CHAPTER 3

Key issues

3.1 The majority of submissions and witnesses to the inquiry expressed broad support for the Bill.[1] In particular, the Bill was described as a 'positive step forward to Australia meeting its obligations under the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*' (Trafficking Protocol).[2]

3.2 Despite this broad support, a number of specific issues and concerns were raised in relation to the Bill, including:

- the breadth of the definition of 'coercion';
- expansion of the definition of 'marriage' in relation to the offences of forced marriage;
- the omission of a servile marriage offence;
- the need to include offences to cover slavery and servitude within intimate relationships;
- the use of the 'reasonable person' test in the definitions of 'forced labour' and 'servitude';
- whether it is appropriate that consent and acquiescence are not defences to the offences under Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth) (Criminal Code);
- the anticipated practical operation of the offence of harbouring a victim; and
- issues relating to reparations orders, and the need for general support strategies for victims of slavery and people trafficking.

---

1 See, for example: ACT Government, *Submission 3*, p. 1; Presbyterian Women's Association of Australia in New South Wales, *Submission 6*, p. 1; Migration Institute of Australia, *Submission 11*, p. 2; Australian Catholic Religious Against Trafficking in Humans (ACRATH), *Submission 12*, p. 1; Project Futures, *Submission 14*, p. 4; Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 15*, p. 3; Liberty Victoria, *Submission 17*, p. 1; Australian Association of Women Judges, *Submission 22*, p. 2; Ms Fiona McLeod SC, Law Council of Australia, *Committee Hansard*, 29 August 2012, pp 1-2; Associate Professor Jennifer Burn, Anti-Slavery Australia, *Committee Hansard*, 29 August 2012, p. 27. However, Scarlet Alliance strongly opposed the Bill, arguing that the 'likely negative impact on sex workers, particularly migrant sex workers, outweighs any perceived gains [from the] changes', *Submission 13*, p. 1.

2 Women's Legal Service Victoria, *Submission 26*, p. 1. The Australian Human Rights Commission, *Submission 38*, p. 2, described the Bill as a 'significant step in Australia meeting its obligations under human rights law'.

Definition of 'coercion'

3.3 The definitions of 'servitude', 'forced labour' and 'forced marriage' in the Bill refer to the use of 'coercion, threat or deception' against the victim, or another person.[3] 'Coercion' is defined in proposed new section 270.1A (Definitions for Division 270) to include coercion by any of the following: force; duress; detention; psychological oppression; abuse of power; or taking advantage of a person's vulnerability.

3.4 While many submissions welcomed these new definitions,[4] other submissions and witnesses expressed concern at the breadth of the definition of 'coercion'.[5] For example, the Hon John Dowd AO QC, President of the International Commission of Jurists Australia (ICJA) argued that 'coercion' is not, in fact, defined in the Bill:

> The Bill states what coercion includes, and therefore it just lists six different terms, two of which are particularly unsuitable. Saying 'coercion includes' does not define coercion. Coercion can take many forms, particularly within certain cultures where men have control over women or where parents have control over children...The word 'power' has far too broad a meaning and in fact needs greater definition, along with the word 'vulnerable'.[6]

3.5 Ms Fiona David of Walk Free was supportive of the introduction of the concept of coercion but considered that the drafting of the definition requires clarification:

> It is very important that this law introduces the concept of coercion…[T]raffickers use very subtle means to control people, so it is very important to have this element of coercion in the bill. But we have also seen in the last 10 years how important it is that our criminal laws are very clear and easy for people in the field to apply. Is the element of coercion as defined clear enough for a cop in Kalgoorlie to apply? I am not sure it is.[7]

Government response

3.6 The committee notes that the Addendum to the Explanatory Memorandum (EM) states that the definition of 'coercion' has been intentionally drafted to be broad:

---

3 Proposed new section 270.4 (definition of servitude), proposed new section 270.6 (definition of forced labour), and proposed new section 270.7A (definition of forced marriage).

4 See, for example: Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 15*, p. 3; Law Council of Australia, *Submission 21*, p. 10; Project Respect, *Submission 25*, p. 4.

5 See, for example: Women's Legal Centre (ACT and Region), *Submission 4*, p. 2, which suggested that the broad interpretation of coercion may lead to ambiguity, particularly in relation to the forced marriage offences.

6 *Committee Hansard*, 29 August 2012, p. 2.

7 *Committee Hansard*, 29 August 2012, p. 8.

> The definition of 'coercion' has intentionally been drafted to be broad and non-exhaustive in order to supplement the existing framework and ensure the broadest possible range of exploitative behaviour is captured and criminalised.
>
> Importantly, the prosecution will still be required to prove the elements of the relevant offence beyond a reasonable doubt.[8]

3.7 At the public hearing, an officer of the Attorney-General's Department (Department) reiterated this position, noting that the definition is 'appropriately drafted':

> [T]he government's position on this is that the definition of 'coercion' is appropriately drafted by reference to…[the] list of matters that may constitute coercion in a particular case within the standard definition of the word. The list is not exhaustive, so it does not limit the application of the definition to certain types of circumstances. One of the benefits of the way that the definition is currently drafted is that it will also allow courts to consider what constitutes coercion in a given case but also by reference to the factors listed in the separate relevant evidence provisions in the Bill.[9]

