

Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)

Project Respect Consultation Submission

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General Comments

Project Respect is a Victorian based support and referral service for women and gender diverse people with experience in the sex industry, and for women and gender diverse people who have experienced human trafficking for sexual exploitation.

While we are primarily based in Victoria, we provide support to women throughout Australia, and work in collaboration with other organisations across sectors such as family violence, housing, and legal services to provide multifaceted care to service users.

Project Respect's purposes are to:

- Provide support to women and gender diverse people with experience in the sex industry to achieve self-directed goals, including equitable access to services;
- Provide support to women and gender diverse people who have experienced trafficking for sexual exploitation, whether current, historic, international or domestic;
- Advocate for structural change to end sexual exploitation.

We provide a platform to elevate and amplify the voices of, while also being informed and guided by, those with past and present lived experience.

We appreciate the opportunity to provide written feedback for the targeted review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth). We have also welcomed the opportunity to provide feedback through participating in one of the associated workshops facilitated by the Law and Policy Review Team of the Modern Slavery and Human Trafficking Branch, Attorney-General's Department.

We note that as a small and currently underfunded service our ability to provide a thorough response to the consultation is constrained by resources and staffing. We do however offer to provide further clarification or to have follow up conversations in relation to our comments below.

Project Respect's Response to the targeted review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)

Format of our response

We acknowledge that the consultation to the targeted review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth) ("the Act") was designed to be in the format of a set of questions about the operation of the Act. As our experience involves providing support services to victim survivors of trafficking for sexual exploitation, we provide our comments within this context.

Executive Summary – Key Themes

The operation of Divisions 270 and 271 form part of Australia's response to human trafficking and slavery which must have as its centre a focus on prevention, protection and restitution. Our responses are provided in this context.

Our consideration of the operation of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth) falls under the following key themes:

1. **The intersection between some offences in Divisions 270 and 271 of the Criminal Code and family violence offences.** This includes the appearance of 'intimate partner type' relationships that in reality have the intent of exploitation for a commercial gain. Currently perpetration of this type of exploitation may be identified through the family violence response system but is rarely identified as an offence under Divisions 270 and 271. This results in an outcome different to that intended by the Criminal Code, and a potential impact on statistics.
2. **Coercion**, as it relates to the offences under the Act, does not appear to be well understood as a method employed to perpetrate crimes of trafficking in persons, slavery and slavery-like practices. In particular, the impact of individual circumstances of vulnerability, exploited by, but not necessarily created by the perpetrator, needs to be understood where the 'reasonable person' test is applied in prosecutions.
3. **Difficulties with prosecution and the impact of prosecution data used as evidence of effectiveness of the legislation.** Related to the above point, the threshold for investigation and prosecution where coercion is a factor appears high and there does not seem to be an appetite for testing the legislation in this area. This has a flow on effect on the way victim survivors are interacted with throughout the system. When victim survivors are told that investigation and/or prosecution is unlikely, it diminishes their experience of being heard and impedes trauma recovery.
4. **The definition of trafficking remains tied to the movement of people.** Australia persists with a definition of trafficking tied to the movement of people, which is not a requirement recognised by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and has been consistently identified through the U.S. Government Trafficking in Persons reports as a priority improvement recommendation for Australia.

5. **The definition of trafficking of children** refers to “sexual services”. This definition implies that consent to provide sexual services is possible for children, which is clearly inappropriate. The definition should be amended to refer to child sexual exploitation and/or child sexual abuse, separately defined and distinct from terms used in relation to crimes against adults.
6. **Other – Extension of Crimes.** Project Respect recommends the introduction of a specific criminal offence relating to intentionally, knowingly or recklessly obtaining sexual services from people trafficked into providing non-consensual sexual services. This is required in order to break the nexus to demand for trafficking, and to provide a deterrent to those men who knowingly buy sexual services from trafficked individuals.

CONSULTATION RESPONSE

1. Intersection between exploitation and family violence

Experience at the Intersection

Question 1: Are stakeholders observing interactions between offences in Divisions 270 and 271 and other laws and frameworks that are impeding, or have the potential to impede, effective investigations and prosecutions of offences in Divisions 270 and 271?

