

## **INQUIRY INTO HUMAN TRAFFICKING**

**Organisation:** The Law Society of New South Wales

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22 February 2017

The Hon. Paul Green MLC  
Chair  
NSW Legislative Council Select Committee on human trafficking  
Parliament House  
Macquarie Street  
Sydney NSW 2000

By email: [humantraffickingcommittee@parliament.nsw.gov.au](mailto:humantraffickingcommittee@parliament.nsw.gov.au)

Dear Mr Green,

**Inquiry into human trafficking**

I am writing on behalf of the Law Society of NSW regarding the NSW Legislative Council Select Committee on human trafficking's (the Committee) inquiry into human trafficking (the inquiry). The Human Rights Committee has contributed to this submission.

As the Committee may be aware, the Commonwealth Parliament's Joint Committee on Law Enforcement is also currently conducting an inquiry into human trafficking. This inquiry will examine Commonwealth law enforcement responses to human trafficking, including slavery, slavery-like practices (such as servitude, forced marriage and forced labour) and people trafficking, to and from Australia. Findings from the Joint Committee's inquiry will also be relevant to the terms of reference of the present inquiry.

Also of relevance to this inquiry is the NSW Legislative Assembly's Select Committee on the Regulation of Brothels' 2015 inquiry into the regulation of brothels. This inquiry examined, among other things, the protection of sex workers in the industry, including issues around organised crime and sex trafficking. This inquiry made a number of findings relevant to human trafficking and slavery, which are attached, for your information.<sup>1</sup>

We provide the following specific comments in response to the terms of reference.

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<sup>1</sup> NSW Legislative Assembly Select Committee on the Regulation of Brothels, *Inquiry into the Regulation of Brothels* (2015), x.

**a) The role and effectiveness of NSW law enforcement agencies in responding to human trafficking including: how NSW law enforcement agencies respond to human trafficking, including slavery, slavery like practices such as servitude, forced labour, and people trafficking; and the influence of organised crime in human trafficking in NSW**

The Commonwealth Attorney-General's Department's submission to the Parliamentary Joint Committee on Law Enforcement's inquiry into human trafficking notes that in Australia, human trafficking and slavery matters largely involve small crime groups, as opposed to larger organised crime groups.<sup>2</sup> The submission notes that small crime groups use family or business contacts overseas to facilitate recruitment, movement and visa fraud.<sup>3</sup>

However, the NSW Legislative Assembly's Select Committee on the Regulation of Brothels 2015 inquiry into the regulation of brothels found that there is still significant criminal activity present in the sex services industry.<sup>4</sup> The inquiry found that around 40 brothels have some recorded connection or ties to outlaw motorcycle gangs in NSW Police intelligence holdings. The inquiry also heard evidence that there are also numerous reports of links to Asian organised crime in NSW brothels.

Evidence given to that inquiry by the NSW Police Force noted that it has intelligence of organised crime, including outlaw motorcycle gangs, being involved in the sex services industry in NSW.<sup>5</sup> In giving evidence to the inquiry, former NSW Deputy Commissioner Kaldas stated that results from the NSW Police Force's analysis indicate that there are clearly issues in the industry in terms of servitude, the use of illegal workers and extortion by or involvement of organised crime and outlaw motorcycle gang groups.<sup>6</sup>

On this issue, the Law Council's February 2016 submission to the Joint Committee's inquiry recommended that as a priority, funding should be allocated to develop primary research into the extent to which organised crime is involved in human trafficking in Australia, noting that current research was limited to predominantly government and Parliamentary reports.<sup>7</sup> The Law Society supports this recommendation, to ensure any proposed reforms are evidence-based.

**b) The prevalence of human trafficking in NSW**

Regarding the prevalence of human trafficking in NSW, the NSW Police Force's evidence to the inquiry into brothels noted that the reporting of sexual servitude was increasing in NSW despite sexual servitude remaining an under reported crime in

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<sup>2</sup> Attorney-General's Department, *Submission to Parliament Joint Committee on Law Enforcement's inquiry into human trafficking*, 16 February 2016, accessed at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Law\\_Enforcement/Human\\_trafficking/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Human_trafficking/Submissions), 8.

<sup>3</sup> Ibid.