Forced marriage offences

3.8 The forced marriage offences in the Bill were welcomed by submitters and witnesses.[10] However, some submissions suggested that the definition of 'marriage' in proposed new subsection 270.7A(2) should be amended to encompass unregistered de facto relationships and unregistered cultural and religious marriages.[11]

3.9 Women's Legal Service Victoria, for example, noted that the definition of marriage in the Bill is broadly defined and consistent with the provisions of the *Marriage Act 1961* (Cth), however it does not cover de facto relationships:

> Given the number of de facto relationships that now exist in Australia, it seems appropriate that the offence be expanded to include an offence where a victim is coerced, threatened or deceived into entering into a de facto relationship without free and full consent.[12]

---

8 Addendum to the Explanatory Memorandum (EM), p. 2.

9 Mr Anthony Coles, Attorney-General's Department, *Committee Hansard*, 29 August 2012, p. 40. The relevant evidence provisions in the Bill are proposed new sections 270.10 and 271.11A.

10 See, for example: Project Futures, *Submission 14*, p. 9; International Commission of Jurists Australia (ICJA), *Submission 30*, p. 4; National Council of Women of Australia, *Submission 36*, p. 3; Ms Allison Munro, Women's Legal Centre (ACT and Region), *Committee Hansard*, 29 August 2012, p. 9; Ms Gayatri Nair, Australian Lawyers for Human Rights, *Committee Hansard*, 29 August 2012, p. 18.

11 See, for example: Women's Legal Service Victoria, *Submission 26*, p. 2; Mr Gregory Jones, *Submission 29*, p. 2; ICJA, *Submission 30*, pp 4-5.

12 *Submission 26*, p. 2.

Government response

3.10 The EM provides the following explanation on the scope of the definition of 'marriage' in the Bill:

> Marriage has been described broadly for the purposes of Division 270 to capture a range of marriage and marriage-like relationships that affect the legal status of the parties, involve a similar level of formal recognition and commitment, and which may carry legal or religious consequences. The provision will capture a relationship which for all intents and purposes is considered to be a marriage by the parties and their community.[13]

3.11 The committee notes the explanation from the Department in its answer to a question on notice that expanding the definition of marriages to include all de facto relationships would result in the forced marriage offences applying in an unclear and potentially unjust manner:

> The intention is to target marriages or relationships in which there is some identifiable point in time at which the victim's lack of consent can be assessed, be that a ceremony or the act of registering a relationship. If the offences extended to all de facto relationships or other relationships, this could lead to the offences applying in an undesirably broad and unclear manner. For example, determining whether or not two people are in a de facto relationship under Australian law requires a case-by-case assessment of a range of different circumstances of their relationship – it is not necessarily possible to know with great certainty the point at which a relationship becomes a de facto relationship, or whether it is a de facto relationship at all.[14]

3.12 The Department also referred to proposed new paragraph 270.7A(2)(d) of the Bill, which provides that 'marriage' includes a marriage that is void or invalid or not recognised by law for any reason:

> The Government's view is that this component of the definition is wide enough to encompass a range of cultural, religious and other ceremonies (whether or not they are registered or otherwise regulated in some fashion).[15]

---

13 EM, p. 24.

14 Answer to question on notice, received 4 September 2012, p. 5.

15 Answer to question on notice, received 4 September 2012, pp 4-5.

Omission of a servile marriage offence

3.13 A small number of contributors to the inquiry expressed concern that there is not a specific offence of 'servile marriage' in the Bill.[16]

3.14 The Department's Discussion Paper on Forced and Servile Marriage sets out the following explanation of 'servile marriage':

> Servile marriage generally refers to situations in which a person is considered a 'chattel' that can be sold, transferred or inherited into marriage. This type of practice is described in the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956* (the Supplementary Convention), and is considered to be a practice similar to slavery.[17]

3.15 Slavery Links noted that the EM refers to a person being transferred or inherited into a marriage, but that the Bill is silent on this point. Slavery Links argued that the Bill should make it 'explicit that a married person may not be transferred to another or inherited'.[18] Ms Fiona David of Walk Free questioned why servile marriage is not covered by the Bill, despite being recognised as a slavery-like practice under the Supplementary Convention. Ms David noted that 'servile marriage' overlaps with 'forced marriage', but is not the same thing.[19]

3.16 The ICJA referred to the Department's Discussion Paper on Forced and Servile Marriage which used the terms 'forced' and 'servile' marriage interchangeably. The ICJA noted that servile marriage 'appears to have an ownership and exploitation component that may not be as evident in forced marriage', and suggested that the distinction between forced and servile marriage needs to be clarified in the Bill.[20]

Government response

3.17 The EM states that the definition of 'forced marriage' would include servile marriage:

> For a person (the victim) to be transferred, sold or inherited into a marriage, there would generally be coercion (i.e. by the abuse of power or by taking advantage of a person's vulnerability), threat or deception used by another

---

16 See, for example: Slavery Links, *Submission 27*, p. 10; Ms Fiona David, Walk Free, *Committee Hansard*, 29 August 2012, p. 8.

17 Attorney-General's Department, *Discussion Paper: Forced and Servile Marriage*, November 2010, p. 3.

18 *Submission 27*, p. 10.

19 *Committee Hansard*, 29 August 2012, p. 8.