The family violence response system in many states has made significant improvements over recent years. This is a positive evolution, however, in some instances a standardised response risks missing nuances that are indicators of trafficking, slavery, or slavery-like offences.

As family violence response systems are state based, and state funded, the understanding that service organisations and police have of the offences experienced by the service users they are working with tends to be informed by state-based legislation. Outside of very targeted specialist organisations who work at this intersection, the understanding of this intersection is not widely understood. This is exacerbated by the funding models for support organisations being state based, with federal funding not reaching ongoing service delivery outside of the single funded service model of the Support for Trafficked People Program. The complexity of work at the intersection is not specifically funded, making this expertise more difficult to develop and to share across the wider service system. Opportunities exist in the implementation of The National Plan to End Violence against Women and Children and the National Action Plan to Combat Modern Slavery in better supporting this work.

Additionally, family violence offences are arguably easier to prosecute, and services supporting experiences of family violence easier to access, compared with services available to support trafficking, slavery, and slavery-like offences. This embeds the risk of missed offences through 'habit' across the systems, preferencing the better understood family violence responses, and more easily prosecuted family violence offences.

These missed opportunities are compounded by a lack of understanding of the nature of coercion, and the impact on victim survivors often being required to develop their own understanding and employing perseverance in seeking just outcomes for crimes against them. These issues are further explored in our responses in sections 2 and 3 below.

Examples of offences that are being missed include intimate partner "type" exploitation that has a commercial motivation. Victim survivors may be coerced into an intimate partner relationship in the belief that they are entering into a relationship, and over time are coerced to providing sexual services, in the home or on other premises, which may be described by the "partner" as necessary for financial reasons, or in the guise of being part of Australian culture (particularly where the victim survivor has been coerced to travel from overseas with the expressed intent of marriage). While these may come to attention through the family violence system, the lack of understanding of how this might represent a trafficking offence means that the potential for this to be repeated behaviour by the perpetrator may not be considered or addressed; the outcome of the perpetrator being mandated to attend a men's behaviour change program is likely to not be effective as the perpetrator's original motivation was to exploit for commercial gain, making respectful relationship based rehabilitation ineffective.

Where gaps emerge in a response to modern slavery, they will unfortunately be exploited.

Exploitation

Question 9: Are stakeholders observing serious forms of exploitative conduct that are not captured by Australia's definition of exploitation and are appropriate for consideration as part of Australia's response to modern slavery (i.e. involving very serious forms of exploitation that are not captured by other laws and frameworks)? If so, what is being observed?

Question 10: If the definition of exploitation were expanded how should this be done? For example, through stipulating additional forms of exploitation, adding to the definition with a 'catch-all' description of exploitation, or amending the definition so that it is a non-exhaustive definition?

The exhaustive definition of exploitation in Australia may be limiting, excluding some forms of exploitation. The discussion paper looks at the seriousness of forms of exploitation and distinguishes them from less serious forms of exploitation like lower-level workplace offences.

In the example given above, regarding sexual exploitation disguised within an 'intimate partner like relationship', the offence risks not meeting the definition through (1) the victim survivor not being aware that they are providing a labour service for financial gain, and/or (2) the setting being domestic. The impact is nonetheless the same, the crime no less serious. The opaque nature of the crime has potentially moved beyond the definition in the Code.

The concept of exploitation is stated to be distinct from harm alone. Trafficking in persons, slavery and slavery-like practises are instead concerned with exploitation which invariably does involve and does harm to victims and survivors, but involves an additional layer of control, profit or advantage gain. It is important to identify situations disguised as domestic in nature, where the control, profit or advantage gain is still present.

Adopting a non-exhaustive definition of exploitation may be a way to future proof the legislation, as more presentations of the crime type appear that may escape being caught by the present definition.

2. Coercion

Irrelevance of consent

Question 11: Is the principle of irrelevance of consent adequately enshrined in divisions 270 and 271? If not, why not, and how could this be addressed?

The discussion paper states that the principle of irrelevance of consent is underpinned in the trafficking protocol, which highlights that the means used by offenders (including coercion, threat or deception) renders any apparent consent by victims to their exploitation irrelevant.

However, in practice, this does not seem to be understood by general police. This issue is critical to the family violence intersection. Victim survivors of trafficking for sexual exploitation where the means of exploitation is based on coercion, cannot, under this principle, give consent. However, victim survivors are still questioned as to whether they could have left the situation or the extent to which they have consented to the exploitation.