<sup>4</sup> NSW Legislative Assembly Select Committee on the Regulation of Brothels, *Inquiry into the Regulation of Brothels* (2015), accessed at: <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5198/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>, 47.

<sup>5</sup> Ibid, 48.

<sup>6</sup> Ibid.

<sup>7</sup> Law Council of Australia, Submission No 21 to Joint Committee on Law Enforcement, *Inquiry into Human Trafficking*, (15 February 2016), accessed at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Law\\_Enforcement/Human\\_trafficking/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Human_trafficking/Submissions), 12.



NSW, Victoria and at the Federal level.<sup>8</sup> However, the inquiry into brothels found that the full extent of the issue is not well known due to the sex services industry operating in a largely private and discrete manner.<sup>9</sup> Former NSW Deputy Commissioner Nick Kaldas provided reasons for under reporting – that a number of sex premises operate without council approval and that a lack of a centralised record of those which do have approval meant it was problematic to investigate or know about such issues.<sup>10</sup>

The United States Department of State *Trafficking in Persons Report* (July 2015) found that Australia was a destination country for women trafficked into the sex services industry.<sup>11</sup> This statement is affirmed by the NSW and Victorian and Federal Police forces, in evidence to the NSW inquiry into the regulation of brothels. The *Trafficking in Persons Report* stated that, in relation to sex trafficking, many women from Asia migrate to Australia (legally or illegally) and can often be coerced into prostitution. The Report found that some victims of sex trafficking or forced marriages are subject to domestic servitude.<sup>12</sup> In relation to labour trafficking, unscrupulous employers and labour hire companies subject men and women from Asia and the Pacific Islands to forced labour, often in agriculture, construction, hospitality and domestic servitude. Many victims are international students who are coerced into working above their maximum allowable hours and are subsequently vulnerable due to fears of breaching their visa requirements.<sup>13</sup>

Anti-Slavery Australia's submission to the Parliamentary Joint Committee on Law Enforcement's inquiry into human trafficking acknowledges that many victims of human trafficking are initially reluctant to engage with law enforcement, particularly as in many cases, victims of trafficking have instilled in them a fear of government authorities such as immigration officials or police.<sup>14</sup> On this issue, the Law Society supports Anti-Slavery Australia's recommendation to broaden the existing referral pathways for immigration and law enforcement officers, to refer suspected victims of human trafficking or slavery to relevant support services, such as the Australia Red Cross Support for Trafficked People Program.<sup>15</sup>

### **c) The effectiveness of relevant legislation and policies**

The Commonwealth *Criminal Code Act 1995* (the Criminal Code Act) contains a comprehensive range of offences that criminalises human trafficking, slavery and slavery-like practices.<sup>16</sup>

As detailed in the NSW Government's submission to the inquiry into the regulation of brothels, the sex industry is decriminalised in NSW.

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<sup>8</sup> Ibid, [4.9].

<sup>9</sup> Ibid, 51-52.

<sup>10</sup> Ibid, 52.

<sup>11</sup> NSW Legislative Assembly Select Committee on the Regulation of Brothels, *Inquiry into the Regulation of Brothels* (2015), 52.

<sup>12</sup> United States Department of State, *Trafficking in Persons Report 2015*, (July 2015) United States Department of State, accessed at: <https://www.state.gov/documents/organization/245365.pdf>, 76.

<sup>13</sup> United States Department of State, *Trafficking in Persons Report 2015*, (July 2015) United States Department of State, 76.

<sup>14</sup> Anti-Slavery Australia, Submission to Joint Committee on Law Enforcement, Inquiry into human trafficking, 2016, 25.

<sup>15</sup> Ibid.

<sup>16</sup> Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth).

As such, the key legislative frameworks governing the operation of the sex industry in NSW are:<sup>17</sup>

- *Environmental Planning and Assessment Act 1979* (EP&A Act): regulates brothels as a land use through the planning and development assessment process;
- *Local Government Act 1993*: enables the enforcement of conditions of consent and inspections of premises;
- *Restricted Premises Act 1943*: provides a definition of a brothel and outlines powers to seek an order to close a brothel;
- *Summary Offences Act 1988*: provides a definition of prostitution and provides offences relating to sex work including advertising sex work and coercion;
- *Crimes Act 1900*: provides offences relating to sexual servitude;
- *Public Health Act 2010*: provides public health and disease control measures and offences relating to sexually transmissible infections; and
- *Work Health and Safety Act 2011* (WH&S Act): provides work health and safety requirements.