20 *Submission 30*, p. 5. See also: Attorney-General's Department, *Discussion Paper: Forced and Servile Marriage*, November 2010, p. 3.

> person. For this reason, the intention is that a servile marriage falls within the definition of forced marriage…
>
> Where a person has been transferred, sold or inherited into a marriage with no right to refuse, this may also amount to an offence of slavery.[21]

3.18 In an answer to a question on notice the Department reiterated these points, informing the committee that servile marriage is considered to be a practice similar to slavery. As a result, this conduct is likely to be covered by the existing slavery offences in the Criminal Code and the proposed offences of forced marriage also potentially cover servile marriages.[22]

3.19 The Department also provided the following explanation as to why a separate definition of 'servile marriage' is not required in the Bill:

> The Government's view is that servile marriage is a practice which would already be subject to criminal punishment and that a new offence is not required. As a result, it is not necessary to include a separate definition of 'servile marriage' in the Bill.[23]

Slavery or servitude within intimate relationships

3.20 A number of submissions suggested that the Bill should include a specific offence of slavery or servitude within intimate relationships.[24] The submissions referred to situations where both parties have consented to the marriage, or relationship, and subsequently the relationship deteriorates to become one of slavery or servitude:

> A typical scenario would be where a woman consents to a marriage or relationship with a man. Over time the relationship deteriorates to slavery-like conditions. The woman suffers regular physical, emotional and sexual abuse. She is forced to do all the domestic work and provide sex whenever the man wants and is threatened with violence if she refuses. Her movements are heavily restricted and her relationships with friends and family are also controlled or not allowed. She has little or no access to finances. She is too scared to leave because her partner threatens violence to herself or her children if she does.[25]

3.21 Ms Allison Munro of the Women's Legal Centre (ACT and Region), explained that, in her view, these circumstances would be difficult to capture under the terms of the servitude offences in the Bill:

---

21 EM, p. 25.

22 Answer to question on notice, received 4 September 2012, p. 11.

23 Answer to question on notice, received 4 September 2012, p. 11.

24 See, for example: Women's Legal Centre (ACT and Region), *Submission 4*, p. 4; Women's Legal Service Victoria, *Submission 26*, p. 3; Women's Legal Services NSW, *Submission 31*, pp 5-6; Women's Law Centre of WA, *Submission 32*, p. 2.

25 Women's Legal Centre (ACT and Region), *Submission 4*, p. 4.

> As the Bill currently stands, there does not appear to us to be any legislative intention to include intimate relationships in the slavery and servitude offences. In relation to servitude, the Explanatory Memorandum to the Bill talks about servitude in relation to industry and workplaces only. There is no mention of intimate relationships with regard to the new offence…
>
> There would be other barriers as well to obtaining a conviction for victims in intimate relationships. Evidence for slavery and servitude in intimate relationships will be particularly difficult. This is due to a frequent lack of physical evidence and the issue of consent being more complex…
>
> Given the apparent lack of legislative intent and the barriers mentioned, we believe it will be almost impossible to obtain a conviction for slavery or servitude for victims in intimate relationships under the current Bill. This is unjust because at the end of the day these women suffer just as much as other victims of slavery or servitude. We believe there needs to be a separate sexual servitude offence that refers to intimate relationships either as part of the offence or as an example.[26]

Government response

3.22 An officer from the Department provided the following explanation as to why a specific offence in the context of an intimate relationship is not included in the Bill:

> [I]n accordance with general criminal law principles, the Bill does not create an offence to cover every possible circumstance or practical example of exploitative conduct that might arise. Rather, the amendments are designed to apply generally to a variety of different types of exploitative conduct in whatever context they arise…
>
> The offences are drafted broadly so that they can apply in the context of a marriage…If the underpinning offending behaviour exists then the fact that it occurs in the context of a marriage frankly would not be relevant…The only thing I would say is that we quite deliberately wanted to avoid a situation where we start talking about specific context. To cite a simple example, in a murder offence you do not say it is murder with a blunt instrument or with a firearm.[27]

---

26 *Committee Hansard*, 29 August 2012, pp 9-10.

27 Mr Anthony Coles, Attorney-General's Department, *Committee Hansard*, 29 August 2012, pp 32, 40.

3.23 In its answers to questions on notice, the Department indicated that it considers that the Bill and the EM are sufficiently clear that the 'slavery-like offences apply in the victim's public or private life, including in the context of a marriage'.[28] Additional information could be included in the EM, however, to explain the operation of the servitude offences (section 270.5), forced labour offences (section 270.6A) and the offence of deceptive recruiting for labour or services (section 270.7). The Department suggested the following text:

> 'The new offences apply irrespective of whether the proscribed conduct occurs in the victim's public or private life. For example, provided the elements of the offence are established, it is immaterial whether the victim and the offender are married or in a de facto relationship.'[29]

3.24 The Department also indicated that the following text could be included in the EM to provide clarity on the issue of consent:

> 'Where a person freely and fully consented to enter into a marriage, but was later coerced, threatened or deceived into remaining in the marriage, the new servitude and slavery offences, or existing State and Territory domestic violence legislation, may apply.'[30]

