

**Parliamentary Joint Committee on the  
Australian Crime Commission**

**Inquiry into trafficking in women for  
sexual servitude**

**Submission No:25**

**Received 29 September 2003**

**Ms Kathleen Maltzahn**

**Founding Director**

**Project Respect**

**PO Box 1323**

**COLLINGWOOD VIC 3066**

**☎ 03 9416 3401 📄 03 9417 0833**

**E-mail: [prespect@vicnet.net.au](mailto:prespect@vicnet.net.au)**

# Parliamentary Joint Committee on the Australian Crime Commission

## Inquiry into trafficking in women for sexual servitude

Submission from Project Respect Inc  
Submitted by Kathleen Maltzahn, Founding Director Project Respect

Endorsed by:  
Asylum Seekers Resource Centre (Footscray)  
Australian Federation of University Women  
Brimbank Community Legal Centre  
Bula Bula Health Service  
Centre for Philippine Concerns-Australia, Brisbane Branch  
Children by Choice  
Christian World Service, National Council of Churches in Australia  
Dr Cleonicki Saroca  
Immigration Women's Speakout Association Inc  
Nepean WATAC (Women and the Catholic Church  
Refugee and Immigration Legal Centre Inc  
Sensis  
Suzanne Belton  
Union of Australian Women  
YWCA

Postal Address:  
PO Box 1323  
Collingwood  
Victoria 3066  
Australia  
Ph: 03 9416 3401  
Fax: 03 9417 0833  
Email: [prespect@vicnet.net.au](mailto:prespect@vicnet.net.au)

# Summary

## Introduction:

- a) Project Respect;
  - b) Definitions;
  - c) International Best Practice.
- 
- 1) The extent of people trafficking in Australia for the purposes of sexual servitude:
    - a) The scale of trafficking in women;
    - b) Routes and methods of trafficking;
    - c) 'Push' and 'pull factors';
    - d) Impact on women;
    - e) Women's Resistance and Responses.
  
  - 2) The Australian Crime Commission's relationship with the relevant State and other Commonwealth agencies:
    - a) Lack of Coordination between Government Agencies;
    - b) The Role of DIMIA;
    - c) The Role of Federal and State Police;
    - d) Involvement of NGOs;
    - e) Operating with a Shared Framework: the UN Trafficking Protocol.

## Recommendations for Sections 1 and 2.

- 3) The adequacy of the current legislative framework.

## Recommendations for Section 3.

## **Summary of Recommendations**

1. The Australian government should ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
2. The federal government should coordinate the development a whole-of-government approach to trafficking that prioritises trafficked women and children's protection and rights, and involves NGOs and local, state and federal government authorities.
3. An alternative detention system must be developed so that possible trafficked victims are not detained in immigration reception, processing and detention centres.
4. Federal and state governments should fund a full range of recovery services for trafficked women, including, for example, accommodation, counselling and English classes.
5. Australian local, state and federal governments should examine, analyse and address the demand for trafficked women by 'customers'.
6. More overseas aid should be directed at addressing the factors that make trafficked women vulnerable, including, for example, violence against women, war, inequality and asylum seeking processes.
7. The Australian government should support and develop bi-lateral and multi-lateral initiatives that ensure that trafficked women who return to sending countries are linked in with support agencies in those countries to protect women from re-victimisation.
8. Local, state and federal governments should provide funding and other support for specialist NGOs such as Project Respect that address trafficking.
9. The Commonwealth Criminal Code should be amended in 3 main ways, to:
  - (a) meet the standards of the UN Trafficking Protocol;
  - (b) improve the current offences; and
  - (c) introduce new specific offences targeting each aspect of the traffickers operations.
10. A special trafficked woman's visa should be introduced.
11. Women who are suspected of being trafficked should not be detained in immigration reception, processing and detention centres.

# Introduction

## Project Respect

Project Respect is Australia's leading specialist non-government organisation addressing trafficking in women for prostitution.

Project Respect aims to promote the human rights of women in the sex industry, through working with women in the sex industry to further their enjoyment of human rights in their own lives, at the same time as challenging the structures that limit and undermine this. Project Respect has a particular focus on violence against women in the sex industry, including trafficking in women and children.

Project Respect was established in 1998. Founding Director Kathleen Maltzahn has been working directly with trafficked women and other women in the sex industry (in Australia and the Philippines) since 1992.

**This submission to the Joint Parliamentary Inquiry is based on information gathered through Project Respect's direct work with women and other research.**

## Definitions

This inquiry looks at people trafficking for sexual servitude. Sexual servitude is addressed in the Commonwealth Criminal Code (Slavery and Sexual Servitude) Amendment Act 1999. Section 3 of this submission looks at these laws in more detail.

In addition, Australia has signed the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the '**Trafficking Protocol**')<sup>1</sup>. The United Nations uses the term 'trafficking', which it defines as:

*“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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 the purpose of exploitation.”*

*“Exploitation shall 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.”*

In the Trafficking Protocol the consent of a victim of trafficking in persons to the intended exploitation is treated as irrelevant where any of the means set out (such as force, abuse or coercion) have been used.

In the Trafficking Protocol, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is considered 'trafficking in persons' even if this does not involve any of the means set out in the definition of trafficking.

This definition establishes two important points:

---

<sup>1</sup> This protocol supplements the UN Convention Against Transnational Organized Crime.

- trafficking does not only happen where people are threatened, overpowered or deceived. The definition includes ‘abuse of power or of a position of vulnerability’, recognising the range of ways people are made vulnerable to trafficking;
- consent to do prostitution/be exploited is not relevant where someone has been subject to threats, abuse of power or vulnerability etc.

### International Best Practice

The UN Trafficking Protocol provides an international standard, and is important because it:

- states that victims of trafficking should be treated not as criminals but as victims of crime;
- asserts the usefulness of NGO participation in combating trafficking;
- calls for the protection of the human rights of trafficking victims once detected by government authorities;
- calls for governments to work across international borders to address trafficking; and
- recognises that steps to combat trafficking must address the demand of ‘customers’ for trafficked women and children.

# 1) The Extent of People Trafficking for the Purposes of Sexual Servitude

## The Scale of Trafficking in Women for Sexual Servitude In Australia

There is currently no agreed estimate of trafficking for sexual servitude in Australia.

The number of women trafficked for sexual servitude/prostitution to Australia is difficult to estimate for three main reasons. First, trafficking is illegal and therefore may occur undetected. Second, victims of trafficking may be unwilling to speak about being trafficked because they fear retribution from traffickers or are traumatised by the experience. Third, there has been a lack of cooperation with agencies that may know of trafficked women to calculate the number of trafficked women in Australia.

At times there has also been unwillingness by government authorities to acknowledge that trafficking may be a problem in Australia.<sup>2</sup>

However, there are a number of ways that the scale of trafficking in women for prostitution/sexual servitude can be measured.