The discussion paper itself (page 29) describes scenarios where a victim and survivor ‘does not remove themselves from exploitative conditions where an opportunity may exist’, and discusses circumstances where the victim and survivor may have consented to some aspects of their circumstances but to not all aspects. The discussion paper also discusses the potential to have positive consent defined in the legislation in order to avoid this confusion and explicitly providing that such consent must be freely and fully given for it to be real consent. The discussion paper further acknowledges that internationally there is little precedent for positive consent in the context of trafficking in persons, slavery or slavery like practice offences.

We would argue that the lack of this precedent is due to any proposed approach of introducing positive consent in this context as going against the very principle of irrelevance of consent. Any evidencing of ‘positive consent’ does not account for coercive conditions under which this consent could be provided. To use this consent as evidence against a crime is circular and dangerous as the usage of coercion could be escalated to protect against future prosecution. Suggesting that a victim and survivor may not remove themselves from exploitative conditions where there is an ‘opportunity’ indicates a lack of understanding of coercion and is another version of ‘why didn’t she leave’. We do not agree with this as the premise behind needing to adjust the legislation around the principle of irrelevance of consent.

While we consider that the principle of irrelevance of consent may be adequate in the legislation, the understanding of this may need to be enforced through education, including when sentencing is considered. Judges and juries may still be influenced by the concept of the ‘ideal victim’ and consciously or unconsciously allow for a level of perceived consent when considering verdicts and sentencing.

Coercion

Question 8: Do the definitions of coercion, threat and deception collectively capture the types of conduct used in offending in Divisions 270 and 271, including subtle forms of coercion? If not, why not, and are specific solutions recommended?

Question 29: Do the definitions of coercion, threat and deception collectively capture the conduct used by traffickers to achieve the physical elements of a trafficking in persons offence?

The discussion paper notes that Australia's definition of coercion at section 270.1A is intended to be non-exhaustive but captures both physical and non-physical means of coercion. It is further noted that Australian investigators have also observed that psychological forms of coercion are more common than physical forms of coercion in cases identified in Australia, and that coercion can be subtle and nuanced (particularly psychological forms of coercion).

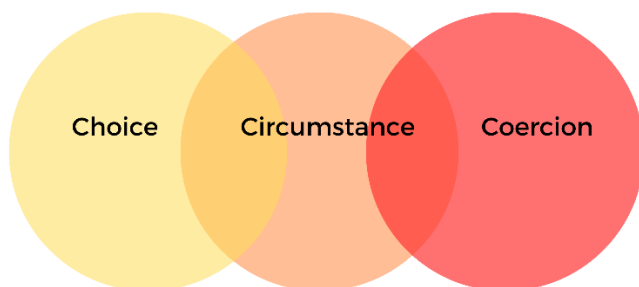
The definition of coercion adopted in the code is brief, and includes through what means coercion can occur, but does not actually define coercion itself.

The discussion paper also notes that there is currently no shared national understanding of coercive control. While the federal, state and territory governments are working together to develop national principles to address coercive control, the terms of that review are expressly limited to intimate partner relationships. An expanded definition of coercion in the Code would be a positive step, but a response to coercive control with ‘coercion’ defined through the lens of the National Working Group on Coercive Control may not be the right one in relation to perpetrators of trafficking, slavery and slavery-like

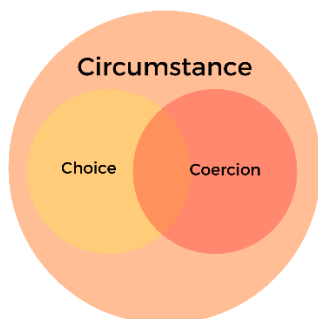
offences. The intent of the perpetrators of trafficking is not to control a partner within a relationship, but to successfully pursue a commercial gain through the exploitation of others. As outlined above, a response that results in undertaking Men's Behaviour Change programs, is not an adequate match for a trafficking or exploitation offence.

We note there appears to be limited precedent to clearly indicate the thresholds at which coercion may be made out in a prosecution. We would challenge that potentially more bravery is required to pursue cases that are based on coercion as the method of exploitation. Without test cases the efficacy of the legislation cannot properly be proven.