In its submission to the Joint Committee's inquiry into human trafficking, the Commonwealth Attorney-General's Department noted the low number of convictions for human trafficking and slavery offences under the Commonwealth legislation, which stood at only 17 for the period between 2004 and 2016.<sup>18</sup>

Similarly, the NSW Government's submission to the inquiry into the regulation of brothels noted that in the past five years, there have been no convictions in NSW for sexual servitude (s 80D of the *Crimes Act 1900*) or coercion (s 15A of the *Summary Offences Act 1988*).<sup>19</sup>

The NSW Police Force is responsible for investigating criminal activity in the brothel industry and can apply to the Supreme Court to close down any brothel suspected of any 'disorderly conduct' as defined in the *Restricted Premises Act 1943*.

A 2013 inquiry by the NSW Community Relations Commission into the exploitation of people through trafficking found that the NSW Police Force encountered problems encouraging victims and witnesses to come forward with information, largely due to a cultural mistrust of government and law enforcement agencies, fear of being deported as an 'illegal migrant', as well as threats by the alleged offenders.<sup>20</sup>

The submission from Anti-Slavery Australia to the 2013 NSW Community Relations Commission inquiry recommended that police and other authorities need to improve their initial actions in responding to trafficked people, once they have been identified.<sup>21</sup> The importance of gaining the trust and cooperation of victims and witnesses is seen as crucial in gathering evidence and achieving successful prosecutions.<sup>22</sup> The Law Society supports this recommendation, which is also consistent with the UN Office of the High Commissioner for Human Rights'

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<sup>17</sup> NSW Government, Submission to the Legislative Assembly Select Committee on the Regulation of Brothels' Inquiry into the Regulation of Brothels, August 2015, 3.

<sup>18</sup> Commonwealth Attorney General's Department, Submission No 17 to Joint Committee on Law Enforcement, *Inquiry into Human Trafficking*, 16 February 2016, 6.

<sup>19</sup> NSW Department of Premier and Cabinet, Submission No 137 to Legislative Assembly Select Committee on the Regulation of Brothels, *Inquiry into the Regulation of Brothels*, 20 August 2015, 8.

<sup>20</sup> NSW Community Relations Commission, *Inquiry into the exploitation of people through trafficking, in all its forms in NSW*, 3 December 2013, 41.

<sup>21</sup> *Ibid.*, 42.

<sup>22</sup> *Ibid.*



Recommended Trafficking Principles and Guidelines on Human Rights and Trafficking, which notes that: “*Trafficked persons shall not be detained, charged or prosecuted for their illegal entry into or residence in countries of transit or destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.*”<sup>23</sup>

In particular, the Law Society notes the need for greater availability of legal assistance and support services for victims of human trafficking and slavery, and the need for greater coordination between state and federal agencies to address forced marriage of children under the age of 16.<sup>24</sup> This issue was raised in Anti-Slavery Australia’s submission to the Joint Committee’s inquiry into human trafficking, which acknowledged that as child protection is a state issue, there is a need for clear coordination between federal and state agencies to establish effective referral and support services for children who are facing forced marriage.<sup>25</sup>

### ***Recommendations to the Commonwealth Parliament’s Joint Committee on Law Enforcement’s inquiry into human trafficking***

A number of stakeholder submissions to the Joint Committee’s inquiry into human trafficking made consistent recommendations for legislation and policy reform, to address the low level of conviction rates, and to improve support services for victims of trafficking and slavery.<sup>26</sup> The Law Society submits that these recommendations should be considered by the present inquiry, where appropriate.

Anti-Slavery Australia and the Law Council submissions recommended the establishment of an independent anti-slavery commissioner, who would have responsibility to monitor and review the effectiveness of Commonwealth law enforcement responses to human trafficking and slavery, and identify any areas for improvement.<sup>27</sup> Specifically, the United Kingdom’s Anti-Slavery Commissioner, who was appointed under the *Modern Slavery Act 2015* (UK), is a recent example of the effectiveness of such a position. The Law Society refers this inquiry to Anti-Slavery Australia’s submission, regarding the specific features of such a role in Australia.

