

CHAPTER 1

Introduction

Referral of inquiry

1.1 On 19 June 2012, the Senate referred the provisions of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 (Bill) to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 13 September 2012.¹

1.2 The Bill was introduced into the House of Representatives on 30 May 2012 by the Attorney-General, the Hon Nicola Roxon MP.² The House of Representatives passed the Bill on 22 August 2012,³ and the Bill was introduced into the Senate on the same day.⁴

Purpose of the Bill

1.3 Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth) (Criminal Code) currently deal with the offences of slavery, sexual servitude, deceptive recruiting, people trafficking and debt bondage.

1.4 According to the Explanatory Memorandum (EM) to the Bill, there are limitations to the current provisions:

[I]nvestigations have revealed that people trafficking syndicates are changing their mode of operation to avoid detection, and if detected, to make elements of the offence harder to prove to the standard that satisfies the court and a jury. In addition to this shift in mode of operation, Australian authorities have identified a diversification of the industries into which victims are trafficked, such as the hospitality industry.⁵

1.5 The Bill will amend Divisions 270 and 271 of the Criminal Code 'to ensure that the people trafficking, slavery and slavery-like offences set out in the Criminal Code comprehensively criminalise all forms of slavery and people trafficking'.⁶

1 Journals of the Senate, No. 92 – 19 June 2012, pp 2528-2529.

2 House of Representatives, Votes and Proceedings, No. 111 – 30 May 2012, p. 1521.

3 House of Representatives, Votes and Proceedings, No. 126 – 22 August 2012, p. 1729.

4 Journals of the Senate, No. 105 – 22 August 2012, p. 2856.

5 Explanatory Memorandum (EM), p. 1.

6 EM, p. 1.

1.6 In addition, the Bill will amend section 21B of the *Crimes Act 1914* (Cth) (Crimes Act) – which deals with reparation for offences – to improve the availability of reparation orders for victims of Commonwealth offences, including slavery and people trafficking.⁷

Consultation

1.7 The introduction of the Bill follows an extended period of consultation by the Australian Government, including the release of two discussion papers in November 2010:

- a Discussion Paper on Forced and Servile Marriage;⁸ and
- a Discussion Paper on the Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections (Slavery and People Trafficking Discussion Paper).⁹

1.8 An Exposure Draft of the Bill was also released for comment in November 2011.¹⁰

International legal framework

1.9 Australia is a party to a number of key international instruments which cover the issues of people trafficking and slavery.¹¹

1.10 Under the *United Nations Convention against Transnational Organised Crime* (UNTOC) and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol), parties are required

7 The Hon Nicola Roxon MP, *House Hansard*, 30 May 2012, p. 6228.

8 Attorney-General's Department, *Discussion Paper: Forced and Servile Marriage*, November 2010, available at: <http://www.ag.gov.au/Consultationsreformsandreviews/Pages/Archive/Consultationonforcedanddservilemarriage.aspx> (accessed 15 August 2012).

9 Attorney-General's Department, *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, November 2010, (Attorney-General's Department's Discussion Paper on Slavery and People Trafficking), available at <http://www.ag.gov.au/Consultationsreformsandreviews/Pages/TheCriminalJusticeresonsetoslaveryandpeopletraffickingreparationsandvulnerablewitnessprotections.aspx> (accessed 15 August 2012).

10 Attorney-General's Department, *Exposure Draft – Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, available at: <http://www.ag.gov.au/Peopletrafficking/Pages/Exposure-draft---legislative-amendments-to-Australia%27s-people-trafficking-and-slavery-offences.aspx> (accessed 15 August 2012).

11 The information in this section is taken from the Attorney-General's Department's Discussion Paper on Slavery and People Trafficking, p. 7, and Anti-Slavery Australia, *Submission 28*, pp 3-4.

to establish criminal offences for trafficking in persons. The Trafficking Protocol sets out the definition of 'trafficking in persons':

'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹²

1.11 Australia is also a party to the *International Convention to Suppress the Slave Trade and Slavery*, and to the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, which contain definitions of slavery and slavery-like practices.

1.12 Obligations that Australia has under treaties which define and prohibit forced labour are also relevant in the context of slavery and people trafficking.¹³

Conduct of the inquiry

1.13 The committee advertised the inquiry in *The Australian* on 4 July 2012. Details of the inquiry, including links to the Bill and associated documents, were placed on the committee's website at www.aph.gov.au/senate_legalcon. The committee also wrote to a number of organisations and individuals, inviting submissions by 31 July 2012. Submissions continued to be accepted after that date.

1.14 The committee received 40 submissions, which are listed at Appendix 1. All public submissions were published on the committee's website.

1.15 The committee held a public hearing on 29 August 2012 at Parliament House in Canberra. A list of witnesses who appeared at the hearing is at Appendix 2, and the *Hansard* transcript is available through the committee's website.

Acknowledgement

1.16 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

12 Article 3(a).

13 For example: *International Covenant on Civil and Political Rights*; *International Covenant on Economic, Social and Cultural Rights*; *International Labour Organisation Convention No. 29 on Forced or Compulsory Labour*; *International Labour Organisation Convention No. 105 on the Abolition of Forced Labour*. For a discussion of these treaties see: Australian Chamber of Commerce and Industry, *Submission 20*, p. 4; Law Council of Australia, *Submission 21*, pp 7-8.

Note on references

1.17 References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.