When discussing definitions of coercion, it is also useful to consider the overlap between choice, circumstance, and coercion. It needs to be understood that circumstances (including that of vulnerability) can both decrease the ability to exercise choice, and also impact how effective coercion can be. Circumstances moderate available *options*, which impacts available *choices*.



This understanding is important, as options can become limited by *structural conditions* that sit within these circumstances, and not just by coercion alone. These conditions can however be exploited by a perpetrator, and not just be 'set up' by the use of coercion. Where circumstances conspire to make coercion more effective, this interaction can look more like the following:



In this case, coercion can overlap with choice, which can be somewhat obscured by the coercion. If the 'circumstance' element is not understood, the point of view of the victim survivor is more difficult to appreciate.

When defining coercion in the criminal code, and providing education around this definition, it may be helpful to consider this dynamic, outlining that the thresholds for coercion may be significantly impacted by circumstances.

Further, contemporary definitions of coercion also consider the impact over time of persistent coercive behaviours. The impact of longer term coercive behaviour can also be that the intensity of the coercive behaviour doesn't need to be as high as it may be compared with a specific, acute perpetration of coercion. In this case the perpetrator does 'set up' the circumstances, normalising expectations of the victim survivor and making the coercion easier to implement.

All of these elements should be considered when defining coercion, as well as when investigating and prosecuting coercion-based offences.

Question 5: What kind of conduct may constitute deception through omission as relevant to offences in Divisions 270 and 271 of the Criminal Code?

Question 6: Should reforms be considered to broaden the application of Divisions 270 and 271 to explicitly include conduct that includes deception by omission?

As stated in the discussion paper, the definition requires a positive act or positive conduct – meaning that deception by omission may not be covered by the Code.

We would support initiatives to include explicit provisions to make a deceptive omission an element of the offences in Divisions 270 and 271.

Such omissions might include the type of disclosures that would normally be part of a contract to provide services in the relevant circumstances, whether through a verbal agreement or a written agreement. For example, in the case of provision of sexual services, this might be having control over the worker's own hours of work, the ability to refuse clients, to not work when unwell, and to specify the services consented to as part of the work.

Currently, as described in the discussion paper, omitting to mention that the worker would not be in control of their hours, refusal of a client, or services consented to as part of the work might not be caught in the code as deception by omission.

Question 12: Is additional guidance required to strengthen consistent understandings on the duration and continuity of a condition of slavery, servitude and forced labour? If so, what form might this guidance take?

The discussion paper specifies the challenges that may arise in slavery investigations and prosecutions in establishing the duration of the conditions.

In developing guidance, we suggest that any specification of unbroken continuity of time should not be a requirement. As part of this guidance, the impact of coercive methods should also be considered. For example, an exploiter may allow small acts of "freedom" of the victim survivor, as a tactic to give a sense to the victim survivor that they have freedom, which immediately follows acts of severe control. This gives the victim survivor a sense that the perpetrator has a level of benevolence, or they may not be "that bad", which is specifically confected to confuse the victim survivor and increase their reliance or acquiescence.

Question 13: Would it be desirable to legislate and include additional guidance about factors that might indicate significant deprivation? If so, what form might this take? Are there other options that might be preferable or useful to help clarify the distinction between servitude and forced labour?

When looking at guidance regarding a victim being “significantly deprived of personal freedom...”, the guidance might be aided by looking at available *options* to the victim during the deprivation, and how structural inequities were exploited to create this situation, not just pure “situation creation” – as described in the section above in our discussion on coercion.

For example, a situation of deprivation to one victim may look different to another – while for some victims it may look as though they can “escape”, consideration would need to be given to where they could go (options), and outcomes of the escape (consequences) in understanding what significant deprivation looks like.

3. Difficulties of prosecution, and the impact of prosecution data being used as evidence of effectiveness of legislation

Australia's response to modern slavery in Australia

The consultation discussion paper states that Australia has a comprehensive response to modern slavery and outlines the inclusions. The list of inclusions states there is a dedicated support programme for victims and survivors.

We note that the only funded support program is the Support for Trafficked People Program (STPP) which is restricted in access (through cooperation with the AFP) and by the length of time this is available.

