

18 October 2004

Assistant Secretary
Criminal Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600
By email : trafficking.offences@ag.gov.au

Dear Madam/Sir

Exposure Draft Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004

About AFAO

The Australian Federation of AIDS Organisations (AFAO) represents Australian HIV/AIDS community based organisations at a national level. Our membership includes State and Territory AIDS Councils, the Australian Injecting and Illicit Drug Users League, Scarlet Alliance (the national organisation representing sex workers) and the National Association of People Living with HIV/AIDS (NAPWA). Amongst AFAO's activities is the provision of HIV policy advice to the Commonwealth Government, advocating for our member organisations, developing and formulating policy on HIV/AIDS issues, and promotion of medical and social research into HIV/AIDS and its effects.

AFAO's key concerns

AFAO is concerned that the Bill over-extends the reach of the criminal law in this area. There already exist a broad range of offences that apply to trafficking in persons. The focus of legislation should be ensuring the health and safety of women vulnerable to trafficking, rather than the punishment of traffickers.

Women from Asia entering the Australian sex industry via contract arrangements are at heightened risk of HIV and other sexually transmitted infections. AFAO is concerned that providing heavier penalties and broadening the categories of behaviour that attract criminal law sanctions may have unintended adverse public health consequences. AFAO believes that it is important that legislation supports rather than impedes peer educators in being able to access migrant sex workers so that they can be provided with information about safe sex standards in the Australian sex industry and how to access health and other support services.

The link between criminalisation of sex work, stigma and poor health outcomes

Sex work is a highly stigmatised occupation. Sex work has a long history of being subject to criminal law sanctions under state and territory laws. These laws have compounded the stigma associated with the industry and the social marginalisation of women working in the industry. It has only been over the last fifteen years that aspects of sex work have become legal in some parts of Australia. Where sex work has remained illegal, it has been difficult for



**AUSTRALIAN
FEDERATION
OF AIDS
ORGANISATIONS INC.**

**PO BOX 51
NEWTOWN
NSW 2042 AUSTRALIA**

**PH +61 2 9557 9399
FAX +61 2 9557 9867**

Email: afao@afao.org.au

**Internet:
<http://www.afao.org.au>
u**

health promotion programs to work effectively with the industry as workers have avoided contact with health authorities for fear of detection by police. Health promotion efforts have been facilitated by the partial decriminalisation of sex work in most states and territories, which has enabled health promotion workers to work openly with sex worker groups to promote peer education. This has enabled sex workers to work in partnership with authorities to sustain improved standards of health and safety in the industry, including very high standards of sexual health.

Lessons learned from the successes in supporting improved health outcomes through decriminalising sex work under state and territory laws should be applied in the context of federal anti-trafficking initiatives. AFAO is concerned that the existence of harsh criminal anti-trafficking sanctions could backfire, because policing such laws could have the effect of driving underground that part of the industry where women are most at risk. Australia's responses to trafficking have not provided incentives for women on sex industry contracts to report poor occupational health and safety conditions or unsafe sex practices. Rather, the current legislative framework has resulted in the victimisation of individuals and policing practices that have pushed the industry underground, thus cutting workers off from health services.

New legislative approaches are required

AFAO acknowledges that there is a need to ensure that criminal sanctions apply to prevent exploitation of workers, particularly children, through deceptive conduct. However AFAO is concerned that the Bill perpetuates the criminalisation and stigmatisation of adult sex work by broadening sexual servitude provisions, providing for harsher criminal sanctions and widening the definitions of criminal conduct (eg, to cover aspects of recruiting and transporting workers including within Australia). Rather than providing an alternative approach that supports openness in the industry, AFAO fears the Bill will only push those organising trafficking to develop more elaborate mechanisms to enable undetectable travel and further expose individuals seeking contracts to criminal networks.

Other less punitive approaches need to be explored. Enabling sex workers to work legally in Australia for short periods of time could help to remove 'traffickers' from the picture. For example, an alternative approach to that of increasing criminal penalties is one of encouraging women to work legally through developing an employer sponsored working visa category for sex work, which would remove the criminal elements involved in existing contract labour arrangements. Under a legalised framework, sex workers could be required to maintain contact with health promotion services during the period of their working visa.

Wherever possible, criminal legislation should not single out the sex industry for special sanctions as this only compounds the stigma associated with sex work. Hence, when considering options regarding debt bondage (section 271.8), options that apply regardless of the nature of the service are preferable to options that apply only to debt bondage for sexual services.

Legislation needs to be better informed by the realities of women's lives in the sex industry

It is a fundamental principle in developing good public policy that communities most affected by policies and laws be intimately involved in the development and implementation of new models and approaches. It is imperative that sex worker organisations be more closely involved in further developing legislation that applies to trafficking. If the legislation is to achieve the aim of reducing rather than adding to the exploitation of persons, it is essential that sex worker groups participate extensively in formulating legislative responses.

AFAO is aware that our member organisation, Scarlet Alliance, is preparing a detailed submission on this Bill. We commend their comments to you as an organisation with a well informed understanding of the way in which the legislation is likely to impact on the reality of the lives of migrant workers in the sex industry.

We hope that these comments have been of assistance,

Yours sincerely,

A handwritten signature in black ink that reads "Don Baxter". The signature is written in a cursive, slightly slanted style.

Don Baxter
Executive Director