances in which the woman finds herself can be extremely arduous even beyond her loss of freedom.⁹

Trafficking into servile marriages may be covered by some of the provisions in the Bill. For example:

- Proposed sections 271.2(1) and 271.5(1) do not require that the prosecution prove that the defendant intended that the victim would be exploited in a particular way (or was reckless as to that result). As such, the provisions may apply to some instances of trafficking into servile marriages. However, as the Commission has stated in its evidence and submission to this Committee, the absence of a requirement for exploitative purpose and the inclusion of a requirement that the force or threats caused the victim to consent are significant and undesirable departures from the Trafficking Protocol.
- Proposed sections 271.2(2)(b) and 271.5(2)(b) include deception as to ‘slavery’ or ‘forced labour’.¹⁰ Those provisions may apply to some instances of trafficking into servile marriages. However, as regards slavery, the purpose of the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* was to clarify that it was a practice **similar to** slavery and some doubt regarding that matter would therefore arise. Similarly, ‘forced labour’ as defined in the Bill seems to have a different content to the internationally accepted definition of ‘servile marriage’. As noted above, under the Criminal Code, the condition of ‘forced labour’ requires that, by

⁶ Ibid, article 1(c).

⁷ See for example Chris Cunneen and Julie Stubbs *Violence Against Filipino Women In Australia: Race, Class And Gender* University of Sydney & Institute of Criminology 1997.

⁸ US State Department *Trafficking in Persons Report* June 2004, p 92.

⁹ See also <http://www.humantrafficking.org/countries/eap/china/index.html>

¹⁰ Those provisions require the prosecution to prove that the defendant ‘deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision of sexual services, exploitation, debt bondage or the confiscation of the other person’s travel or identity documents’. As noted above, ‘exploitation’ is defined to include circumstances where the exploiter’s conduct causes the victim to enter into slavery, forced labour or sexual servitude (see item 11 of the Bill). Servile marriage appears unlikely to constitute sexual servitude. As noted above, that term is defined in the Dictionary and s270.4 of the Criminal Code which provides, inter alia, that ‘sexual servitude’ is the condition of a person who provides ‘sexual services’. ‘Sexual services’ is defined, in turn, to mean the **commercial** use or display of the body for the sexual gratification of others (see item 15 of the Bill and s270.4(2) of the Criminal Code).

reason of force or threats, the victim is not at liberty to cease providing labour or services or leave the place in which they provide those services.¹¹ The definition of ‘servile marriage’ in the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* does not require the use of force or threats. As the anecdotal evidence referred to above suggests, other factors may operate to prevent a woman leaving such a marriage.

The Commission is therefore of the view that the Bill does not adequately deal with trafficking involving servile marriages. This may raise further difficulties in terms of Australia’s compliance with the Trafficking Protocol (when ratified).

One means of amending the Bill to better accommodate those matters would be as follows:

- The Bill might define servile marriage using the definition from *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*. As is noted in the Explanatory Memorandum to the Bill, that international instrument was the source of the definition of ‘debt bondage’, so there is a precedent for that approach.
- The definition of exploitation in item 11 would be amended so as to read (suggested amendments marked up):

exploitation, of one person (the *victim*) by another person (the *exploiter*), occurs if:

(a) the exploiter’s conduct causes the victim to enter into slavery, servile marriage, forced labour or sexual servitude...

(paragraph (b) would remain in the same terms).

That amendment would then flow through to the deceptive trafficking offences in proposed sections 271.2(2) and 271.5(2) and the trafficking in children offence in proposed section 271.4. That amendment would also flow through to the trafficking by force/threat offences in proposed sections 271.2(1) and 271.5(1) if those provisions were amended as per the Commission’s suggestions in its written submission.¹²

- A specific offence of engaging in conduct causing another person to enter into servile marriage (similar to the debt bondage offence in proposed section 271.8) could also be included in the Bill.

4. Victim Impact Statements

At Hansard page 4 Senator Ludwig asked:

A number of submissions have raised matters such as victim impact statements and the like. On a short reading, the Criminal Code Act 1995 appears to me not to have followed many of the state criminal codes in developing this area of law on victim impact statements and the ability for victims to at least make their views known. Do

¹¹ See section 73.2. Item 12 of the Bill will make insert a cross reference to that provision in the Dictionary.

¹² That is to include an element of exploitative purpose in similar terms to that which appears in the domestic trafficking in children offence in section 271.4(c).

you think more work needs to be done in that area to ensure that the federal Criminal Code at least catches up with state developments?