Firstly, a range of estimates related to numbers of trafficked women, and profits from trafficking, has been given over the past twenty years. For example:

- ex-Australian Federal Police agent Chris Payne indicates that women have been trafficked to Australia for prostitution since as early as 1975. The AFP Papertiger Operation that investigated trafficking between 1992 and 1995 estimated that there were 300 'contract girls' in Sydney at any given time at that period;
- Detective Senior Sergeant Ivan McKinney estimated that trafficker Gary Glazner bought at least forty trafficked Thai women, and grossed \$1.2 million between 1997 and 1998;
- in 1998 Attorney-General Daryl Williams told Parliament that 'investigations show that the gross cash flow to organisers of the trade could be in the region of \$1 million per week';<sup>3</sup>
- in 1999 respected Age journalist Mark Forbes cited estimates that there are 500 trafficked women in Australia at any one time.<sup>4</sup>

In addition, estimates can be made based on a range of other information, including statistics from the Refugee Review Tribunal<sup>5</sup>, DIMIA removal statistics<sup>6</sup>, sex industry

---

<sup>2</sup> In February 2003 the Minister for Justice, Senator Chris Ellison, told the Senate Legal and Constitutional Committee that 'slavery chains', 'where people are traded in, as goods and chattels might be' did not exist in Australia. Commonwealth of Australia, *Senate Legal and Constitutional Legislation Committee*, 11 February 2003, p. 155.

<sup>3</sup> Commonwealth of Australia, House of Representatives, *Parliamentary Debates*, p. 5849–51.

<sup>4</sup> M. Forbes, 'Our Secret Slave Trade', *The Age*, 21 August 1999.

<sup>5</sup> Traffickers in Thai (and some other) women routinely apply for protection visas for trafficked women (often without the women's knowledge or consent). This secures working rights for the women, and means they can be prostituted in legal brothels without the risk of detection and deportation. The process the traffickers use means that appeals are made to the Refugee Review Tribunal. By analysing figures for applicants in South East Asian countries such as Thailand, it is clear that female applicants outweigh male applicants in a way inconsistent with political trends (particularly as it is more common for male refugee applicants to outweigh female applicants). These figures provide one clue for estimating numbers of trafficked women in Australia.

estimates, observations in brothels etc. and other sources. Based on this information, Project Respect estimates that there are up to 1,000 women in Australia under contract at any one time. This refers to women still paying off a 'debt' and does not include women who have finished their 'debt' but remain in Australia.

Project Respect is concerned that there has been little Federal government attempt to quantify the number of trafficked women in Australia, and notes that this is seemingly inevitable without a coordinated whole-of-government approach to trafficking that clearly delineates who will carry out such work and how information will be accessed and centralised.

## The Routes and Methods of Trafficking for Prostitution in Australia

***'Having a sense of the scale of trafficking tells us only part of the picture. Equally as important is understanding trafficking methods; where women are trafficked from, their experiences of procurement, migration and treatment after arrival in the UK'.<sup>7</sup>***

Project Respect believes it is important to understand not just the numbers of trafficked women, but also the intensity of criminality and violence experienced by women, and the tactics that traffickers use to do this. This is necessary both in measuring the harm done by trafficking and in ensuring that government responses do not inadvertently replicate the tactics used by traffickers.

It appears that most women trafficked to Australia are from South East Asia and China, however there are also indications that women are at times trafficked from Europe and Latin America. The majority of women trafficked to Australia appear to be Thai women. However, some women who are assumed to be from Thailand may in fact be from Burma or China. Also, Project Respect has anecdotal evidence that following the recent publicity about trafficking in Thai women, fewer Thai women are being brought to Australia. Instead, women are being trafficked to Australia in increasing numbers from South Korea.

Thai women include both those that are totally deceived about the fact that they will do prostitution in Australia (the minority) and those who know they will do prostitution but are deceived about the conditions of that prostitution (the majority). The second group includes both women who have done prostitution previously in Thailand and/or abroad, and women who have never done prostitution before. The following information refers primarily to patterns for trafficked Thai women.

### *Recruitment*

Women who do not expect to do prostitution in Australia may be told they will be working in employment outside the sex industry, for example, a restaurant, in the

---

<sup>6</sup> Anecdotal information from trafficked women suggests that many women detected by DIMIA authorities are trafficked, (and that many more are not detected but manage to finish their 'contracts' and leave the country). As a point of comparison, in the UK, police estimate that that only a tenth of trafficked women are actually detected. This assumes that authorities are in fact looking for trafficked women.

<sup>7</sup> Kelly and Regan *Journeys of Jeopardy* (2003), page 23.

travel industry etc. Women who do know they are doing prostitution will generally be deceived about the conditions of that prostitution and their freedom once in Australia. For example, women may be given the impression that they will be working in a karaoke bar, will be able to pick and choose who they have sex with and will only have a small number of prostitution clients.

Both groups of women are likely to be told that they will have a debt to the traffickers, but will be deceived about the size of the debt and/or how quickly they will be able to pay it off.

### *Transport*

Traffickers regularly provide women with false passports and pay money into women's bank accounts to temporarily inflate their bank balance which strengthens their application to Australian immigration authorities for a visa..

Some trafficked women allege that airport officials in sending countries are corrupt and collude with traffickers. Women are frequently brought to Australia by escorts, who sometimes pose as part of a honeymoon couple or a family group. Sometimes, traffickers arrange marriages for trafficked women to strengthen visa applications to Australia. Escorts include both Thai and Australian nationals, and are paid to bring women to Australia.

### *Pre-ordering, on-selling and 'auctioning'*

Traffickers access women in a range of ways. Some traffickers operate organised chains that cover the entire trafficking process – they recruit women in source countries and prostitute them in their own brothels (or through escort arrangements) in Australia. Other traffickers engage in only one part of the trafficking. For example, they may recruit women and bring them to Australia, and then sell them to another trafficker. This sale may be based on a 'pre-order', or involve traffickers coming to look at women once they are in Australia and picking the one/s they wish to buy. Some traffickers have many women, others may be 'mum and dad' traffickers who buy a half share in a woman.

### *'Breaking-in'*

Women who were deceived about the fact that they would be doing prostitution are usually subject to significant and systematic violence upon arrival in Australia. This will frequently involve multiple rapes and threats of harm to the individual women and their families.

This violence serves two functions, one more obvious than the other. Firstly, pre-prostitution violence aims to break women's will and impress upon them their powerlessness in the face of the traffickers' demands. It aims to stop them from running away or seeking help in other ways, such as by telling customers their situation. Secondly, this rape teaches women how to do prostitution sex, and impresses on them that they must 'satisfy' their 'customer' and cannot refuse types of customers or sex (including sex without condoms).

Women who know they are coming for prostitution (but not the terms and conditions of the prostitution) may also be subjected to pre-prostitution violence. This is particularly so for women who have not previously done prostitution and are shocked to learn that they will be in a brothel and not, for example, a karaoke bar, that they

will be confined to the brothel or their living quarters and that they cannot refuse specific customers, specific sexual acts or sex without a condom.

Traffickers routinely respond to women's initial complaints, including their requests to return home, with sexual, physical and psychological violence. As with women deceived about doing prostitution, this violence aims to teach women that they have no other option, cannot access help and cannot escape.