The current requirement for cooperation with the AFP to enter this program is relevant to our answers in this section of our response paper.

Prosecutions and convictions

Page 18 of the consultation discussion paper notes that the number of prosecutions regarding trafficking in persons, slavery or slavery like offences, are very low.

This is impacted by the fact that prosecutions only occur where the CDPP advises to proceed, and the prosecution process appears to be very long and slow. As such, it is unsurprising that the number of prosecuted cases are as low as they are.

Unfortunately, these statistics are sometimes used as evidence that trafficking is of low risk in Australia. We contend that data that provides information about the number of people seeking services due to experiences of trafficking, would be helpful in terms of understanding the nature of the risk in Australia. This is again impacted by data from the STPP only relating to people who meet the STPP criteria. We recommend that data about seeking support be collected and compiled from a range of services in order to understand the extent of the service support requirement.

We further contend that there is an interaction between the time sensitive goal of obtaining disclosures from a victim survivor for the purposes of investigation and building a case for prosecution, that is

unhelpful to a victim survivor that needs time to process their experience. This may, appropriately, result in the non-pursuit of an investigation in the best interests of the victim survivor, but can also result in a lack of support through the STPP. Longer term STPP support is not available in any event.

We also note in the consultation discussion paper a summary of modern slavery practises in Australia. We note that offences reported relating to trafficking in persons and sexual exploitation are still high. Although the discussion paper states that victims and survivors of sexual exploitation are declining as a proportion of total victims and survivors, this is a misleading statement as the number hasn't declined in raw terms and the proportion is impacted by increases in other categories. We also note that on the table on page 17 it clearly shows there has only been a small proportional decrease in this category in the current year anyway, being 18.75% in the 2020/21 FY compared with 18.37% percent in the 2021/22 FY, both significantly up from 12.96% in 2017/18. This does not indicate a substantial decline and in fact has been trending upwards over the past five years apart from the small decline in the most recent year. We are unclear why the presentation of statistics for this category was misdescribed in this way and have seen this in other papers with similar descriptions attached. We do not think it is helpful to skew the reader's view of statistics in this way.

Similarly, page 20 of the consultation paper, under the heading global trends, points out that more than half of forced labour cases are in sectors other than commercial sexual exploitation. This obviously means that nearly half of the cases still relate to commercial sexual exploitation alone. We also note that the same page indicates that the majority of victims and survivors of modern slavery continue to be women and girls. The gendered impact of modern slavery and the continuing risk of sexual exploitation should not be underestimated .

Page 25 of the consultation paper, under the heading poor or harsh working conditions, makes the statement that the Fair Work office is responsible for investigating matters involving claims of substandard working conditions that do not meet the threshold of a trafficking in persons, slavery or slavery like practise. Where the FWO identifies behaviour that may amount to trafficking, slavery or slavery like practise, this is referred to the AFP as the investigating agency for these crimes. Statistics regarding the number of actual referrals to the AFP from the FWO, and how these were originally identified (e.g. through reports by members of the public), would provide interesting data to frame this information.

Difficulties in Prosecution - Reasonable Person Test and Coercion

Question 14: Should subsection 270.10(1) be expanded to make explicit that factors at subsection 270.10(2) can apply to deliberation of whether a reasonable person in the position of a victim and survivor would have felt free to cease providing labour or services or to leave the place where they are providing those labour or services?

Question 15: Do the list of matters at subsection 270.10(2) provide appropriate guidance? If not, why not, and what additional or different factors should be considered?

As outlined in the discussion paper, the Code adopts a reasonable person test to establish an objective and hypothetical test. As also stated, there are challenges including whether juries understand the type of trauma that has been experienced by victims and survivors, and accounting for this trauma in

whether a reasonable person in the place of the victim survivor would have felt free to cease providing labour or leave the place where this is being provided.

We would also argue that juries would likely not be in a position to understand the nuances of coercive control, as outlined in section 2 of our detailed response, and how this is impacted by a victim survivors individual circumstances whether or not caused by, or exploited by, the perpetrator. It is important to consider whether the coercion included taking advantage of existing structural inequity barriers and trauma so that this could be leveraged. “Personal circumstances” requires further explanation.