The Australian Human Rights Commission (AHRC),<sup>28</sup> Anti-Slavery Australia<sup>29</sup> and the Law Council<sup>30</sup> submissions all supported the implementation of a human rights-based approach to measures to address human trafficking and slavery. Australia has ratified the *United Nations Convention against Transnational Organized Crime* (UNTOC) and the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the*

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<sup>23</sup> United Nations Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 2010, accessed at: [http://www.ohchr.org/Documents/Publications/Commentary\\_Human\\_Trafficking\\_en.pdf](http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf).

<sup>24</sup> Anti-Slavery Australia, Submission to Joint Committee on Law Enforcement, Inquiry into human trafficking, 2016, 32.

<sup>25</sup> Ibid, 30.

<sup>26</sup> These include submissions from the Australian Human Rights Commission, the Law Council of Australia and Anti-Slavery Australia.

<sup>27</sup> Anti-Slavery Australia, Submission to Joint Committee on Law Enforcement, Inquiry into human trafficking, 2016, 5.

<sup>28</sup> Australian Human Rights Commission, Submission to Joint Committee on Law Enforcement, Inquiry into human trafficking, 4 March 2016, 5.

<sup>29</sup> Anti-Slavery Australia, Submission to Joint Committee on Law Enforcement, Inquiry into human trafficking, 2016, 23.

<sup>30</sup> Law Council of Australia, Submission No 21 to Joint Committee on Law Enforcement, Inquiry into Human Trafficking, (15 February 2016), 6.

*Convention on Transnational Crime* (the Trafficking Protocol) and is signatory to the *Convention Against Slavery* (1926).<sup>31</sup>

Australia has also ratified other conventions that prohibit different forms of exploitation that may occur in trafficking or slavery and slavery-like situations including debt bondage, forced labour, child labour and forced marriage. These include the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of Elimination of All forms of Discrimination Against Women*, the *Convention on the Rights of the Child* and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*.<sup>32</sup> Therefore, the Australian Government has an obligation to prevent trafficking and slavery and protect the rights of people who are survivors of trafficking and slavery, particularly women and children.

Further, as noted in Anti-Slavery Australia's submission, when the former Special Rapporteur on trafficking in persons visited Australia in 2011, she expressed concern that, "all ongoing support services are dependent on a contribution to criminal justice process or investigation".<sup>33</sup> The former Special Rapporteur also stated that the focus on criminal justice "imposes an additional burden on victims of trafficking and does not represent an adequate knowledge of their status as victims," and therefore does not have a human rights based, or victim based, approach to protecting those who have been exploited.<sup>34</sup>

To ensure that the Australian Government complies with its international human rights obligations, the Law Society strongly supports the Australian Government adopting a human rights based approach to inform all measures to prevent, protect and redress trafficking and slavery. In particular, the Law Society also submits that a child rights approach should be adopted for victims under 18 years of age, to ensure their particular vulnerabilities are also addressed.

The Law Society also strongly supports recommendations by the AHRC and Anti-Slavery Australia regarding the development of transparent measures to regulate trafficking and slavery within supply chains. The Law Society notes that there have been a number of recent cases in Australia, particularly in the horticultural sector, which demonstrate labour exploitation in Australia is widespread.<sup>35</sup>

In particular, the Law Society recommends the introduction of legislation similar to the United Kingdom's *Modern Slavery Act* (2015), which includes specific transparency in supply chains provisions to address these issues. On this issue, the Law Society welcomes the announcement of a federal inquiry into establishing a *Modern Slavery Act* in Australia.<sup>36</sup>

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<sup>31</sup> Australian Human Rights Commission, Submission to Joint Committee on Law Enforcement, Inquiry into human trafficking, 4 March 2016, 5.

<sup>32</sup> Ibid, 6.

<sup>33</sup> Anti-Slavery Australia, Submission to Joint Committee on Law Enforcement, Inquiry into human trafficking, 2016, 23.

<sup>34</sup> Ibid.