During their initial period in Australia, trafficked women are frequently stopped from leaving their residence (often the traffickers' own home, or a residence guarded by the traffickers or the traffickers' associates), or are chaperoned if they are permitted to leave.

Within 45 days of a woman's arrival in Australia, traffickers frequently make bogus applications for protection visas for women, thereby securing work rights for the woman while her bogus application is processed. Women are often unaware that this application has been made, or what it means, and at times are told simply that they have a working visa. As women are told that prostitution is legal in Australia, some women genuinely believe that they are legally entitled to do prostitution in Australia. This is one element of the range of deception and mis-information that traffickers use to disempower trafficked women.

#### *Prostitution Violence and Exploitation*

Trafficked women generally pay off a 'debt' that is calculated in terms of dollars, 'jobs' or months. A typical debt for a Thai woman is between \$35,000 and \$50,000. Project Respect has been told of women with debts of up to \$80,000 but this is less common. 'Job' requirements are typically between 500 and 1,000. Some traffickers may also require women to stay on after the debt is paid off, for example for an additional twelve months.

Women are prostituted both in brothels and through escort arrangements. It is commonly assumed that, in states where prostitution is legal, trafficked women are found predominantly in illegal brothels. In Victoria, this is not the case – trafficked women have been located in a number of legal brothels.

Women are prostituted for many hours a day, frequently seven days a week. Women report being woken and taken back to the brothel if customers arrive after they have left. Some women may be given a 'free' day during a quiet period, and will be allowed to keep a portion of this money. Women typically try to send as much of this money home to parents or children, but also use the money to pay for food and other expenses in Australia as these are often not provided by the trafficker.

Many women pay off their debt very quickly, often between two and six months, for two reasons. Firstly, traffickers make women do prostitution for long hours and will not allow them to refuse customers, as they wish to maximise their profit as quickly as possible. Secondly, once women have been made to accept that they must pay off their 'debt' and cannot escape, many women try to pay off the money as quickly as possible so they can escape the trafficking situation. They see no way out of their situation other than accepting the traffickers' conditions. Many hope that once they

have paid off the debt they will be able to make money to send home – their initial objective in coming to Australia.

Violence continues during this period. Women report being sent back to violent customers if they leave the room and being made to have sex without a condom if the customer asks for this.

As the contract period proceeds, women will be given more and more freedom. By the end of the contract, many women will have no physical constraints on them. This is because:

- women have learnt that they will be punished if they run away, and are scared that the traffickers will hunt them down even if they return home;
- women hope to pay off their ‘debt’ and then be able to make some money for themselves and their families;
- women have learnt that there is little support for women who run away, and are told that they will be deported if they contact Australian authorities;
- women at the end of their contracts are less ‘valuable’ to traffickers, as profit has been extracted from them and they are no longer ‘new faces’.

#### *Detection, Escape, End of contract – Post-contract Vulnerability*

The contract situation commonly ends in one of three ways: women are detected by DIMIA, women’s ‘contracts’ end and they are allowed to leave the traffickers’ control, or (less commonly) they run away. At times, traffickers themselves contact DIMIA and ‘dob’ the woman in, if a woman is close to finishing her ‘contract’.

Traffickers benefit by having a trafficked woman removed by DIMIA so she does not:

- ‘contaminate’ new contract women (for example by telling them how to seek help, by explaining to them what the Australian legal situation is etc);
- operate in competition to the contract women;
- have to be paid for ongoing prostitution.

Also, if DIMIA deports the woman, the traffickers may save on airfare and escort costs.

Women are routinely detected in brothels by DIMIA. They are then commonly repatriated to their home country (or the country on their passport) as quickly as possible. These women are then vulnerable to re-victimisation and further trafficking once they return home.

Other women complete their contract and leave Australia at their own time. Many women attempt to do further prostitution in order to make some money. For women this may be the most tangible way to regain a sense of control over their lives, and make up for the loss of many months of freedom and happiness. Other women simply wish to leave Australia as soon as possible.

Some women are able to run away. Most commonly this is achieved by establishing a relationship with an Australian citizen who will either provide refuge to the woman or attempt to pay off the contract. Sometimes, trafficked women marry Australian citizens. A woman who escapes the traffickers is unlikely to understand her migration rights and other legal rights. At times, a woman’s migration status is made worse by traffickers who have applied for protection visas for women and then cancelled the application when the woman ran away. This means that the woman cannot make

another on-shore application for a visa (for example a spouse visa) and so is vulnerable to removal.

Each of these three scenarios at best leaves women without support and information, and at worst exposes women to further victimisation and re-trafficking.

Each step in this process involves a range of criminal activities and violence, and presents a number of entry points for government responses to trafficking. This will be discussed in more detail in section 2.

### ‘Push’ and ‘Pull’ Factors

‘Push’ factors that make women and children vulnerable to trafficking have been well documented internationally, and we will not repeat them in detail here. However, we note that international research is increasingly identifying violence against women as a push factor. For example, women attempting to leave domestic violence may opt to travel overseas as a way both to leave their abusive partner and to secure an income for dependent children or parents. This trend is also apparent among trafficked women in Australia.

Project Respect believes that as a destination country, Australia should give particular consideration to ‘pull’ factors – that is, the factors that cause women to be brought to Australia for prostitution. It is important to note that regardless of how poor or desperate a person might be, if there is no market for them in a destination country, they will not be trafficked.

An important pull factor in trafficking for prostitution is clearly the demand for trafficked women. Project Respect believes that the demand for trafficked women is fuelled by:

- a lack of women in Australia prepared to do prostitution;
- ‘customer’ demand for women seen as compliant;
- ‘customer’ demand for women who they can be violent towards;
- racialised ideas that Asian women have certain qualities, for example that they are more compliant and will accept higher levels of violence.

Another related factor is the sheer profitability of trafficking. While traffickers can operate with virtual impunity, and without fearing loss of assets or income, trafficking will continue unabated. An integrated and effective government response must address these ‘pull’ factors.

### Impact on Women

Trafficking for prostitution exposes women to a range of negative impacts, including:

- psychological and physical ill health due to violence while in the sex trafficking situation, including rape; beatings; forced abortions; threats and actual violence against family, including children in home countries; having their passport taken by traffickers; verbal abuse; and imprisonment.<sup>8</sup> US research on domestic and

---

<sup>8</sup> Reports of violence against women in the Australian sex industry include: Mark Forbes ‘Life as a commodity, to be bought and sold’, June 5 2001, The Age.

international trafficking documented serious injuries sustained by trafficked women, ranging from head injuries to vaginal bleeding, as a result of violence including stabbing and sexual assault.<sup>9</sup> The slave-like conditions that trafficked women in Australia are held in have been documented in the 2000 court case against trafficker Gary Glazner in Victoria;<sup>10</sup>

- fear of retribution by traffickers who women may believe will punish them or their families if they are perceived to have collaborated with authorities;
- fear of stigmatisation if they are returned to their country of origin;
- fear about not being able to repay debts to traffickers;
- drug dependencies that begin either through traffickers forcing women to use drugs, or as a coping mechanism in the absence of access to medical, psychological and other services that could help address the effects of violent experience; and
- general ill health due to inadequate nutrition and exercise, as a result of being detained by traffickers and poor sexual health due to forced unsafe sex practices.

