

Drugs and Crime Prevention Committee, Parliament of Victoria- Inquiry into People Trafficking for Sex Work in Victoria

Fitzroy Legal Service ("FLS") welcomes the opportunity to respond to the Drugs and Crime Prevention Committee, Parliament of Victoria's Inquiry in People Trafficking for Sex Work in Victoria (the "Inquiry").

FLS is one of the oldest community legal centres in Australia. Located in the inner Melbourne suburb of Fitzroy, our doors first opened in 1972 to provide casework to clients who live, study or work in a catchment area consisting of Fitzroy, Collingwood, Abbotsford, Brunswick, Richmond, Carlton, East Melbourne and Clifton Hill.

Our service operates both day and night services to best meet the needs of clients and to take full advantage of the many highly experienced lawyers and willing legal students who provide their valuable skills on a pro bono basis.

The service also plays a significant role in the areas of law reform and community legal education, which is closely bound up with the practice of preventative law, demystification of the law, self-help and empowerment. FLS also has a long history of running public interest cases and working closely with marginalised communities and individuals.

Our experiences in the casework practice serve to inform our law reform and community legal education activities.

FLS works with Project Respect ("PR") in relation to our casework, legal education and law reform work. PR has referred a small number of cases to us that involve victims of trafficking for the purposes of sex slavery. All of these clients have been women. FLS is currently attempting to assist these clients to claim compensation pursuant to the Victims of Crime Assistance Tribunal Act ("VOCAT"). We have also assisted a small number of trafficked women in relation to their family law and family violence matters by providing advice and referrals.

So far, our contact with trafficked women has occurred only after women have escaped from their traffickers. Hence, we have limited experience by which to respond to the first three terms of reference. Therefore, our submission will focus on the fourth term of reference, namely the need for policy and legislative reform to combat trafficking for the purposes of sex work in Victoria. However, we endorse the submission of Project Respect in relation to the remaining terms of reference.

Need for legislative reform

While we are not in a position to comment on strategies to prevent or combat trafficking, FLS notes that with the exception of Project Respect, our trafficked clients in Victoria remain without specialised resources or support. As such, even in the rare occasions

when traffickers are brought to justice and are prosecuted for their crimes, our clients continue to experience the effects of these crimes throughout the rest of their lives.

FLS is currently waiting for our trafficking VOCAT matters to be determined by the Tribunal.

In our experience, fear of retaliation by their traffickers has prevented our trafficked clients from reporting their situation to police.. While it is not a requirement under the VOCAT Act that applicants provide evidence of their report to police, it is our experience that it is virtually impossible to make a successful VOCAT claim in the absence of a police statement. If an application is submitted without a police statement, the Tribunal will require reasons why the applicant has not reported the incident to police. It is a concern that trafficked women who do not feel comfortable or safe to report their experiences to police will be disadvantaged because their applications may not include a police statement.

In these circumstances, the Tribunal will need to make a determination on whether the evidence our clients have provided is sufficient to constitute a crime of violence pursuant to the legislation. In the cases that FLS deals with, our clients have only confided in Project Respect workers and trusted counsellors about the history and nature of the trafficking. Hence, there are limited forms of evidence that our clients can rely upon to support their VOCAT application. This could jeopardize their abilities to claim compensation under this legislation.

We submit that the Committee take these factors into account and consider providing more surety for victims of trafficking under the VOCAT legislation. This can be achieved by the Tribunal being empowered to immediately accept a trafficked victim's application if she can have a supporting report from a specialist organisation that deals with trafficking issues (such as Project Respect) or sexual assault issues related to trafficking (such as the Centres Against Sexual Assault). If these organizations were formally recognized as specialist services to assist the Tribunal in matters of VOCAT trafficking matters, this would also ensure that victims of trafficking receive appropriate support whilst being assisted by the VOCAT process. We would also support these organizations being funded with additional resources to be able to undertake this specific work.

Under section 54 (a) of the *Victims of Crime Assistance Act 1996 (Vic)* a person's character (including past criminal activity) is a consideration for Tribunal members in determining whether or not to make an award of assistance (or in determining the amount of assistance awarded).

In our experience, trafficked victims will have had contact with the criminal justice system due to the fact that in most circumstances they are living in Australia on illegal visas. Whilst FLS is not sufficiently experienced to comment on issues pertaining to migration law, we understand from our work with our clients and with Project Respect, that trafficked victims often enter Australia on short-term visas. Subsequently, they either overstay their visas or unknowingly breach their visa conditions. It is understood that in some circumstances, the traffickers also dishonestly apply for visas on the victims' behalf.

Furthermore, there is a possibility that trafficking victims might, due to their unlawful entry into Australia, come to the attention of law enforcement agencies for matters such as drug use, illegal prostitution or because they have engaged in offending behaviour to support their livelihood

It is our clients' experiences that traffickers ensure that they meet the victims' families in their home countries. Clients have informed us that they and their families have been threatened with harm if they were to inform the authorities of their situation. Due to the very nature of a trafficked victims' illegal visa status, she will be unable to access health, social security or education systems in Australia. A victim of trafficking is required to live in secrecy as they often live in fear of deportation due to their precarious migration status.

Hence, if a trafficked victim has contact with the criminal justice system, it is very likely that she will have been forced into this situation in order to continue to survive.

Therefore, it is recommended that the Tribunal's requirement to consider a person's character in terms of past criminal conduct be at least waived in circumstances where the applicant is a victim of trafficking. It is our submission that the Committee make this recommendation in recognition of the insidious power dynamics that exist between the trafficker and victim. These factors are also recognized in the Federal Criminal Code Act (1995) section 268.10:

Crime against humanity--enslavement

(1) A person (the **perpetrator**) commits an offence if:

(a) the perpetrator exercises any or all of the powers attaching to the right of ownership over one or more persons (including the exercise of a power in the course of trafficking in persons, in particular women and children); and

(b) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

"exercises any or all of the powers attaching to the right of ownership" over a person includes purchases, sells, lends or barter a person or imposes on a person a similar deprivation of liberty and also includes exercise a power arising from a debt incurred or contract made by a person.

We believe that it is prejudicial to a client's application of crimes compensation for her criminal history or conduct to be assessed.

Education for the community legal sector

In 2008, FLS, together with the Federation of Community Legal Centres (Vic) and Project Respect, conducted two training sessions with Victorian and interstate community legal centres aimed at raising awareness of sex trafficking legal issues (apart from migration issues). Community legal centres strongly identified that they would like to have more capacity to be able to assist Project Respect (and interstate anti-trafficking organisations) to assist mutual clients in legal matters. However, in order to do so, community legal

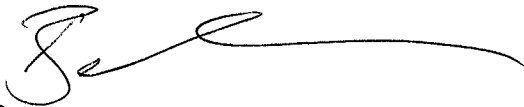
centres require additional training to support clients who may not disclose that they are victims of trafficking, or in fact, may not know that they are victims of trafficking.

Community legal centres would benefit from training in trafficking, sexual slavery, indicator recognition of trafficking victims and referral pathways for clients who have been trafficked.

We submit that funding be provided to community legal centres to be able to assist trafficking victims in acknowledgement of the complexity and seriousness of legal issues that a trafficking victim faces.

We thank the Committee for the opportunity to respond to this Inquiry. If there are any further queries, please feel free to contact the writer.

Yours faithfully,
FITZROY LEGAL SERVICE

A handwritten signature in black ink, appearing to be 'Belinda Lo', written in a cursive style with a long horizontal flourish extending to the right.

PER:

Belinda Lo
Legal Projects Officer and Solicitor