We understand this question to contemplate the use of statements similar to those provided for by Part 3, Division 2 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). That is, such statements would only be received after a conviction had been entered and could be considered for the purposes of sentencing.

As Mr Lenehan observed at Hansard p4, statements of that nature appear to be contemplated by the Trafficking Protocol. That appears from article 6(2) which states:

Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases...[a]ssistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

Provision for such statements may also be required by Australia's existing international obligations. For example, article 12 of the *Convention on the Rights of the Child*¹³ states:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in **any judicial and administrative proceedings affecting the child**, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.¹⁴

It has been suggested that the right to be heard in judicial proceedings should be interpreted broadly to:

'include all those situations where the proceedings may affect the child [including when] he or she initiates them, for instance by introducing a complaint as a victim of ill treatment...'¹⁵

In light of the above, the Commission supports the introduction of victim impact statements for the purposes of the offences created by the Bill as a measure which is consistent with Australia's existing international obligations and the terms of the Trafficking Protocol.

Any provisions should be drafted such that they are consistent with the principle that the views of a trafficked person should be presented in a manner not prejudicial to the rights of the defence. As noted above, the Commission understands that such statements would only be received after conviction. However, a statement which made false allegations of a serious nature could still adversely affect a defendant's right to be dealt with fairly during sentencing (particularly if, for example by reason of their lack of specificity, they are of a nature which is difficult for the defendant to rebut).

¹³ Opened for signature 20 November 1989, 1577 United Nations Treaty Series 3; entered into force 2 September 1990; ratified by Australia 17 December 1990.

¹⁴ Emphasis added.

¹⁵ Office of the High Commissioner for Human Rights *Manual on Human Rights Reporting under six major international human rights instruments* Geneva 1997 page 428.

One means of avoiding any possible prejudice in that process would be to leave the reception of such statements to the discretion of the Court, which is the approach which has been adopted in New South Wales.¹⁶ As a further protection, it could be specified that, in exercising that discretion, the Court should consider any prejudice that might be caused to the defence through the reception of such a statement.

5. Penalties applicable to the offence of debt bondage

At Hansard page 5, Senator Ludwig asked:

In your view, are the penalties provided in the legislation in respect of debt bondage compatible with similar offences?

The Commission notes the following comments made by Project Respect in its submission on the Exposure Draft of the Bill (included as an annexure to its submission to this inquiry):

Finally, we query the sentence for this offence, of 12 months. Debt bondage is as instrumental a part in the trafficking process as the recruitment and transport as laid out in the Trafficking in Persons offences. We therefore suggest that the term be lengthened to reflect the seriousness of the crime and its significance in the trafficking process.

The Commission is not aware of any domestic legislative provisions that would provide guidance as to the adequacy of the penalty imposed in debt bondage cases. However, some assistance may be gained from legislation enacted in other jurisdictions.

In the United Kingdom the *Sexual Offences Act 2003* (UK) imposes a maximum penalty of 7 years imprisonment (and a minimum of 6 months imprisonment) for conduct that ‘causes or incites another person to become a prostitute’ or which is aimed at controlling the activities of another person in relation to their prostitution ‘in the expectation of *gain* for [themselves] or a third person’. Under the Act ‘gain’ is defined as including, ‘the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount’ (s 52 and s 53 of the *Sexual Offences Act 2003* (UK)).

Under the Canadian *Criminal Code* a person who:

- for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally; or
- lives wholly or in part on the avails of prostitution of another person,

is liable to imprisonment for a maximum period of 10 years (ss 212(1)(h) and (1)(j) of the *Criminal Code*, respectively).

United States federal law treats debt bondage type offences as part of the continuum of trafficking offences. A person who ‘recruits, entices, harbours, transports, provides or obtains by any means’ a person knowing that force, fraud or coercion will be used to cause the person to engage in a commercial sex act is liable for 20 years imprisonment (see §1591 of the *Victims of Trafficking and Violence Protection Act 2000* (Public Law 106-386)).

¹⁶ Unless the primary victim has died as a direct result of the offence (see ss 28(2) and (3) *Crimes (Sentencing Procedure) Act 1999* (NSW)).

In the Commission's view those approaches correctly recognise that more substantial penalties may be required in at least some instances of debt bondage.