These vulnerabilities are consolidated by problems such as women's limited English skills, lack of knowledge of the Australian legal and immigration system, lack of support networks, and misinformation about consequences of cooperating with authorities.

### Women's Resistance and Responses

Trafficked women engage in many strategies to avoid or minimise the violence and exploitation they are exposed to. It is important to recognise that many trafficked women actively attempt to change their situation. The difficulty is not that they accept the violence they experience, but that the rest of the community does. In this, we see many parallels with the experiences of other women who experience violence, such as domestic violence.

It is important that we learn from our successes in addressing these issues. Australia has developed international best practice in many areas around domestic violence and sexual assault. Many of these principles should be extended to trafficking.

---

<sup>9</sup> Janice Raymond, Donna Hughes, Carol Gomez, *Sex Trafficking of Women in the United States: International and Domestic Trends*; Coalition Against Trafficking in Women, 2001, p 78.

<sup>10</sup> Marnie Ford, 'Sex slaves and legal loopholes: Exploring the legal framework and federal responses to the trafficking of Thai "contract girls" for sexual exploitation to Melbourne, Australia', 2001.

## **2) The ACC's Relationship with Other Relevant Commonwealth and State Agencies**

### **Lack of Coordination between Government Agencies: the Need for a Whole of Government Approach**

Traffickers are resourceful, flexible and opportunistic. They operate across state and international borders. To challenge traffickers, it is necessary to show some of the same qualities. However, at present, government agencies often operate in isolation, and key responsibilities are divided across local, state and federal government.

For example, in Victoria, local government is responsible for monitoring planning permits for brothels. In the course of their work, council enforcement officers may encounter trafficked women. State government is responsible for issuing licences to brothels and brothel owners and managers, and state legislation covers trafficking-related crimes such as rape, assault and threats. However, there is no squad specifically addressing violence against women in the sex industry. Cases could be referred to a range of specialist squads (re Asian crime, sexual offences, children etc), and intelligence will not necessarily be centralised. The Federal Government covers trafficking both through trafficking specific legislation, which the AFP addresses, and through the Migration Act, administered by DIMIA.

At present, there is no one body receiving trafficking-related information or coordinating responses to traffickers nationwide. At times, even single organisations compartmentalise information in a way that minimises intelligence gathering and analysis. For example, until recently, DIMIA's Compliance and Investigation branches were separate entities with competing mandates – while Compliance was tasked to remove unlawful non-citizens as quickly as possible (and was paid in relation to the number of detections), the less well-funded Investigation branch aimed to keep women in the country for questioning. Compliance's mandate often over-rode Investigation's desire to keep women in Australia. (In recent months the NSW branch of DIMIA has combined these two branches.)

Project Respect believes that the ACC could usefully play a coordinating role on this issue.

### **The Role of Immigration Authorities**

At present, the Department of Immigration plays a significant role in relation to trafficking. It is frequently the only government authority whose personnel have direct contact with trafficked women. Disturbingly, due to the mandate it is operating under (the Migration Act), the department may play a role that trafficked women feel replicates the behaviour of traffickers. Trafficked women without valid visas are frequently detained in immigration reception, processing and detention centres. While there, they accrue a debt to the Commonwealth, which is calculated daily, and which seems out of proportion either to the facilities they are utilising or their ability to re-pay the debt.

Project Respect notes that deporting trafficked women may unintentionally increase demand, and play into the hands of traffickers who wish to get rid of 'old stock'.

Project Respect believes that it is inappropriate for DIMIA to play a lead role in terms of trafficked women. However, DIMIA could be better equipped to play a support role, in a range of ways:

- counter-trafficking information could be distributed during DIMIA compliance raids. This information could inform brothel personnel of the penalties for sexual slavery and women in the sex industry of support agencies and their rights if they are a victim of trafficking;
- DIMIA staff should be trained to recognise indicators of trafficking, and respond sensitively and appropriately to potential victims of trafficking;
- DIMIA could develop protocols with NGOs providing specialist support to trafficking women whereby organisations are informed if DIMIA identifies women in brothels it believes need further information or support;
- DIMIA interviews with women detained in brothels or other sex industry-related venues should provide genuine opportunities for women to make disclosure about trafficking;
- DIMIA could provide information about sexual slavery offences and support agencies to detained women, and encourage them to access these services.

At present, trafficked women and their families have little confidence in DIMIA's response to trafficking. Project Respect has heard a range of allegations that indicate this lack of confidence, including that:

- Women detected in brothels in lingerie etc are not enabled to cover or clothe themselves, and at times are taken to the detention centre in this inappropriate clothing. This subjects women to stigmatisation within the centres, both by staff and fellow detainees, and exposes women to the cold.
- DIMIA personnel pressure detained women to leave Australia, minimising the likelihood that women will talk to police or access support services. (This pressure is compounded by women's concern that they are accruing another debt, this time to the Australian Government, while they are in detention.)
- DIMIA accepts passports and tickets from traffickers without questioning why they are in possession of the tickets or what their role is in relation to the women;
- DIMIA does not consistently act on allegations of trafficking; and
- Traffickers threaten women in detention centres, and that DIMIA does not take steps to protect potential trafficking victims from this sort of intimidation.

We also note that during a recent visit to the Maribyrnong Immigration Detention Centre, a DIMIA official told Project Respect that a trafficked woman Project Respect staff had come to visit, had told her that she did not want to see us. When we rang the woman to confirm this less than fifteen minutes later, she said that DIMIA had 'lied' and that she had wanted to see us. While this may well be due to language misunderstandings (the DIMIA official did not use an interpreter), we believe that DIMIA can play a role in encouraging women to access support agencies such as ours. It is unfortunate that women may feel that DIMIA is not willing to play this role. Following the death of a woman who may have been trafficked in Villawood Immigration Detention Centre, NSW Deputy Coroner encouraged both DIMIA and ACM to establish 'some form of dialogue with organisations such as Project Respect that might assist in identifying, assessing and providing the appropriate medical,

community and translator services to women who might be identified as victims of trafficking'.<sup>11</sup>

## The Role of Federal and State Police

Project Respect believes that the police are a more appropriate lead agency to address trafficking than DIMIA, as their focus is on crime and not migration issues.

