

Submission to: Senate Legal and Constitutional Committee on Criminal Code Amendment (Trafficking in Persons Bill)

**From: Sheila Jeffreys, Jen Oriel, Carole Moschetti, Krishna Rajendra ON
behalf of Coalition Against Trafficking in Women Australia
(CATWA)**

Address: Box 1273, Nth Fitzroy, Victoria 3068

Email: sheila@unimelb.edu.au

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**CATWA is the Australian branch of the international non government
organization Coalition Against Trafficking in Women which has category II
consultative status with ECOSOC.**

The Explanatory Memorandum with this draft legislation purports to bring Australian law into conformity with the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime* (UN Protocol). It is our opinion that the Bill fails in its objective for reasons set out in this Submission. We argue against the inclusion in the Bill of any change in visa provision for 'sex workers'. In addition we recommend the inclusion of the offence to 'purchase the sexual services of a minor' into the Bill.

1/ Forced/Free distinction

The Bill distinguishes between 'forced' and 'free' trafficking. Such distinction is contrary to the definition of 'trafficking' in the UN Protocol.

The Explanatory Memorandum states that 'the Bill criminalises comprehensively every aspect of trafficking and fulfils Australia's legislative obligations' under the UN Protocol (p.1). If the Bill is to incorporate the Protocol into Australian law then it must use the definition in that Protocol.

The use of a forced/free distinction creates difficulties of proof in law and puts the shifts the onus of proof to the trafficked person's state of mind. In effect, it puts the onus on the trafficked women to prove that they have been forced into trafficking instead of targeting the action of the traffickers. This distinction signals a departure from the UN Protocol where the offence of trafficking is focused on the *act* of the trafficking instead of the mental state of the trafficked person.

We recommend: the Bill use the wording of the definition in the UN Protocol and include the terms 'coercion' and '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' in its definition. Further, we argue against the use of 'consent' to mitigate the offence since the Protocol definition states that consent 'shall be irrelevant'.

2/ Debt bondage

CATWA supports Option 3 in relation to this offence i.e. debt bondage should apply specifically to 'sex workers' and apply regardless of whether 'the reasonable value of those sexual services were actually applied towards the liquidation of the debt and regardless of whether the length and nature of the services were limited or defined'.

In order to eliminate debt bondage it should be an offence to cause a woman to work to pay off a debt of any kind or size. If a woman receives a loan for travel she should be able to pay this off out of her regular earnings as would be the case with any other worker and any other debt. If pimps/brothel owners in Australia are permitted to work women with no pay until they pay off a debt of any size this is sexual slavery and cannot be allowed.

We recommend: The penalty for debt bondage be greater than the 12 months suggested in the Bill.

Debt bondage is the fiscal motivation behind trafficking of persons and how alleged offenders make profits from their victims. It is through debt bondage that those involved in trafficking in Australia, pimps/brothel owners make their money. It would be unfortunate if they were protected by the imposition of a lesser penalty than exists for those involved in trafficking women into Australia from other countries. The protection of any form of debt bondage, or treating it lightly, will give sustenance to trafficking.

By criminalising debt bondage and imposing more severe penalties it will minimise the 'profitability' of the practice and bring Australia's laws in conformity to international standards.

3/ Child trafficking

In respect of child trafficking we consider that the legislation should introduce the offence of the 'purchase of sexual services of a minor'. Targeting the buyer will reduce the demand, that is the market force, for the supply of trafficked minors, who constitute a large percentage of trafficked persons. We do not consider that an offence of 'buying the sexual services of a trafficked child' is appropriate because that distinction i.e. between trafficked children and those who have been prostituted but not trafficked, is too hard to make and raises difficult questions of proof.

We recommend: The Bill include the absolute liability offence of "the purchase of sexual services of a minor". Other countries have successfully introduced legislation to outlaw the buying of children under 18, e.g. Japan, Netherlands. Australia is behind in its obligations to implement the UN Convention on the Rights of the Child in not having such legislation.

4/ Visas for 'sex workers'

CATWA considers it of the utmost importance that Recommendation 4.80 of the Inquiry into The Trafficking of Women For Sexual Servitude 2002 about working visas for 'sex workers' is not implemented. It states "In relation to the suggestions of

the Scarlet Alliance, the Committee accepts that changes to the current restrictions on working visas may do much to enable women wishing to come to Australia for sex work to do so without recourse to the services of traffickers."

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

b) If trafficked women have working visas the traffickers and recruiters have a no-fault mechanism for trading women across international borders. If they are found to have trafficked women, they can simply display a working visa to prove that the woman has been sold with her own consent. This makes a mockery of any international definition of slavery. It would legitimise transnational sexual slavery. Given that in late 2004, sex trafficking rose from the third to the second most lucrative organised crime in the world, it is imperative to oppose any measure that helps transnational criminals to trade in women. A visa scheme for transnational prostitution is one such measure.

c) Issuing working visas to trafficked women would not be necessary in a country where the government sought to reduce the demand for prostitution. It can only be considered as a legitimate request in the current Australian context because the sale of women's bodies is protected by law in most States. The federal government should not seek to help the prostitution industry to satisfy the exponential demand by men that the legalisation of brothel prostitution has created.

5/ Absolute liability

CATWA propose that the most serious offences should be made absolute liability offences, as defined in section 6.2 of the Criminal Code. Absolute liability removes the requirement of a subjective mental state of the alleged offender.

It our opinion that offences relating directly to the trafficking of minors should be made absolute liability offences under the Bill. In particular, we note the offences set out in section 270.6 and section 271.4 of the Bill.

The offence of trafficking a minor is serious and is expressly prohibited in the UN Protocol and also in Article 35 of the UN Convention on the Rights of a Child. Other organizations such as the International Organization for Migration and International labor Organization bear witness to the need for strong measures by States to protect minors because of the heightened vulnerability of children to trafficking, often for exploitation for sexual and labour purposes.

Further, sections 15Y and 15YA of the *Criminal Act 1914* and Division 270 of the *Criminal Code* provides for certain sexual offences against minors as absolute liability offences.

We recommend: Given the seriousness of the act of trafficking of minors, and the increased vulnerability of trafficked persons we recommend that the offences set out in section 270.6 and 271.4 of the Bill be absolute liability offences.

6/ Demand

The UN Protocol requires States Parties to ‘adopt or strengthen legislative or other measures, such as educational, social or cultural measures...to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking’.

The toleration or legalisation of brothel prostitution increases and condones the demand for sexual services. CATWA considers that the most effective way to reduce demand and end trafficking is to penalize buyers. We recommend adoption of the Swedish model which has reduced trafficking in that country. However the right of men to buy women seems to be an important value in Australian political culture. Thus it seems unlikely that the penalizing of the buying of sexual services that a country like Sweden, which has more for women’s rights, has introduced will take place very soon. Other measures to reduce demand such as public education campaigns against men buying women for sex should be implemented immediately. **We recommend** that some measures to reduce demand for prostitution should go into this Bill as it is that demand that trafficking fulfills.