'Reasonable person test' in the servitude and forced labour offences

3.25 The introduction of specific forced labour offences, and the expansion of servitude offences to apply to non-sexual servitude was supported by a number of submissions.[31] Some submissions suggested that the test of whether a 'reasonable person in the position of the victim would not consider himself or herself to be free' (which is used in the definitions of 'servitude' – proposed new paragraph 270.4(1)(a) – and 'forced labour' – proposed new subsection 270.6(1)) could be clarified.[32]

3.26 The Law Council of Australia and the ICJA referred to comparable United States legislation where the definition of 'serious harm' for the purposes of the forced labour offences refers to 'a reasonable person of the same background and in the same circumstances' as the victim.[33]

---

28 Answer to question on notice, received 4 September 2012, p. 15.

29 Answer to question on notice, received 4 September 2012, p. 15.

30 Answer to question on notice, received 4 September 2012, p. 15.

31 See, for example: Uniting Church in Australian, Synod of Victoria and Tasmania, *Submission 15*, p. 3; Australian Lawyers Alliance, *Submission 19*, p. 5.

32 See, for example: International Commission of Jurists, Western Australian Branch, *Submission 18*, p. 4; Law Council of Australia, *Submission 21*, pp 12-13; ICJA, *Submission 30*, pp 3-4; Ms Fiona David, Walk Free, *Committee Hansard*, 29 August 2012, p. 8.

33 *Submission 21*, pp 12-13 and *Submission 30*, pp 3-4 respectively.

Government response

3.27 The EM notes that the 'reasonable person test' requires a court to consider whether a reasonable person of the same background and in the same circumstances would have been free to withdraw his or her labour or services, or to leave the workplace.[34] In making a determination the court may have regard to the matters listed in the relevant evidence provision (proposed new section 270.10), including:

- the economic relationship between the alleged victim and alleged offender;
- the terms of any contract or agreement between the alleged victim and alleged offender; and
- the personal circumstances of the alleged victim, including their lawful presence in Australia, their understanding of the English language and their social and physical dependence on the alleged offender.[35]

3.28 In an answer to a question on notice, the Department stated:

> The Government considers the existing formulation of the 'reasonable person' test is appropriate. It is a standard term of art in criminal law jurisprudence.
>
> The phrase 'in the position of the victim' is intended to refer to a person who shares the background and circumstances of the victim…
>
> Given the clarity already provided in the Explanatory Memorandum, the Government does not consider it necessary to alter the current formulation of the 'reasonable person' test.[36]

General consent provisions

3.29 The Bill inserts specific provisions into Divisions 270 and 271 of the Criminal Code to provide that the consent or acquiescence of the victim is not a defence to the offences in those Divisions (proposed new sections 270.11 and 271.11B).

3.30 A number of submissions welcomed these proposed new provisions.[37] However, Scarlet Alliance strongly objected to the consent provisions, arguing that

---

34 EM, p. 19 in relation to the definition of forced labour in proposed new section 270.6. See also: EM, pp 15-16 in relation to the definition of servitude which states that 'whether a person is "not free" in relation to the matters specified in the definition [of servitude] is intended to be an objective test. It is intended that the court consider whether a reasonable person of the same background and in the same circumstances would have been free to withdraw his or her labour or services or leave the workplace'.

35 EM, p. 16, in relation to the definition of servitude, and EM, p. 19 in relation to the definition of forced labour.

36 Answer to question on notice, received 4 September 2012, p. 6.

37 See, for example: ACRATH, *Submission 12*, p. 4; Uniting Church in Australian, Synod of Victoria and Tasmania, *Submission 15*, p. 3; Australian Lawyers Alliance, *Submission 19*, p. 5.

the amendments will impact on migrant sex workers, perpetuating a stereotype that 'sex workers cannot consent to sex work, that all sex work is violence'.[38] Specifically:

> Implicit is an assumption that migrant workers have no agency, free will, and can be treated as minors who cannot make decisions for themselves. In effect, the Australian Government is regulating *who can consent* to travel, work, have sex, and earn money. Not recognising consent limits who can be heard and [who can] access justice. In a wider socio-economic and geo-political sense, it takes away the agency of people to work to provide money for their family, prevents people from moving across borders, reinforces racist stereotypes, keeps people in poverty, and prescribes who is able to make rational decisions.[39]

3.31 Scarlet Alliance's submission noted the statement in the EM that '[i]n prosecutions for slavery and slavery-like offences, consent has been a difficult issue'.[40] Scarlet Alliance disputed this point:

> [I]n all the prosecuted cases, all the sex workers knew they would be sex working in Australia and had consented to do so. The fact of their consent to sex work was not a barrier in securing the prosecutions.[41]

Government response

3.32 The EM sets out the reasons for the inclusion of these general consent provisions:

> While judges have generally directed juries that consent by a victim is not a defence to a charge, some judges have also indicated that consent may be relevant to an assessment of whether a person was in fact reduced to a state of slavery…However, the [Trafficking Protocol] makes it clear that consent of a victim is irrelevant (see Article 3(b)).
>
> People trafficking or reducing a person to a state of slavery or servitude often involves suppressing the person's free will, their self-respect, as well as the ability to make decisions for themselves. To allow a defendant to escape liability because his or her offending achieved the desired effect in bringing about these changes in a victim so that the victim appears to acquiesce in his or her treatment would be inexcusable.[42]

3.33 At the public hearing, an officer from the Department explained that the general consent provisions do not affect the rights of individuals to consent to work in any particular industry:

---

38 *Submission 13*, p. 4.