However, for police to play a positive role, they must make a commitment to this issue, and be appropriately trained. Without an adequate understanding of trafficking issues, police can also replicate traffickers' practices, for example by not ensuring that women are given adequate information about their migration rights and other legal rights, failing to explain that they are not arrested and can therefore leave police controlled premises and confiscating passports for use as evidence

Research in the United Kingdom<sup>12</sup> shows in known trafficking cases in 1998, all but one occurred in an area where 'the local force has a "pro-active" approach to prostitution and/or a vice unit'<sup>13</sup>. The report states that:

'where there is a reactive, nuisance based, response to prostitution it is less likely that trafficked women will be detected. The conditions under which they exist, alongside a fear of the authorities ... means that few will come forward for help. Police forces that insist they have no problem must ask themselves, whether, unintentionally, they are creating 'areas of tolerance' for trafficking.'<sup>14</sup>

Trafficking is a crime where the obstacles to victim testimony are significant. The UK research finds that only a small minority of trafficking victims testify – the rest ask to be deported, preferably within 48 hours, 'fearful that their exploiters will think they have given evidence against them, and carry out threats made to themselves and their families.'<sup>15</sup> Clearly trauma from violence experienced also impacts on their choices. (Importantly, NGO support can change women's choices – see below.) In this context, the UK Metropolitan Police's Clubs and Vice Unit (CO14) has made its primary concern regarding trafficking to 'ensure the rescue and safety of the women (or children). The success of the investigation – to the extent that it is possible to make arrests and seize assets – is secondary.'<sup>16</sup>

In addition, their approach is pro-active, although it also utilises reactive and disruptive approaches where appropriate:

'The pro-active framework begins with the presumption that law enforcement cannot expect trafficking victims either to approach the police for protection, or to be able to give evidence. Investigations therefore need to be intelligence led, and use whatever other legal means are available to build a sufficient case

---

<sup>11</sup> See the Coroner's finding into the Inquest into the death of Ms Puongtuong Simaplee.

<sup>12</sup> 'Stopping Traffic: Exploring the extent of, and responses to, trafficking in women for sexual exploitation in the UK', Liz Kelly and Linda Regan, Police Research Series Paper 125, Home Office (UK)

<sup>13</sup> Kelly and Regan, above n 7, p. 18.

<sup>14</sup> Kelly and Regan, above n 7, p. 26.

<sup>15</sup> Kelly and Regan, above n 7, p. 31-32.

<sup>16</sup> Kelly and Regan, above n 7, p 33

to prosecute the exploiters at the UK end. If a case involves a willing witness this is seen as the ‘icing on the cake’.<sup>17</sup>

These principles should be incorporated in Australian approaches to trafficking. It is unreasonable to expect that the women who have borne the brunt of traffickers’ violence and exploitation should have to take responsibility for stopping the traffickers.

It should be noted that efficient policing of traffickers can have important side-benefits for police and government. Trafficking for prostitution generates significant income for organised crime. In April 2002, police in the United Kingdom had seized £4.5 M for less than 12 operations over 18 months to two years, more than for any other crime.<sup>18</sup> If undetected, these funds are fed back into further criminal activity.

Policing cannot happen in a vacuum. The UK Research identified women’s fear of retribution as a key factor limiting their ability to cooperate with police in investigations.<sup>19</sup> This reflects Project Respect’s experience. For example, a woman in the Maribyrnong Immigration Detention Centre recently disclosed to Project Respect that she had been trafficked. This was supported by independent advice Project Respect had received about this woman and others detained with her. The woman indicated that she was prepared to speak to the Australian Federal Police, but was deeply concerned about the ramifications of this. However, it was impossible to provide her with any real information about what protection could be extended to her if she fully disclosed her experiences, as Criminal Justice Visas are provided on a case-to-case basis and there is no clear program or visa to describe to women.

This is typical of a current vicious cycle, where police cannot offer women protection until they know the quality of the information the women offer, and women are too scared to talk until they know if they will be protected. This cycle could be broken by a visa category for trafficked women. Women could be informed about this visa category without it being seen as an inducement (this issue is discussed in more detail below).

### Involvement of Non-government Organisations

Project Respect believes that policing alone cannot address trafficking – policing must be complemented by specialist NGOs such as Project Respect which can offer support to women outside the prosecution process. Women are entitled to support as victims of crime, regardless of their willingness to testify against traffickers. This is a fundamental right, and one that is crucial to women’s recovery from the violence and exploitation they have experienced.

---

<sup>17</sup> Kelly and Regan, above n 7, p. 33.

<sup>18</sup> From a presentation by Inspector Chris Broome, Metropolitan Police, London, UK, at the April 2002 Australian Institute of Criminology Round Table on Trafficking. UK police work closely with NGOs in addressing trafficking for prostitution. This strategy is more fully explored in “Stopping Traffic”, cited below.

<sup>19</sup> Liz Kelly and Linda Regan, *Stopping Traffic: Exploring the extent of, and responses to, trafficking in women for sexual exploitation in the UK*, Police Research Series Paper 125, Home Office (UK), 2000.

However, there is also a pay-off for law-enforcement agencies where support agencies are enabled to work with women. UK research states that in countries where there are specialist non-government organisations who offer support, up to 50 per cent of women testify.<sup>20</sup>

The UN Trafficking Protocol recognises the important role NGOs can play in addressing trafficking and working with trafficked women.

The principle of providing independent support and advice to victims of crime is clearly recognised across Australia. In Victoria (as in other states), in relation to sexual assault, this is expressed through a protocol between Victoria Police and Centres against Sexual Assault (CASAs) that requires the police to contact CASAs if women make allegations of recent sexual assault. This allows women to access support, independent advice about their choices and information about what will happen to them. This model should be replicated in relation to trafficking. Project Respect recommends that both state/territory police forces and the Australian Federal Police develop similar protocols with NGOs such as Project Respect which provide specialist support to trafficked women.

Support agencies should be brought into counter-trafficking operations as soon as possible, to give women support and information from the very beginning.

## Operating within a shared framework: Ratifying the UN Trafficking Protocol

As well as having a mechanism for coordination, it is important to have a shared framework. The United Nations Trafficking Protocol provides the most relevant framework, given that the Australian government has signed this. A key element of this is that the human rights of trafficked women are protected. All agencies involved in counter-trafficking work should access training on trafficking that explores ways to operationalise this commitment to trafficking victim's rights.

Australia must also ratify the UN Protocol, as a matter of priority.

### Submissions (for sections 1 and 2)

Based on this information, Project Respect submits that:

1. The Australian government should ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
2. The federal government should coordinate the development a whole-of-government approach to trafficking that gives priority to the protection of the rights of trafficked women and children's protection and rights, and involves NGOs and local, state and federal government authorities;

---

<sup>20</sup> These groups provide safe accommodation, counselling, some form of income support, advocacy, and where possible education and training. Kelly and Regan, above n 7, p 32.

3. An alternative detention system must be developed so that possible trafficked victims are not detained in immigration reception, processing and detention centres;
4. Federal and state governments should fund a full range of recovery services for trafficked women, including, for example, accommodation, counselling and English classes;
5. Australian local, state and federal governments should examine, analyse and address the demand for trafficked women by 'customers';
6. More overseas aid should be directed at addressing the factors that make trafficked women vulnerable, including, for example, violence against women, war, inequality and asylum seeking processes;
7. The Australian government should support and develop bi-lateral and multi-lateral initiatives that ensure that trafficked women who return to sending countries are linked in with support agencies in those countries to protect women from re-victimisation;
8. Local, state and federal governments should provide funding and other support for specialist NGOs such as Project Respect that address trafficking.