One solution touted is to provide additional guidance about some of the factors that may be relevant to this deliberation. Relevant matters already specified include personal circumstances of the alleged victim and survivor, but this does not necessarily give juries an extensive understanding or framework for the rationale of what the person's overall life looks without instruction in how coercive control works.

In our view, guidance needs to be given to juries to understand this operation of coercive control. The reference to the elements used in coercion should be added to subsection 270.10(2).

Additionally, the legislation could be amended to state that the deliberation is around whether a reasonable person in the position of a victim or survivor would have felt free to cease providing labour or services, or to leave the place where they are providing those labour or services, *allowing for the understanding of the consequences of doing so*. The ability to leave may be one thing, but knowing what risk this would then potentially trigger may change the framing of this question entirely. What looks like freedom to one person, may not look like freedom to another.

For this reason, we also question the need for the reasonable person test at all, as the judgement of the person in the situation is likely to be the most compelling. In many cases, applying an objective and hypothetical test may not be possible. Coercion inherently has the impact of clouding clear judgement. Without having experienced this firsthand, would jurors be able to assess whether the responses of the victim survivor were reasonable?

Impacts on Victim Survivors – Prosecution Focus

We would like to provide some general feedback about challenges we have seen with victim survivors and the interaction with the criminal code, including with state based general policing units.

We have seen a strong reluctance to investigate or prosecute cases where coercive control is the method of perpetration, with cases not being taken on even though coercion is expressly included in Division 270 and 271. We have also seen the direct impact on a victim survivor where they are confronted with a line of questioning that includes questioning why they didn't leave a situation, as though lack of physical restraint indicated there was no exploitation – indicating a lack of understanding of patterns of overall control or dominance. They hear statements made about how their situation didn't satisfy the threshold for trafficking or exploitation, or they have been told that their situation wouldn't be likely to be prosecuted – often early in the process, with the case never being seen by prosecutors.

The impacts on the victims of crime in these situations is substantial. When victims are told very early on that the case won't be prosecutable, or there is insufficient evidence, what they tend to hear is “this

didn't happen to you". This has an impact on trauma recovery, and also limits supports available - while initial referral to the STPP is still likely, the time period that the service can be accessed is short. After that, the victim survivor is navigating systems not set up, or funded, to support their particular experiences. Disengagement from services is also a likely outcome.

This has created a peculiar result whereby the prosecution focus is driving the criteria for entry into the STPP – and yet – where cases are occurring due to coercion, they are not being prosecuted, hence resulting in limited access to support. If the response to modern slavery is in fact contemporary and designed to respond to changing trends, the response needs to not only consider coercion (as detailed in section 2 of our response), but also consider the intersection with family violence (as detailed in section 1 of our response), and ensure the system is equipped and supported to appropriately respond, without limitations caused by gaps between state and federal jurisdictions, or opting out of funding because the service doesn't fit a predetermined model of funding that lacks flexibility. Additionally, it is crucial that actions be taken to de-link the availability of supports through the STPP from cooperation with the AFP, and the need to have referrals made only from the AFP.

We also draw attention to one of the recommendations directed to Australia from the U.S. Government's Trafficking in Persons Report 2022 which states: "Conduct initial screening interviews with potential victims in a safe and neutral location and in the presence of a social service professional." Conditions that increase the victim survivors' feeling of safety, and improve the trauma informed approach to victim survivors, should be adopted.

Further, the lack of prosecutions gives the impression that such presentations of modern slavery are rare. In our view, there are cases falling through the gaps that are not being seen, and/or are hidden amongst family violence data. The lack of prosecutions is also not operating as a deterrent to perpetrating these crimes.

We see the disincentive for victim survivors to pursue their own justice as this requires an extensive level of perseverance, while being confronted with a lack of understanding of trauma informed approaches. Where victim survivors are unable to coherently detail timelines, local law enforcement will either dismiss the case or categorise down to the single offences / incidents (usually related to lesser offences than within the modern slavery suite) that they might be able to gather sufficient evidence on, rather than looking at patterns. This also has the further effect that repeat perpetrators are not identified where this might be helpful to a broader prosecution regarding a single perpetrator with multiple activities.

The focus on the perpetrator of these crimes should always remain a key goal.