39 *Submission 13*, p. 4 (emphasis in original).

40 *Submission 13*, p. 4 quoting from EM, p. 31.

41 *Submission 13*, p. 4.

42 EM, p. 31.

> [T]he Bill does not affect the rights of individuals to consent to work in any industry in ordinary circumstances, including the sex industry, and nor does it criminalise any type of employment. The provisions in the Bill simply ensure that where consent is given as a result of coercion, threats or deception the offender will not escape liability for their conduct. That…is consistent with general principles of law, where consent must be full and free.[43]

'Harbouring a victim' offence

3.34 The new offence of harbouring a victim was generally supported;[44] however, concerns were raised in relation to the relevant fault elements required for the offence to be made out.[45]

3.35 In its submission, Scarlet Alliance argued that the new harbouring offences would criminalise people who are not traffickers – namely, those who are peripherally involved, or caught up unknowingly or unintentionally – or who are intending to assist migrant workers.[46] Ms Jules Kim of Scarlet Alliance expanded on these concerns at the public hearing:

> Importantly, the broad scope of this Bill may criminalise people around sex workers including employers, drivers, security, receptionists, colleagues, accommodation providers and health services. It may act to make sex workers more isolated in their access to support, or take them into more dangerous work places, or encourage sex workers to work alone.[47]

3.36 Scarlet Alliance also emphasised that harbouring offences already exist in the *Migration Act 1958* (Migration Act), referring to sections 233E (concealing and harbouring a non-citizen) and 245AD (referring an unlawful non-citizen for work).[48]

3.37 Scarlet Alliance raised concerns in relation to the fault element of 'recklessness' in the harbouring offence, questioning what onus it would place on 'drivers, colleagues, health services, sex worker organisations, receptionists and managers' to investigate sex workers before offering them services. Scarlet Alliance suggested that any such investigations would impact on the willingness of migrant sex workers to access these health and safety services.[49]

---

43 Mr Anthony Coles, Attorney-General's Department, *Committee Hansard*, 29 August 2012, p. 32.

44 See, for example: Law Council of Australia, *Submission 21*, p. 4; Australian Lawyers for Human Rights, *Submission 23*, pp 3-4; Project Respect, *Submission 25*, p. 2.

45 See, for example: Scarlet Alliance, *Submission 13*, p. 6; Ms Fiona David, Walk Free, *Committee Hansard*, 29 August 2012, pp 8-9.

46 *Submission 13*, p. 6.

47 *Committee Hansard*, 29 August 2012, p. 21.

48 Answer to question on notice, received 7 September 2012, p. 7.

49 Answer to question on notice, received 7 September 2012, p. 7.

3.38 Ms Fiona David of Walk Free also queried the fault elements of the offence of harbouring a victim:

> I read the offence and I wondered if someone could be convicted of this crime of harbouring even if they had no knowledge of the fact that their conduct was assisting the commission of slavery or trafficking.[50]

Government response

3.39 In relation to concerns that the new offence of harbouring a victim may apply to people who are seeking to provide support to a victim, the EM states:

> The new offence is…not intended to apply to a person whose only intent is to provide help to or comfort a victim of trafficking or a trafficking-related offence.[51]

3.40 The EM also refers to the existing harbouring offence in the Migration Act:

> Existing section 233E of the [Migration Act] contains an offence of concealing and harbouring non-citizens. This offence is designed to address irregular migration and is not sufficient for the purposes of people trafficking, primarily as it makes no reference to exploitation as an element of the offence. For that reason, the penalties for that offence are also insufficient. Further, [the] offence is not applicable to domestic trafficking or to slavery or slavery-like offences.[52]

3.41 In its submission, the Commonwealth Director of Public Prosecution (CDPP) set out the application of fault elements for the harbouring offence (proposed new subsection 271.7F(1)):

- where a defendant harbours, receives or conceal another person (the 'victim') – the physical element is 'conduct' and the fault element is 'intention' (section 5.6 of the Criminal Code);
- where the harbouring, receipt or concealing of the victim assists a third person in connection with any offence committed by the third person (the 'third person offence'), or furthers a third person's purpose in relation to any offence committed by the third person (the 'third person offence') – the physical element is 'result' (or 'circumstance') and the fault element is 'recklessness' (proposed new subsection 271.7F(2));

---

50 *Committee Hansard*, 29 August 2012, pp 8-9.

51 EM, p. 51. The EM, p. 51, also notes that the harbouring a victim offence is 'not intended to criminalise a person who unknowingly receives services from a victim, such as the client of a sex worker who is a victim of a trafficking or a trafficking-related offence'.

52 EM, p. 51.

- where the third person offence is an offence against Division 271 (apart from section 271.7F) or Division 270 of the Criminal Code – the fault element is 'absolute liability' (proposed new subsection 271.7F(3)).[53]

3.42 The committee questioned the CDPP as to why proposed new subsection 271.7F(2) specifically applies the fault element of recklessness in relation to the conduct in paragraph 271.7F(1)(b) – where the harbouring, receipt or concealing of the victim assists or furthers the offence committed by the third person – when this fault element could be 'read in' from section 5.6 of the Criminal Code (Offences that do not specify fault elements).[54]

3.43 An officer from the CDPP acknowledged that the inclusion of a specific reference to 'recklessness' in proposed new subsection 271.7F(2) is 'not strictly needed', however:

> Our position has been, when discussing these issues with the Attorney-General's Department, that, because of some of the difficulties or the confusion that can occur around fault elements, wherever possible we would prefer the fault elements to be specified.[55]

Reparations for victims and the need for a federal compensation scheme

3.44 The proposed amendments to paragraph 21B(1)(d) of the *Crimes Act 1914* (Crimes Act) mean that a victim of a federal offence may be awarded reparations for any loss suffered or expense incurred by reason of the offence, and not just losses incurred as a 'direct result' of the offence (as is currently the case).