<sup>35</sup> See for example, Fair Work Ombudsman, '26 migrants exploited at NSW blueberry farm', *SBS online*, 25 August 2016, accessed at: <http://www.sbs.com.au/yourlanguage/hindi/en/article/2016/08/25/26-migrants-exploited-nsw-blueberry-farm>; Nick McKenzie, 'Fruit supplier to Coles and Woolworths using illegal foreign workers', *ABC News Online*, 15 November 2016, accessed at: <http://www.abc.net.au/news/2016-11-15/fruit-supplier-to-coles-woolworths-using-illegal-foreign-workers/8023570>.

<sup>36</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into establishing a Modern Slavery Act in Australia*, accessed at:



The introduction of specific transparency in supply chain legislation is consistent with the Australian Government's recent announcement at the National Roundtable on Human Trafficking and Slavery that it will strengthen its response to human trafficking and slavery following recommendations made by the Australian Government's multi-stakeholder Supply Chains Working Group.<sup>37</sup> Specifically, the Australian Government indicated that it will work collaboratively with business and civil society to:

- create a suite of awareness-raising materials for business;
- further consider the feasibility of a model for large businesses in Australia to publicly report on their actions to address supply chain exploitation;
- examine options for an awards program for businesses that take action to address supply chain exploitation; and
- explore the feasibility of a non-regulatory, voluntary code of conduct for high risk industries.

The Law Society submits that the present inquiry should consider ways in which the NSW Government and relevant agencies can play a role in addressing the ongoing concern of labour exploitation in Australia.

Additional recommendations to the Joint Committee's inquiry into human trafficking, which the Law Society supports, include:

- Establishing a national compensation scheme for victims of human trafficking, slavery and slavery-like practices;
- Greater support services for victims of human trafficking, slavery or slavery-like practices;
- Additional protections regarding unaccompanied minors;
- Increased funding for support programs and legal aid; and
- Ratification of additional international treaties (outstanding protocols).

Thank you for considering this submission. If you have any questions, please contact Anastasia Krivenkova, Principal Policy Lawyer, on \_\_\_\_\_ or \_\_\_\_\_

Yours sincerely,

  
**Pauline Wright**  
**President**

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[http://www.apf.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery/Terms\\_of\\_Reference](http://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Terms_of_Reference).

<sup>37</sup> Joint Media Release, the Hon Julie Bishop MP, Minister for Foreign Affairs, the Hon Peter Dutton MP, Minister for Immigration and Border Protection, the Hon Michael Keenan MP, Minister for Justice, Minister Assisting the Prime Minister for Counter Terrorism, 'Working with business and civil society to target human trafficking and slavery', 28 November 2016, accessed at: [http://foreignminister.gov.au/releases/Pages/2016/jb\\_mr\\_161128.aspx](http://foreignminister.gov.au/releases/Pages/2016/jb_mr_161128.aspx).



**NSW Legislative Assembly Select Committee on the Regulation of Brothels -  
2015 inquiry into the regulation of brothels**

***Findings relevant to the present inquiry into human trafficking:***

- That unapproved massage parlours and karaoke bars where sexual services are provided without planning approval and in an underground manner, allow significant potential for them to be affiliated with organised crime or human trafficking and sexual servitude especially compared with the approved sector of the sex services industry in NSW (finding 9);
- That there are structural aspects of larger operations in the sex services industry which make them attractive to organised crime, in particular their use of cash which is of assistance in laundering money obtained from unrelated enterprises of an illegal nature (finding 10);
- That successful sex slave prosecutions and evidence from both the Australian Federal Police and the NSW Police Force make it probable that (finding 11):
  - Sexual servitude occurs in NSW; and
  - Criminal networks do operate in some parts of the NSW sex services industry;
- That there are significant numbers of foreign workers operating in the NSW sex services industry which has an estimated 340 brothels in NSW (finding 12);
- That the nature of the services sex services industry is such that sex workers from foreign countries operate without proper visa permission and in circumstances where they are vulnerable to exploitation and servitude whether as part of a system of sex trafficking or not (finding 13); and
- That some sex workers are subject to fines or other financial punishment and other undesirable industrial practices (like being forced to work in their places of work for up to 17 hours or more a day against threat of deportation) that would not be acceptable in normal work places and the usual protection of the rights of workers provides particular challenges given the nature of the sex services industry (finding 14).