4. Definition of trafficking currently tied to the movement of people

Question 25: Should the cross border trafficking offences (including trafficking in children) be amended so that they do not require their physical movement of a person? If so, how could this be achieved through amendments to the offences?

Question 26: Does organising or facilitating entry or exit or proposed entry or exit or receipt of a person adequately capture the relevant actions that comprise the act in trafficking in persons? If not, why not, and why alternate or additional terms are recommended?

Question 27: Should the domestic trafficking offences (including trafficking in children) be amended so that they do not require the physical movement of a person? If so, how could this be achieved through amendments to the offences?

Question 28: Should the domestic trafficking offences include the same terms as the cross border offences so that the same methods are captured? For example, should the term 'receipt' form part of Australia's domestic trafficking offences? Similarly, should the domestic trafficking in children offence mirror the domestic trafficking in persons offence and include 'proposed transportation'?

Question 40: Are the jurisdictional requirements of Australia's domestic trafficking in persons offences appropriate? If not, why not and what changes or solutions are recommended?

The requirement that geographical movement be an element of trafficking in persons at all is a limitation of the legislation and makes the domestic trafficking offences particularly difficult to navigate. Once again we draw attention to one of the recommendations directed to Australia from the U.S. Government's Trafficking in Persons Report 2022 which states: "Ensure the statutory definition of trafficking under the criminal code does not require movement of the victim as an element of the crime."

The reasoning of this principle is succinctly summed up in the principles to the U.S. Government's Trafficking in persons report 2022:

"Neither U.S. law nor international law requires that a trafficker or victim move across a border for a human trafficking offense to take place. Trafficking in persons is a crime of exploitation and coercion, and not movement. Traffickers can use schemes that take victims hundreds of miles away from their homes or exploit them in the same neighborhoods where they were born."

A situation that can be an offence of domestic trafficking because the individual was moved from Albury NSW to Wodonga Victoria, but in the otherwise same circumstances cannot be because the individual was moved from Brisbane to Cairns, does not make any sense in the Australian context.

5. Definition of trafficking of children referencing "sexual services"

Question 31: Is the term sexual services appropriate in the context of Australia's child trafficking offences? If not, are alternate terms suggested? If the term is not appropriate in the context of child trafficking, is it appropriate in the context of trafficking involving adult victims and survivors? What might the unintended consequences be if the term was changed, noting it is used throughout offences in division 271?

Does the phrase 'provide sexual services or will otherwise be exploited' adequately capture the forms of exploitation that may be present in, or driving, child trafficking?

In short, this terminology must be changed in application to children. If care is required in implications this can be looked at by legal experts. The current definition is not victim centred language and implicitly indicates consent which can't be given by children.

The use of the language at the moment indicates a legitimisation of using children for sexual services which is clearly inappropriate. We recommend that the language adopted should be child sexual exploitation, child sexual abuse, or if absolutely necessary for legal reasons, terminology along the lines of "child sexual exploitation in the guise of providing sexual services".

The addition of “or will otherwise be exploited” to one of the alternative statements would not of itself be problematic.

The implications of using the terminology “provide sexual services” in relation to adults in the context of exploitation are different, in that in non-exploitative contexts, sexual services can be provided consensually by adults. Within the criminal code, the use of this term for adults, when applied to exploitative contexts however, should always be phrased as “provide non-consensual sexual services”.

There is no version of consensual sexual services that can be provided by children, so the use of different terminology is valid.

We also note that page 14 of the consultation paper footnotes that in 2019, the Australian government removed all references to the term child pornography in Commonwealth legislation, replacing it with the term child abuse material to reflect the seriousness of the harm and to avoid conflating material depicting the sexual abuse of children with material depicting sexual activity between consenting adults. We agree there is similar opportunity in this legislation review regarding terms used within the trafficking of children definitions.

6. Other – Extension of Crimes

Project Respect recommends the introduction of a specific criminal offence relating to intentionally, knowingly or recklessly obtaining sexual services from people trafficked into providing non-consensual sexual services.

This is required in order to break the nexus to demand for trafficking, and to provide a deterrent to those men who knowingly buy sexual services from trafficked individuals. This will ensure that any men who may come into contact with an individual who has been trafficked is both responsible and accountable for their action (or inaction) and participation in the crime.