### 3) The Adequacy of the Current Legislative Framework

#### Hypothetical case study

The following case study is based on the kind of treatment of some women trafficked to Australia for prostitution. The story and the names in it are fictitious. This submission highlights deficiencies in the Commonwealth Criminal Code that limit the effectiveness of police to prosecute traffickers who operate in ways similar to those described in Lisa's story and proposes amendments that would better equip Australian local and federal police to charge and prosecute traffickers.

*Lisa was recruited from her home country to do prostitution in Australia.*

*Lisa met a man named Stewart in a bar in Lisa's home city where Lisa was working as an exotic dancer. Stewart told her there were great opportunities for Lisa to make large amounts of money by working as a prostitute in the Australian sex industry.*

*Lisa was pleased to hear about this opportunity because she had a large, very poor family who she wanted to support financially. She decided to find out more, hoping that she could go to Australia and make money fast, then leave the sex industry forever.*

*Stewart agreed to pick her up from the bar in his car and take her to meet his friend Monika who he said could arrange the trip to Australia. Stewart picked Lisa up and dropped her off at Monika's house. Monika later paid Stewart \$5,000 for recruiting Lisa.*

*Monika told Lisa that if she went to Australia to work as a prostitute she would earn \$100,000 in her first year. She told her that her earnings for her first 400 sexual acts would be given to Monika and her colleagues in exchange for providing a passport, visa, air ticket, clothes, accommodation and food.*

*Monika arranged for Lisa to travel to Australia with Craig, posing as a couple in order to make it easier to pass through Australian immigration. Craig was paid \$2,000 for travelling to Australia with Lisa.*

*When Lisa arrived in Australia she was picked up from Melbourne airport by David. David had paid \$15,000 to Monika to collect Lisa from the airport and 'do what he wants with her'. David asked Lisa to give him her passport. She gave it to him and he didn't give it back to her.*

*David took Lisa to a small apartment in Melbourne where David raped her 7 times over 3 days. Lisa was not able to leave the apartment without David. The door to the apartment was locked from the outside of the apartment and there were bars on the windows. On her fourth day in Melbourne, David drove her to a brothel called 'Club Exotica'.*

*A man named Peter accompanied David and Monika in the car to the brothel holding a knife. David threatened to kill Lisa if she tried to run away.*

*At the brothel, Lisa serviced 9 men on her first day. Each man paid \$110 to Jason, who manages the brothel. Lisa received no money for the sexual services she performed. One of the men asked Lisa to engage in anal sex. When she complained to Jason he slapped her and told her not to complain. One of the men raped Lisa without wearing a condom.*

*The next day, in exchange for \$15,000, David transferred Lisa's contract to Robert. David gave Robert Lisa's passport. Lisa continued working at Club Erotica. A few weeks later, compliance officers of the Department of Immigration and Multicultural Affairs and Victoria police officers raided the brothel. Lisa was unable to produce a valid passport or visa.*

*She was too frightened of David, Peter, Jason and Robert to tell the police or the Immigration officials about her situation. She was transferred to the Maribyrnong Immigration Detention Centre, where she was detained along with other male and female detainees. While in detention, she was not given the contact numbers of, or the opportunity to speak with, a lawyer, migration agent, doctor, social worker or non-government organisation.*

*48 hours after being detected by DIMIA compliance, she was deported to her country of origin. Lisa was not aware of any support services for victims of trafficking in her home country.*

*6 weeks later, Lisa was detected by DIMIA working in a brothel located 4 kilometres from 'Club Exotica'.*

## **Introduction: the difference between slavery and servitude offences**

The crux of engaging in slave-trading is buying and selling someone as if they are owned property.

In the context of trafficking of women to Australia for sex slavery, this often extends to transferring the 'contract' requiring a woman to perform a set number of unpaid sexual services from one person to another. For example, Lisa was sold by David to Robert.

In order to make women comply with the unfair and illegal nature of the 'contract' a trafficked woman is under, the 'owner' is likely to make various threats and use various methods to control the woman's freedom.

The current slavery offences in the Criminal Code are designed to target slave ownership, slave trading or facilitating slave trading. A second set of offences in the code, 'sexual servitude offences', are targeted at coercing someone to provide sexual services. In the context of women trafficked to Australia for prostitution, offences relating to both the buying and selling of women (slavery) and the imposition of servile conditions (sexual servitude) are relevant.

## Submissions (section 3) – Legal Reform

The Commonwealth Criminal Code will better address slavery and sexual servitude if 3 main kinds of reforms are made to the Commonwealth Criminal Code.

First, the Code should be revised to meet the standards in the UN Trafficking Protocol. Second, the existing offences of slavery and sexual servitude should be strengthened to better address the practices of traffickers. Third, each element of the traffickers typical practices should become the basis for new discreet offences. These new discreet offences will be important as fall back offences.

Project Respect suggests that the following specific amendments should be made:

1. The code should be amended so that relevant offences better reflect the definition of trafficking in the UN Trafficking Protocol. The Protocol contains an internationally agreed definition of trafficking, which is not reflected in Australia's current legislation despite the fact that Australia has ratified it. In particular:
  - 1.1. The Protocol encompasses circumstances where women's vulnerability is exploited and where coercion, rather than force, is used to sexually exploit women; and
  - 1.2. The Protocol has a strong focus on witness protection, not just criminal prosecution.
2. The parts of Division 270 which define 'slavery' and 'slave trading' do not include 'imprisoning' or 'detaining' a person. Given that the traffickers of women to Australia for prostitution tend to lock the women up either at the brothel or in cramped living quarters, this common aspect of the traffickers' activities is not captured by this law.
3. The definition of 'sexual servitude' in the legislation should be expanded. The definition currently fails to address some of the harm that women trafficked to Australia for prostitution commonly suffer. It is likely that the definition was narrowly construed due to concerns about indirectly outlawing aspects of the regulated prostitution industry. Provisions addressing traffickers' tendency to prevent a trafficked woman from leaving her place of residence or leaving a vehicle must be implemented. These locations are both places where a trafficked woman's liberty is typically restrained.
4. New offences need to be introduced to target, as much as possible, the typical conduct of those who traffic women for prostitution.

5. A new offence that makes it illegal to assign, or take an assignment of, a sex worker's contract of employment for the purpose of sexual exploitation, should be introduced to target the buying and selling of 'contract girls'.
  
6. New provisions should address situations where a woman is compelled to perform sex in ways she does not want to, at times she does not want to, or more often than she wants to, due to threats of force, harm or detriment. Examples of the types of exploitative sexual requirements trafficked women may be forced or coerced to do are:
  - engaging in non-consensual sex;
  - engaging in sex without a condom;
  - engaging in anal sex;
  - sadomasochistic sex;
  - requirements to see too many customers in one day;
  - requirements to do prostitution for long hours or at unwanted times (for example at night rather than during the day);
  - requirements to do prostitution when unwell; and
  - requirements to have sex when menstruating.
  
7. Another important offence required is one which makes it illegal to coerce someone to perform sexual services by threatening their family or friends.
  
8. A new offence should be introduced which makes it illegal to require someone to perform sexual services to pay off a debt. In order to avoid inadvertently criminalising circumstances where a woman in the sex industry receives an advance on her earnings and then owes the brothel owner some hours, an exception could be made that up to 1 month's earnings can be paid to a woman in prostitution in advance without invoking the offence.
  
