

Crimes Amendment (Sexual Servitude) Bill - Extract from Legislative Assembly Hansard of 17/10/2001

CRIMES AMENDMENT (SEXUAL SERVITUDE) BILL

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Bill introduced and read a first time.

Second Reading

Mr FACE (Charlestown—Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development), on behalf of Mr Debus [8.21 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Crimes Amendment (Sexual Servitude) Bill. The bill contains new offences—with significant sanctions—prohibiting the practice of forcing women and children into sexual service. The new offences are part of the scheme of national laws recommended by the Model Criminal Code Officer's Committee of the Standing Committee of Attorneys-General, a national committee in which this jurisdiction plays an active part. The Government is mindful of the need to have uniform criminal laws where possible, and is today introducing legislation that adopts the relevant recommended provisions set out in chapter 9 of the model criminal code, entitled "Offences Against Humanity; Slavery".

The Commonwealth has now enacted the model provisions contained in that report, with some modifications, in the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999. That Act prohibits the practice of slavery throughout and beyond Australia. This bill therefore does not deal with slavery per se, as the enforcement of those laws has been assumed by the Commonwealth. However, the report also found that in addition to traditional forms of complete chattel slavery, where the victim is traded as a form of property, servitude is also created by so-called debt bondage. This degrading treatment of human beings is particularly true of the recruiting and trading of women and children in international criminal prostitution rings. The women concerned in this trade are most likely to be isolated and coerced and held against their will and are frequently unaware of the kind of employment for which they have been recruited. In many cases there are contrived debts involved.

Various brokers through a chain of suppliers recruit and provide the women or children sex workers and the end broker pays a sum. This sum is recouped by demanding that the victims provide sexual services to repay that debt. Refusal to provide these services can lead to threats of violence or deportation following a tip-off to immigration officials. All too often we see the persons recruited deported and sanctioned; they are the visible face of criminal networks that may exist here and in other countries that lead them to be unlawful workers in Australia in the first place. It should be noted that sexual servitude is specifically covered in the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999.

However, the Commonwealth provisions only prohibit sexual servitude that occurs to some extent outside of Australia. The Standing Committee of Attorneys-General felt that such conduct was more appropriately legislated against at State and Territory level. I am therefore introducing a bill designed to complement the existing Commonwealth laws and ensure that in New South Wales there is no legislative gap through which sex slave traders can slip. In light of the need for there to be comity between the schemes, the Government has drafted the bill I introduce today to follow the relevant parts of the Commonwealth Act as closely as possible. The only divergences from that legislation are where the Crimes Act 1900 already has a form of words that covers the concept. The Australian Capital Territory has just passed similar legislation, and South Australia has introduced recent legislation to the same effect.

I now turn to the specific provisions in the bill. "Sexual servitude" is defined to be the condition of any person who provides sexual services and is not free to cease providing those services because of the use of force or threats. These threats can be of force or causing the person's deportation, or any other unreasonable threat of detrimental action. It is necessary to require that these threats of other detrimental action be unreasonable to ensure that this new legislation does not interfere with the existing laws regulating prostitution in this State. The offences therefore do not apply to the usual employment conditions for sex workers.

The bill proposes to prohibit sexual servitude in two ways. Firstly, there will be an offence of causing sexual servitude. That offence is committed if a person causes the sexual servitude of another and intends to cause that sexual servitude, or is reckless as to causing such sexual servitude. Causation, intention and recklessness are well known terms in criminal law. It is appropriate to include recklessness as a possible mental element of the offence. The circumstances envisaged by the offences are so serious that the law can expect persons to consider their actions very carefully in this area. Secondly, the bill creates an offence of conducting a business involving sexual servitude. That offence is committed if a person conducts any business that involves the sexual servitude of others and knows about, or is reckless as to, that sexual servitude. Activities in that area are often orchestrated by persons as part of a criminal business. It is not appropriate to permit those people to escape conviction because of a lack of direct involvement.

The offence also extends to any person that has any control or direction over the business or, while not being involved in the business itself, provides finance for the business. The offence thus catches those who hide behind others and those who support the trade, and is aimed at the Mr Bigs of the international trafficking in sex slaves. The penalty for both these offences is imprisonment for 15 years. However, if the victim is a child or a person suffering from a serious intellectual disability the maximum penalty is 19 years imprisonment. Those penalties match those of the Commonwealth offences and the model criminal code recommendations. It should also be noted that under section 344A of the Crimes Act 1900 any person who attempts to commit those offences will be liable for the full maximum terms of the offences. The bill also amends the Child Protection (Offenders Registration) Act 2000 to enable persons convicted of those offences to be registered pursuant to that Act.

The Commonwealth offence of deceptive recruiting for sexual services has not been reproduced in this bill. This offence would have been broader in its scope than was necessary to deal with deceptive recruiting for sexual servitude. New South Wales already has offences that more than adequately cover this area. Relevant current offences include section 91A of the Crimes Act 1900—procuring; section 91D of the Crimes Act 1900, promoting or engaging in acts of child prostitution; and section 15A of the Summary Offences Act 1988, causing or inducing prostitution. The current offences already include within their elements procuring by any fraud, section 91B of the Crimes Act 1900; and, in relation to children, inducing by any means, section 91D of the Crimes Act 1900. The penalty for the model criminal code offence of deceptive recruiting offence is identical to the current offence of procuring—that is, seven years imprisonment.

The current New South Wales offences relating to child prostitution are greater than the j aggravated offence—the proposed aggravated offence is nine years, the current penalties in New South Wales are 10 years and 14 years. I am sure that all honourable members will abhor the practices at which this bill is aimed and will support it. It is hoped that those States and Territories that have not yet passed similar legislation will do so shortly. It is important to have nationally consistent laws to deal with such issues. I commend the bill to the House.

Debate adjourned on motion by Mr Stoner.

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