Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012

Senate Legal and Constitutional Affairs Committee
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Canberra ACT 2600
Australia

Executive Summary

Project Respect welcomes the opportunity to comment on the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, and commends the Australian Government on the review and updating of this legislation to ensure it encompasses all aspects of the complex nature of human trafficking, and addresses the serious and heinous nature of this crime.

Given that Project Respect's expertise and experience has been in regards to trafficking of persons for the purpose of sexual exploitation, this submission relates primarily to trafficking and slavery in these particular situations, and not other forms of forced labour. This submission builds upon the joint submission between Project Respect and Fitzroy Legal to the 2011 Discussion Paper - Criminal Justice Response to Slavery and People Trafficking, Repatriation, and Vulnerable Witness Protections[1].

Project Respect **welcomes** many of the amendments, particularly:

- The inclusion of coercion and threat, and acknowledgement of the many methods of keeping a person in slavery
- The expansion of definitions of slavery and exploitation, including lack of freedom to cease providing services (whether physical or psychological)
- The inclusion of harbouring a victim as a serious offence

Project Respect **recommends** further development of legislation, including:

- Further clarification and development of the definition within the Crimes Act for reparations, to specifically include non-financial loss from pain and suffering as a result of the offence
- The expansion of the definition of conducting a business to include receiving finance from the business
- The expansion of deceptive recruiting to include not only the nature of services to be provided, but also the inability to refuse customers
- Inclusion of an offence for intentionally, recklessly, or knowingly obtaining services from a trafficked person.

Project Respect **questions**:

- How the differing nature of sexual slavery (with rape as a standard and inherent part of the crime) will be considered if the legislation applies equally to all forms of trafficking
- The relevance of a person's eligibility to be in Australia under the Migration Act in determining the crime against them.

Project Respect also recommends the following **non-legislative reforms**:

- Federal compensation scheme for victims of trafficking as a Federal offence
- Visa's and support completely de linked from Criminal Justice Process
- Community Education programs to raise awareness of trafficking in all forms
- Research into the demand for trafficking in persons in all forms

[1] Fitzroy Legal and Project Respect *Submission to the Federal Attorney General's Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking, Reparation and Vulnerable Witness Protections*, 2011 – available at http://projectrespect.org.au/our_work/advocacy

Introduction

Project Respect is a nonprofit, non-faith based community organisation established in 1998 to work with, empower and support women in the sex industry. Project Respect is committed to addressing violence against women in the sex industry, and working to prevent exploitation and enslavement of women by the industry - including those who are trafficked for prostitution.

Project Respect led the 2003 national campaign on trafficking for prostitution that resulted in the Federal Government's $20 million package on trafficking. The organisation is widely recognized as a leading support agency for women trafficked into the sex industry in Australia as it continues to lobby, advocate and advise on issues related to trafficking, as informed by direct, individual work with women who have been trafficked. Project Respect also established and continues to run the first shelter for women who have been trafficked into the sex industry in Australia.

In addition to anti-trafficking work, Project Respect's direct work with women in the sex industry includes outreach to brothels, information provision, individual counselling, support and referrals, weekly peer support lunches, a social enterprise to train and employ women who wish to exit the sex industry, and advocacy training for women in the sex industry.

In 2010/2011, Project Respect encountered 995 women from the sex industry, and provided over 1200 hours of individual counseling. The organisation reached over 70 of Victoria's legal brothels, and in addition to meeting several women who had been trafficked themselves, found indicators of other women being trafficked/enslaved, including:

- Women disclosing threats to harm them, or their families overseas
- Women not having their ID, and not knowing what visa they are on
- Women being told what to answer (word for word) if anyone asks questions
- Women being provided with only one meal per day and forced to work long hours to pay off debts
- Brothel owners making outrageous statements to Project Respect staff, including 'they have to stay in the brothel because they try to run away and I am trying to run a business'
- Women literally being shoved back inside a brothel when attempting to exit and speak to Project Respect staff.

Numbers of trafficked persons on the Commonwealth Support Program (administered by Red Cross) remain relatively low (80 clients on the program in 2010/2011 – 63 of whom had been sexually exploited[2]). Yet requests and referrals to Project Respect for assistance for women who have been trafficked are on the rise. It is this work that informs Project Respect's submission as follows.