9. An offence should be introduced to target circumstances where traffickers mislead someone about their migration status and take advantage of that person's lack of accurate knowledge about their migration status. This would be very useful given that traffickers frequently lodge false and fraudulent refugee visa applications and deceive women about their migration status.
  
10. Another important amendment which should be made is to create an offence which targets the lodgement of false and fraudulent visas for the purpose of sexual exploitation.
  
11. Another important fallback offence which exists in the US is withholding travel documents. A new offence should be introduced along these lines in order to

address the trafficker's typical act of refusing to allow victims to have their passports and visas.

12. A specific offence should be introduced to target couriers. Traffickers typically arrange for women to be accompanied on the plane trip to Australia and pay amounts of money to people willing to act as 'couriers'. An offence that outlawed the activity of accompanying someone to Australia for the purpose of sexual exploitation would be a useful targeted offence.
13. The offence of deceptive recruiting is an important fallback offence because it focuses on preparatory conduct – it is not necessary that a situation of sexual servitude or slavery has arisen. The major weakness in the deceptive recruiting offence is that it does not outlaw deception about the *terms and conditions* of the sex industry work. It is only directed at women who do not know they will be doing prostitution. This means that the deceit of someone who knows they are being recruited to Australia for prostitution, but does not know they will be in a position of slavery or sexual servitude, is not covered by this offence. Underlying the narrow scope of this offence is an inappropriate moral distinction that those who agree to do prostitution are less deserving of justice and that someone who consents to prostitution consents to boundless sexual degradation.

Another major set of law reform is urgently required in relation to the availability of visas for victims of trafficking. The inadequate current visa options for trafficked women, and the negative impact of this on women's recovery and prosecutions against traffickers could be addressed through the introduction of a special trafficked women visa.

## **A new trafficked women visa**

### **1. Migration issues**

- 1.1. Migration issues are of crucial relevance to this inquiry into trafficking of women for sexual servitude. They are particularly relevant to the Committee's examination of the adequacy of the current legislative framework and the Committee's relationship with relevant state and federal agencies.
- 1.2. Women are trafficked in the context of irregular and forced migration. Trafficked women may have willingly or unwillingly broken Australia's immigration laws. Regardless of whether they have complied with Australian migration laws, trafficked women in Australia are victims of serious crime who need our protection.
- 1.3. Allowing trafficked women to stay in Australia when they are discovered here is critical for three main reasons. First, trafficked women require a stable and supportive environment in order to recover from the trauma and

exploitation they have experienced. Second, if trafficked women are unable to stay in Australia, they may be trafficked again. Third, successful prosecutions of traffickers require the cooperation of trafficked women, who are likely to possess the best evidence of crimes committed. Accordingly, if trafficked women are deported, so is the evidence needed to investigate and prosecute traffickers.

- 1.4. The link between providing visa rights and support services and increasing successful prosecutions has also been made in countries other than the US. In Belgium, Italy, Spain and the Netherlands, the same trend has occurred.
- 1.5. In Austria, there are residence rights for trafficked women, granted by the Aliens Act including rights to psychological, health and legal assistance for some victims. Each federal province funds at least one women's shelter for use by trafficked women.
- 1.6. In Australia, the important link between protecting trafficked women and prosecuting traffickers needs to be made. One important part of this link is the provision of a new trafficked women's visa.

## **2. The current position for trafficked women**

- 2.1. Under the Migration Act, non-Australians are not permitted to enter or stay in Australia unless they have been granted a valid visa. Non-Australians in Australia who do not have a valid visa are termed 'unlawful non-citizens'. The Department of Immigration, Multicultural and Indigenous Affairs ("DIMIA") is required to detain 'unlawful non-citizens' under Australia's mandatory detention laws and remove them from Australia as soon as reasonably practicable.
- 2.2. Generally, a non-Australian person in Australia will be removed from Australia if they:
  - do not have a valid visa;
  - have a visa obtained by fraud; or
  - contravene the conditions of their visa (ie by working without work rights).
- 2.3. Victims of sexual servitude, sexual slavery and deceptive recruiting may fall into category (a), (b) or (c) and DIMIA may detain them in immigration detention, reception and processing centres and remove them from Australia.
- 2.4. Victims may wish to stay in Australia, rather than return to their country of origin, because they:
  - wish to cooperate with police to gather evidence against or be witnesses in prosecutions of the criminals who have exploited them;
  - fear harm from traffickers, including being re-trafficked, if they return to their country of origin; and
  - have limited life options outside Australia.

- 2.5. Generally, victims of trafficking travel to Australia on short term student or tourist visas and cannot remain Australia long-term unless they receive one of the following types of visas:
- a criminal justice visa;
  - a protection visa; and
  - visas depending on other circumstances, such as a spouse visa.

### **3. Criminal Justice Visas (“CJV’s”)**

- 3.1. A CJV enables a trafficked woman to stay in Australia for the purpose of criminal justice. A requesting agency (for example, federal or state police or a director of public prosecutions) can request a CJV from DIMIA if the presence of a non-Australian person is required in Australia for the ‘administration of criminal justice’. The requesting agency must issue a CJV certificate indicating that the presence of the person in Australia is required. DIMIA will not issue a CJV visa without the CJV certificate.
- 3.2. Before issuing a CVJ, DIMIA must be satisfied that the costs of keeping the non-Australian in Australia and removing the non-Australian from Australia will be met by the requesting agency.
- 3.3. Once the person is no longer required in Australia for the administration of justice, the CJV certificate and the CJV is cancelled and the person must either leave Australia or obtain another valid visa.
- 3.4. A woman who is granted a CJV in the context of cooperating with authorities who are investigating or prosecuting traffickers has no guarantee that she will be able to stay in Australia for longer than the period she is needed for the administration of criminal justice. In other words, once the investigation or criminal trial is concluded, the woman faces a real risk of deportation.
- 3.5. The agency who requests the CJV also has the obligation to provide financial and other support to the women while they remain in Australia. This can be problematic. In cases where police agencies request CJV’s the provision of financial and other support can be seen as inducing the information provided by trafficked women. Traffickers’ defence lawyers may seize on this issue to discredit the evidence given by trafficked women in court.

### **4. Protection visas**

- 4.1. As a party to the *1951 Refugees Convention*, Australia has agreed to allow those asylum seekers who meet the definition of refugee, may remain in Australia, at least temporarily, rather than return to a country where they may face persecution. This right is provided in the Commonwealth Migration Act 1958.
- 4.2. Some victims of trafficking may meet the definition of ‘refugee’ and be allowed to stay on a ‘protection visa’ which is available to refugees.