3.45 While welcoming the Bill's change to reparations orders for victims of federal offences – which includes slavery and people trafficking offences – submissions raised a number of issues in relation to reparation orders and compensation, including:

- whether reparation orders cover non-economic losses;
- limitations to obtaining reparations orders and the disparities between state victim compensation schemes; and
- the need for a federal victim compensation scheme.

---

53 *Submission 7*, p. 4. See also: Ms Jaala Hinchcliffe, Office of the Commonwealth Director of Public Prosecutions, *Committee Hansard*, 29 August 2012, p. 38.

54 See: *Committee Hansard*, 29 August 2012, p. 38.

55 Ms Jaala Hinchcliffe, Office of the Commonwealth Director of Public Prosecutions, *Committee Hansard*, 29 August 2012, p. 38. See also: Attorney-General's Department, Answer to question on notice, received 4 September 2012, p. 12.

Non-economic losses

3.46 A number of submissions and witnesses commented that the proposed amendments to section 21B of the Crimes Act do not provide clarity as to whether non-economic loss (such as pain and suffering) are covered.[56] For example, Ms Rosemary Budavari, from the Law Council of Australia, argued:

> Although the Bill does improve the process by which a reparation order may be made as a consequence of criminal proceedings, it does not clearly articulate that those reparation orders cover pain and suffering amounts.[57]

3.47 In its submission, the Australian Lawyers Alliance highlighted the importance of this type of loss being covered in reparation orders:

> [C]ompensation for non-economic loss [or] pain and suffering is extremely important to people who have been victims of trafficking, as it provides them with some financial support as they embark on the difficult process of rehabilitating themselves and rebuilding their lives.[58]

Limitations to obtaining reparations orders and state victim compensation schemes

3.48 A number of submissions highlighted the difficulties for victims in obtaining reparation orders.[59] In its submission, the Australian Catholic Religious Against Trafficking in Humans (ACRATH) set out seven factors that currently limit the utility of reparations orders for victims of trafficking and slavery, including:

- the possibility that not all victims will come to the attention of a judge with the power to grant a reparation order;
- the requirement for a conviction to be made before a reparation order may be made and the intrinsic challenges in securing such a conviction;[60]
- the fact that a reparation order is effectively a civil judgement which requires enforcement by the victim against the perpetrator and the resultant detriment this may have on the victim's recovery;

---

56 ACRATH, *Submission 12*, pp 3-4; Law Council of Australia, *Submission 21*, p. 21; Project Respect, *Submission 25*, p. 4; ICJA, *Submission 30*, p. 7; Ms Rosemary Budavari, Law Council of Australia, *Committee Hansard*, 29 August 2012, p. 4; Ms Jemima Brewer, Australian Lawyers Alliance, *Committee Hansard*, 29 August 2012, p. 18.

57 *Committee Hansard*, 29 August 2012, p. 4. See also: Ms Jemima Brewer, Australian Lawyers Alliance, *Committee Hansard*, 29 August 2012, p. 18.

58 *Submission 19*, p. 14.

59 See, for example: ACRATH, *Submission 12*, p. 3; Law Council of Australia, *Submission 21*, p. 22; Australian Lawyers for Human Rights, *Submission 23*, p. 6.

60 See also: Law Council of Australia, *Submission 21*, p. 22.

- the potential inequity caused by the discretionary nature of reparation orders, which may result in the order made not being proportionate to the harm suffered;
- the lack of procedures which require courts to consider whether any person may be entitled to a reparation order and to invite such person to make an application for an order under section 21B;
- the fact that the terms of section 21B are limited to loss suffered by victims as a direct result of the commission of an offence; and
- the fact that section 21B does not specifically provide for reparation orders to be made in respect of non-economic loss (such as pain and suffering, loss of amenities or loss of expectation of life), which is a type of loss frequently suffered by victims of trafficking and slavery.[61]

3.49 ACRATH noted that the proposed amendment in the Bill will only address one of these factors, namely that the loss is no longer going to be required to be a direct result of the commissioning of the offence.[62]

3.50 Victims of slavery and trafficking offences may also be eligible for compensation from state schemes; however, this approach is also unsatisfactory, given the disparities between the jurisdictions. Associate Professor Jennifer Burn of Anti-Slavery Australia summarised the differences:

> Across Australia there are eight different schemes providing financial compensation for victims of crime. There are different time limits, categories of harm considered and levels of award, leading to inconsistencies across jurisdictions and differences in outcomes. The problem can be put simply: the amount of compensation available to victims of federal trafficking offences depends on the place in Australia where the offence took place.[63]

---

61 *Submission 12*, p. 3.

62 *Submission 12*, p. 3.