[2] The Third Report of the Anti-People Trafficking Interdepartmental Committee *Trafficking in Persons – The Australian Government Response 1 July 2010 – 30 June 2011* (Canberra) 2011

Legislative Reform and Further Recommendations

Crimes Act 1914

Paragraph 21B(1)(d).

Project Respect welcomes this amendment.

> **Recommendation:** Further expansion to include reparations for pain and suffering incurred, which may not be considered 'loss suffered'. Project Respect has witnessed some of the physical, psychological and social impacts of being trafficked, which can be immense and span over a number of years, and in all likelihood, a lifetime. The 2010 Victorian Parliamentary Inquiry Drugs and Crime Prevention Committee "Inquiry Into People Trafficking for Sex Work report[3] details the impacts and effects of trafficking into the sex industry on women, which includes living in fear, detrimental impacts on a trafficked person's health and well-being, Post Traumatic Stress, occupational hazards, stigmatization, isolation, social exclusion, marginalisation and legal insecurity, and financial recognition of these effects on a person's life and the need for reparation must be provided for.

Criminal Code Act 1995

Division 270.1A - Definitions

Project Respect welcomes the insertion of definitions to clarify the diverse range of methods of keeping someone in slavery, including by psychological threat. This demonstrates understanding of the changing methods of traffickers in recent years, from physically keeping a victim in slavery by withholding passports, to the more common psychological threats and coercion.

Project Respect welcomes the definition and scope of conducting a business in relation to trafficking, as the profitable nature of trafficking is one of the key reasons that it continues.

> **Recommendation:** the definition of conducting a business to be expanded to include '*receiving finance from the business'*. Anyone who profits from a business that traffics humans should be held accountable for their earnings.

270.3, Subdivision B – Slavery

Project Respect welcomes the expansion of the definitions of reducing a person to slavery.

[3]Drugs and Crime Prevention Committee *Inquiry into People Trafficking for Sex Work* (Victoria) June 2010

270.4, Definition of Servitude

Project Respect welcomes the changes that recognise the complexity of the lack of freedom to cease providing services whether physical or psychological.

> **Project Respect questions** how the draft bill takes into account the different nature of sexual exploitation/slavery as an offence. Trafficking of persons for labour is certainly an abhorrent crime, however as part of sexual slavery (in addition to all other crimes of threat and coercion also apparent in labour trafficking) repeated rape/sexual abuse is inherent.

270.7 – Deceptive Recruiting

Project Respect welcomes this amendment and clarification of the serious nature that deception plays in trafficking.

> **Recommendation:** Further expansion of subsection (f) to include inability to refuse customers, number of customers to provide services to per day, etc. It should read:
>
> (f) if the engagement is to involve the provision of sexual services:
>
> (i) that fact; or
>
> (ii) the nature of sexual services to be provided (for example, whether those services will require the victim to have unprotected sex); or
>
> (iii) the circumstances of the sexual services to be provided (for example, inability to refuse customers).

270.10 - Relevant evidence

Project Respect welcomes this amendment.

> **Project Respect questions** the relevance of the victim's entitlement to be in Australia under the Migration Act, in determining the crime perpetrated against them.

271.1A – Definition of exploitation

Project Respect welcomes the inclusion of the definition of exploitation.

271.2(1)(b) and (c) and 271.5(1)(b) and (c)

Project Respect welcomes the expansion from "force or threats" to "coercion, threat or deception".

271.7F – Harbouring a victim

Project Respect welcomes this amendment and the specification that this offence applies even if the third person has not been prosecuted or found guilty.

Further Legislative Recommendations

Project Respect supports the introduction of a criminal offence relating to intentionally, knowingly or recklessly obtaining sexual services from trafficked women to provide a deterrent for men who knowingly buy sexual services from trafficked women. This will ensure that any men who may come into contact with a woman who has been trafficked both responsible and accountable for their action (or inaction) and participation in the crime.

> **Recommendation:** Introduce a criminal offence relating to intentionally, knowingly or recklessly obtaining sexual services from a trafficked woman.