- 4.3. The definition of ‘refugee’ in international and Australian law is someone who, owing to a well-founded fear of persecution on the basis of their race, religion, nationality, political opinion or membership of a social group, is unwilling or unable to be protected by their country of origin.
- 4.4. There have been some successful applications for protection visas on the basis of refugee claims by trafficked women in Australia. To succeed in an application for a protection visa, the victim needs to argue that she fears persecution on the basis of her membership of the social group ‘trafficked women’ and that the authorities in the country of origin are unwilling or unable to protect her from the traffickers. In some countries, officials in a woman’s country of origin may have in fact been involved in trafficking her to Australia.
- 4.5. If the woman’s application to DIMIA for a protection visa is refused, she can apply to the Refugee Review Tribunal (“**RRT**”) for them to make a fresh decision about her application. If the RRT refuses her application, she has at least two more options. One option is to apply to the Federal or High court to review the RRT’s decision. Another option is to apply to the Minister for Immigration under section 417 of the *Migration Act 1958* for a visa which the Minister can grant on humanitarian grounds in his absolute discretion.
- 4.6. The CJV application process requires cooperation between DIMIA and the requesting agency, which can be bureaucratic and time consuming. A protection visa can provide permanent protection<sup>21</sup>, whereas the CJV lasts only as long as necessary for the administration of criminal justice. Without permanent protection, a woman may be unwilling to speak out against the organised criminals who have exploited her. While the CJV is the most obvious visa option for women who have been trafficked there are important reasons to explore protection, spouse and other visa options for these women. CJV’s require police commitments to cover the costs of the women remaining in Australia, whereas once a protection visa application is lodged, the woman can remain in Australia without the financial assistance of the police.
- 4.7. Even if the protection visa application ultimately fails, the woman can work legally up to the time when the RRT refuse her application if the application is lodged within 45 days of her arrival in Australia. Under general immigration law, if someone arrives in Australia on a valid visa, for example a tourist visa, and applies for a protection visa within 45 days of arrival, that person is eligible for work rights. This is known as ‘the 45 day rule’. Those who traffic women to Australia frequently abuse this right by submitting a baseless application for a protection visa on the trafficked woman’s behalf, without the knowledge of the trafficked woman. Her work rights continue until the time the RRT rejects the protection visa application. At this time, the traffickers typically ‘dob’ the woman in to DIMIA, who then detain and

---

<sup>21</sup> If DIMIA or the RRT is satisfied that an application meets the definition of “refugee”, the applicant is eligible for a permanent protection visa unless the applicant entered Australian without a valid visa, in which case, only a temporary protection visa, which lasts approximately 3 years and may be renewed in certain circumstances, is available.

deport her. Often, the dob-in time conveniently coincides with the time when the woman has performed the required number of sexual acts to work off her contract. Instead of staying in Australia to earn some money, the woman finds herself detected, detained and deported by DIMIA.

- 4.8. It is worth noting that if a trafficked woman makes a genuine application for a protection visa within 45 days, receives work rights and chooses to be re-employed in the sex industry, this may have a negative impact on the credibility of the woman as a witness in the prosecution of traffickers. Accordingly, it may be prudent to refer the woman to social service agencies who may be able to provide employment and training opportunities outside the sex industry for victims of trafficking. At the time of writing, there is no such available social service in Victoria. If a woman lodges her protection visa 45 days after arriving in Australia, she is not eligible for work rights and there is no government funded welfare payment for people in this situation. She will be forced to rely on charities to meet her basic needs or she may choose to work, in breach of her visa conditions. If she is in immigration detention, her basic needs are met.
- 4.9. If a trafficked woman arrives in Australia on a valid visa, she may be eligible for a bridging visa so that she can be released from immigration detention while her protection visa application is processed. But while the woman is waiting for her protection visa application to be processed, she is not eligible for various government-funded services such as translation and interpreting, health care, counselling and education programs. The absence of such support services can mean that a woman lacks the security and confidence to cooperate with police investigations into and prosecutions of traffickers.

## **5. Migration and legal advice**

- 5.1. Referring trafficked women to lawyers and migration agents for visa advice provides an extra source of support and independent advice to women who are more likely to cooperate with authorities if they feel confident about their legal and migration rights and are well-supported. If a trafficked woman needs advice about the availability of a protection visa, specialist legal centres such as the Refugee and Immigration Legal Centre in Victoria, the Refugee Advice and Casework Service in NSW and Legal Aid in each state and territory, usually provide free and confidential advice.
- 5.2. Trafficked women may also need independent legal advice in relation to their rights as witnesses in prosecutions of traffickers.

## **6. Spouse visas**

- 6.1. Trafficked women may also be eligible for a spouse visa if they are in a 'marriage-like' relationship with an Australian citizen. A referral should be made to a migration agent (such as at RILC) to provide advice about this and other visa options if a trafficked woman is in this situation.

## 7. A new type of visa for trafficked women

- 7.1. In the United States, victims of severe forms of trafficking may be eligible for a number of benefits and services regardless of immigration status. The US State Department has established a 'trafficking office' that provides victims of trafficking with access to services such as shelter, medical care and voluntary repatriation.
- 7.2. According to information on the website of the US Department of Justice, to receive the assistance, victims of severe forms of trafficking who are eighteen years or older must be certified by the U.S. Department of Health and Human Services ("HHS") in consultation with the U.S. Department of Justice. Victims of severe forms of trafficking who are under eighteen years of age are also eligible for certain benefits but do not need to be certified.
- 7.3. The HHS must certify that the victim:
  - is willing to assist in every reasonable way in the investigation; and
  - is a victim of severe forms of trafficking in persons; and
  - has either made a bona-fide application for a T visa with the Immigration and Naturalization Service or is a person whose continued presence in the United States is necessary for the prosecution of traffickers in persons.
- 7.4. Government-funded programs, services, and assistance necessary for the protection and rehabilitation of trafficked women, such as crisis counselling, short-term shelter or housing assistance and mental health assistance, are available to trafficked women, regardless of their immigration status.
- 7.5. Victims are also provided with reasonable access to translation and interpretation services and receive information about pro bono and low-cost legal services, including immigration services. Victims of severe forms of trafficking may also be eligible for other services and benefits that are generally available to federal crime victims. Federal agencies, such as the Federal Bureau of Investigation (FBI), the INS, and U.S. Attorneys' offices have victim specialists who assist victims of federal crimes throughout federal criminal investigations and prosecutions and ensure that victims receive information about their rights and referrals to necessary services.
- 7.6. The US *Trafficking Victims Protection Act 2000* created a new special visa for victims of trafficking who are willing to provide information on traffickers to police. The visa provides temporary residence for up to 3 years and may also lead to permanent residency in circumstances where repatriation may lead to harm or extreme hardship.<sup>22</sup> Since introducing the T visa and

---

<sup>22</sup> See Sean Murphy, 'International trafficking in persons, especially women and children' *The American Journal of International Law*, Vol 95, no 2, at 410 and Dr Kerry Cunningham and Jane Hearn "Trafficking and the Sex Industry: from Impunity to Protection" *Current Issues Brief No 28, 2002-2003* Australian Department of Parliament Library, at 14.

support services, the US has doubled the number of investigations into trafficking and tripled the number of convictions for trafficking.<sup>23</sup>

---

<sup>23</sup> See US Department of Justice, Fact Sheet, “Accomplishment in the Fight to Prevent Trafficking in Persons, Washington, 25 February 2003 as discussed in Cunningham & Hearn, above, 14-15.