63 *Committee Hansard*, 29 August 2012, p. 27. See also: Ms Jemima Brewer, Australian Lawyers Alliance, *Committee Hansard*, 29 August 2012, p. 18; Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 15*, Appendix, pp 7-9; Law Council of Australia, *Submission 21*¸ pp 23-26.

Federal compensation scheme

3.51 Many submissions[64] referred to Australia's obligations under international treaties to provide:

- measures in the legal system that offer victims of trafficking the possibility of obtaining compensation for damage suffered;[65] and
- an effective remedy to any person whose rights or freedoms are violated.[66]

3.52 Currently there is 'no clear process that would allow victims of trafficking to claim compensation',[67] and submissions called for the establishment of a federal victim compensation scheme.[68]

3.53 On this point, submissions referred to the report of the UN Special Rapporteur on Trafficking, Ms Joy Ngozi Ezeilo, on her recent fact-finding mission to Australia, which noted a lack of a comprehensive national framework for victims' compensation in Australia. The UN Special Rapporteur specifically recommended that the government establish a federal compensation scheme for victims of people trafficking.[69]

Government response

3.54 On the amendment to paragraph 21B(1)(d) of the Crimes Act, the EM states:

> The amendment allows an individual victim to be awarded reparations for any loss suffered or any expense incurred by reason of the offence. This ensures that reparation could be made in respect of individual victims of any federal offence for loss suffered by reason of the criminal conduct, even if the loss was not a direct result of that conduct.[70]

---

64 See, for example: Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 15*, p. 4; Law Council of Australia, *Submission 21*¸ p. 20; Anti-Slavery Australia, *Submission 28*, p. 9.

65 Article 6.6 of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol).

66 Article 2.3 of the International Covenant on Civil and Political Rights.

67 Anti-Slavery Australia, *Submission 28*, p. 9. See also: Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 15*, p. 4, which stated that 'Australia has failed to provide direct avenues for survivors to pursue compensation'.

68 See, for example: Law Council of Australia, *Submission 21*, p. 23; Project Respect, *Submission 25*, p. 2; Anti-Slavery Australia, *Submission 28*, p. 9; ICJA, *Submission 30*, p. 8.

69 Law Council of Australia, *Submission 21*, p. 23; Anti-Slavery Australia, *Submission 28*, p. 9. See also: United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in person, especially women and children on her Mission to Australia (17-30 November 2011)*, 18 May 2012, p. 21, available at: http://www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx (accessed 20 August 2012).

70 EM, p. 64.

3.55 In an answer to a question on notice, the Department provided the following explanation as to the scope of the amendment:

> The proposed amendment to subsection 21B(1)(d) of the [Crimes Act] will ensure that individuals can be awarded reparations for loss suffered or expenses incurred by reason of the criminal conduct, even if the loss was not a direct result of that conduct…
>
> It is important to emphasise that section 21B(1) of the Crimes Act deals with reparations, not compensation. As such, it is not intended to cover non-pecuniary damages, such as pain and suffering. Victims are entitled to make civil claims against defendants for non-pecuniary loss. Victims may also be eligible for compensation under State and Territory victims of crime compensation schemes.[71]

3.56 An officer of the Department indicated that a federal victim compensation scheme is a matter that has been considered by the government:

> Establishing a Commonwealth scheme would require specific funding, and that is a policy matter for consideration by the government...
>
> I think it is fair to say that it is an issue that we are aware of…It has come up in this context over several years, and it has come up in other contexts as well. It is something that we are continuing to look at. But…ultimately, it is a policy matter for the government.[72]

Broader support strategies for victims of people trafficking

3.57 Under the Trafficking Protocol, Australia has obligations to establish:

- measures to provide for the physical, psychological and social recovery of victims of trafficking (Article 6.3); and
- measures that permit victims of trafficking to remain in its territory, temporarily or permanently, in appropriate cases, and that consideration be given to humanitarian and compassionate factors (Article 7).[73]

3.58 It is in the context of these obligations that the need for improved victim support is discussed, in particular the need to separate the grant of visas for victims of trafficking from the provision of assistance in the criminal justice system and to ensure that victims of trafficking are not prosecuted for any offences they have committed in the course of the trafficking.

---

71 Answer to question on notice, received 4 September 2012, pp 15-16.

72 Mr Anthony Coles, Attorney-General's Department, *Committee Hansard*, 29 August 2012, pp 31 and 34.

73 Australian Lawyers Alliance, *Submission 19*, pp 17-18.

Visas for victims of trafficking

3.59 The Department's *Discussion Paper on the Criminal Response to Slavery and People Trafficking; Reparations; and Vulnerable Witness Protections* refers to the 'People Trafficking Visa Framework' (Visa Framework) and the 'Support for Victims of People Trafficking Program' (Support Program), as providing flexible assistance for victims and their families.[74]

Visa Framework

3.60 The Visa Framework enables suspected victims of trafficking to remain lawfully in Australia if they do not already hold a valid visa.[75] The Visa Framework comprises three types of visa: Bridging F visa, the Criminal Justice Stay visa and the Witness Protection (Trafficking) (Permanent) visa.