Non legislative reforms

In addition to the legislative reforms, Project Respect recommends the Federal Government pursue the following non-legislative reforms, in recognition of the importance of a wholistic approach to this victim based crime, as recognized by the United Nations, which includes prosecution, protection, prevention, national and international coordination[4]

Compensation/opportunity for fair reparation

Trafficking is a federal offence; however compensation is only accessible through State schemes. Compensation schemes for those who have been trafficked vary between the States, resulting in different entitlements depending on which state a person was trafficked into, different timeframes in which a victim is eligible to apply and further complicated when they have been trafficked between different States of Australia (in Project Respect's experience, this is increasingly common as a method to avoid detection).

> **Recommendation:** develop a federal compensation scheme for all victims of trafficking to ensure that all victims of trafficking are able to pursue equal terms of reparation for suffering a federal crime against them.

Visa's and support for trafficked persons de-linked from criminal justice process

As stated previously, the official figures of trafficked persons on the Commonwealth Support Program remain relatively low (80 people on the program in 2010/2011, 62 of whom were sexually exploited)[5], yet Project Respect continues to meet and support many women who have been trafficked, plus having serious concerns about even more.

Trafficked women encountered by Project Respect frequently advise they have been told by traffickers that police in Australia are corrupt, connected to traffickers and they will be either deported or returned to their traffickers (plus their families will be in danger) if they speak to police. Currently, if the Australian Federal Police encounter a person they feel has been trafficked but the person will not speak to police (and therefore cannot access support or a visa on the Commonwealth Support Program) they remain in a situation of exploitation and slavery. This is unacceptable.

Any person who has been trafficked should be able to access a visa and support regardless of their ability or willingness to engage with the Criminal Justice Process. Prosecutions should not be the ultimate priority, but a preventative method pursued wherever possible. Those who have been trafficked have suffered human rights violations on our soil – Australia is obliged to assist them.

> **Recommendation:** develop another stream of victim access to support and visa's though accredited non-government community service organisations – using examples from Italy and other countries that implement this model, with victim support as the ultimate priority, while remaining committed to prevention of

[4] United Nations *International Framework for Action to Implement the Trafficking in Persons Protocol*, (New York) 2009.

[5] The Third Report of the Anti-People Trafficking Interdepartmental Committee *Trafficking in Persons – The Australian Government Response 1 July 2010 – 30 June 2011*. (Canberra) 2011

further trafficking[6]. This is likely to result in a significant increase in support costs as more victims feel safer to access assistance, and adequate resources will need to be provided to those organisations providing support.

Research into the demand for trafficked persons

In order to effectively tackle trafficking, first it must be understand exactly why there is a demand for trafficking of persons[7] into Australia, be it financial, social or cultural (or a combination of these and other factors) and then address the demand accordingly, to prevent the profitability of supply. This will undoubtedly vary between the very different crimes of trafficking for marriage, sexual slavery and labour, and so each aspect requires individual and focused research.

> **Recommendation:** Adequate funding and partnerships resourced between academic institutions and other groups for both theoretical and practical research into the demand for all known methods of trafficking in Australia.

Community Education on trafficking

Project Respect continues to meet large numbers of people who are oblivious to the issues of trafficking in Australia, and many believe it is only an issue in less developed nations. While Australians remain unaware of this crime, it is sure to continue.

> **Recommendation:** Invest significant resources into community education campaigns, targeting high schools, universities, TAFE's and professionals – so that anyone who may come into contact with a trafficked person is aware of the issues and action they can take.

[6] European Commission *Fight Against Trafficking in Human Beings* accessed at http://ec.europa.eu/antitrafficking/showNIPsection.action;jsessionid=1ptnNngN1Cvv8P4jGThj9Qy9j8dmY7QKZhWKWvSSMKQJYVh7f8v6!-403728570?sectionId=6888c58a-3517-49fd-903c-c18984028f48

[7] *Tackling the demand that fosters human trafficking: Final Report* as prepared by Ruth Rosenberg for the Social Transition Team, Office of Democracy, Governance and Social Transition of the United States Agency for International Development, 2011.