6. Serious Harm and aggravated offences

This was a further issue arising from the submission made by World Vision. In its comments on the exposure draft of the Bill, World Vision made the following recommendation:

It is recommended that the Exposure Draft be changed to include a broad range of aggravated offences in situations where as part of the trafficking crime, the victim suffers egregious harm. Such an approach is taken in the relevant legislation in the Philippines. Aggravated sentences should apply in situations where the victim:

- a. contracts HIV/AIDS,
- b. is mutilated,
- c. dies,
- d. is raped,
- e. becomes pregnant (particularly if the victim is a minor),
- f. has a forced abortion,
- g. suffers severe psychiatric illness or physical injury, or
- h. is forced to commit a crime against another person.

That recommendation was modified when World Vision made its submission to this inquiry, as appears from the following passage in its submission:

In our original submission, World Vision recommended that a range of offences be included as aggravated offences, as forms of egregious harm. In our meeting with Minister Chris Ellison, legal staff advised that the following offences would be examined to establish whether they are covered by definition of 'harm' in Criminal Code, and if not, could be included in the Explanatory Memorandum or the second reading speech.

- a. becomes pregnant (particularly if the victim is a minor),
- b. has a forced abortion

At Hansard page 5, Senator Ludwig asked Mr Lenehan:

I was also wondering whether you had looked at the area of serious harm. World Vision indicated that they understood that aggravated offences in terms of the word 'harm' could include situations of gross harm to victims, such as where a person contracts HIV-AIDS, has a forced abortion, is raped or develops a psychiatric illness. They want to know whether those types of aggravated offences are covered by the word 'harm' or whether 'harm' is insufficient to contemplate all of them.

That issue was also discussed during the oral evidence given by World Vision:

CHAIR—On that very point of the aggravated offences, are they the only things that you think should be included as aggravated offences?

Ms Fairfax—We did have a longer list, but it has been refined.

CHAIR—Somebody being intentionally infected with HIV or something like that.

Ms Fairfax—We did have those things. We had a longer list, but we were advised that they are covered by what is already in the bill.

Senator LUDWIG—And you accept that?

Ms Fairfax—At some point, you have to hope that the advice is correct. We had ‘contracts HIV/AIDS, mutilation, dies, rape, pregnancy, abortion, suffers psychiatric illness or physical injury or is forced to commit a crime against another person’. We were advised that most of those came under the current definition of harm and that other laws would cover being forced to commit a crime against another person. So the ones that are left which we feel are not clearly covered by harm are forced pregnancy and abortion.

The relevant provisions of the Bill and Criminal Code are set out below.

Proposed section 271.3 is to provide:

- 1) A person (the *first person*) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the *victim*) and any of the following applies:

....

(c) the first person, in committing the offence:

- (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
- (ii) is reckless as to that danger.

That provision requires reference to a number of existing definitions which appear in the Dictionary of the Criminal Code:

harm means physical harm or harm to a person’s mental health, whether temporary or permanent. However, it does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

harm to a person’s mental health includes significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

physical harm includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

serious harm means harm (including the cumulative effect of any harm):

- (a) that endangers, or is likely to endanger, a person’s life; or
- (b) that is or is likely to be significant and longstanding.

It appears, from its comments on the Exposure Draft, that World Vision is of the view that an aggravated offence will be made out under s271.3 upon proof that a person actually **suffers** serious harm. If so, the Commission disagrees. Section 271.3 requires that the accused

engage in conduct which gives rise to a **danger** of such harm and is reckless as to that danger.

As regards conduct exposing a trafficked person to pregnancy, we understand World Vision is primarily concerned in relation to the position of children. However, as noted above, trafficking of children is dealt with separately in proposed section 271.4. Like the aggravated offences in section 271.3, the offence in proposed section 271.4 has a maximum penalty of imprisonment for 20 years. It may therefore be that this suggested amendment is unnecessary.

Forced abortion would seem to be included in the definition of physical harm, in that it is 'physical contact with a person that the person might reasonably object to in the circumstances'. It also seems arguable that conduct exposing a person to a risk of forced abortion would involve a danger of significant psychological harm. The issue would then be whether those harms (separately or cumulatively) are likely to endanger a person's life or to be significant and longstanding so as to satisfy the definition of 'serious harm'. If there is doubt as to that matter, the Commission would support an amendment to section 271.3(c)(i) such that it reads:

'engages in conduct which gives rise to a danger of death or serious harm to the victim or to a danger that the victim will be subjected to forced abortion ...'

Thank you again for the opportunity to participate in this inquiry. The Commission would be very happy to clarify any other issue which may arise.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John von Doussa', written in a cursive style.

John von Doussa QC
President