3.61 A person identified by the Australian Federal Police (AFP) as a suspected victim of people trafficking may be eligible for a Bridging F visa for up to 45 days.[76] Holders of Bridging F visas receive intensive victim support through the Support Program (discussed below). There is also an option to grant a second Bridging F visa for a further 45 days (taking the total to 90 days), during which time the person will continue to receive intensive victim support. The offer of a second Bridging F visa may be considered on a case-by-case basis.

3.62 After the expiry of a Bridging F visa, a Criminal Justice Stay visa may be granted to a suspected victim of trafficking at the request of police. A Criminal Stay Visa allows the holder to remain in Australia for as long as their presence is required for law enforcement purposes. The Criminal Justice Stay visa holder is allowed to work and receives support under the Justice Support Stream of the Support Program (also discussed further below).

3.63 A suspected victim or a witness who has made a contribution to an investigation or prosecution of an alleged trafficking offender may be eligible for a Witness Protection (Trafficking) (Permanent) visa if, as a result of their assistance, they would be in danger were they returned to their home country.

---

74 Attorney-General's Department, *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, November 2010, p. 3.

75 Except where otherwise indicated, the information on the People Trafficking Visa Framework (Visa Framework) and the Support for Victims of People Trafficking Program (Support Program) is taken directly from: Australian Government, *Trafficking in Persons: The Australian Government Response 1 July 2010-30 June 2011*, Third Report of the Anti-People Trafficking Interdepartmental Committee, pp 28-30.

76 Anti-Slavery Australia, *Supplementary Submission 28*, p. 2, noted that the provisions of the Migration Regulations require that the Bridging F visa is available if 'an officer of the Australian Federal Police, or of a police force of a State or Territory, has told Immigration, in writing, that the applicant has been identified as a suspected victim of human trafficking'.

Support Program

3.64 The Support Program provides a range of support services for suspected trafficking victims. The Support Program is divided into four streams:

- Assessment Stream – which provides intensive support for up to 45 days to all trafficked people determined by the AFP to be eligible for the Support Program, irrespective of whether they are willing or able to assist police. Victims have access to the following support as needed: secure accommodation; a living allowance; a food allowance; an amount for the purchase of essentials, such as clothing and toiletries; access to health care, including counselling; access to interpreters; and access to legal services.
- Extended Assessment Stream – which provides access to a further 45 days support for clients who are willing, but not able, to assist with an investigation and prosecution of a people trafficking offence. This extended period of support is provided on a case-by-case basis and is designed to provide additional assistance to clients suffering from medical conditions and trauma.[77]
- Justice Support Stream – provides support until the investigation and prosecution of a people trafficking matter is finalised.[78]
- Temporary Trial Support Stream – provides intensive support (similar to that provided under the Assessment Stream) for trafficked people who return to Australia to give evidence pertaining to a people trafficking prosecution. Recipients are entitled to short-term accommodation and a weekly living and food allowance.

Linking visas and support to the criminal justice process

3.65 A number of submissions expressed concern that visas and support for victims of trafficking are 'linked' to the criminal justice process.[79] The Law Council of Australia acknowledged reforms in 2009 which gave greater access to visas for victims of trafficking, however:

> [V]ictims are generally still obliged under the [Visa] Framework to contribute to a police investigation against the persons who trafficked them, in order to become eligible for visas…[T]his not only makes a victim's

77 If the client does not hold a valid visa, a second Bridging F visa for up to 45 days may be granted.

78 Clients have access to the following support as needed and eligible: Special Benefit, Rent Assistance and a Health Care Card; assistance with securing longer-term accommodation; assistance to purchase essential furniture and household items; access to Medicare and the Pharmaceutical Benefits Scheme; access to legal services and interpreters; assistance to obtain employment and training (including English-language training) if desired; and links to social support.

79 See, for example: Project Futures, *Submission 14*, p. 17; Project Respect, *Submission 25*, p. 7.

> ability to stay in Australia and access services dependent on the discretion of police and prosecutors, but also on arbitrary factors such as whether their traffickers are still in Australia. A human rights based approach would provide victims with a right to stay in Australia based on their need to access services. It would also enable them to stay as long as they need those services or if they are at risk of harm if deported.[80]

3.66 Submissions and witnesses highlighted that victims of trafficking can be reluctant to provide assistance to the police.[81] Project Respect outlined some of the reasons that victims of trafficking may not want to go to the police:

> Trafficked women…frequently advise they have been told by traffickers that police in Australia are corrupt, connected to traffickers and they will be either deported or returned to their traffickers (plus their families will be in danger) if they speak to police…
>
> Any person who has been trafficked should be able to access a visa and support regardless of their ability or willingness to engage with the Criminal Justice Process. Prosecutions should not be the ultimate priority, but a preventative method pursued wherever possible.[82]

3.67 Anti-Slavery Australia, among others, suggested that there should be available a permanent visa which could be granted in compassionate circumstances where victims of trafficking are unable to participate in a criminal investigation.[83]

3.68 In a supplementary submission, Anti-Slavery Australia explained that, even where a victim comes forward and provides assistance to police, the victim still faces great pressures and uncertainty arising from their visa status:

> Our experience of the operation of the [Criminal Justice Stay visa] is that trafficking investigations can be complex and protracted. Victim-witnesses face uncertainty for their future, and concern for the safety of their family, particularly young children. The [Criminal Justice Stay visa] does not provide victim-witnesses who are afraid of the consequences of giving evidence against their traffickers with any guarantee that they will receive further visa protection after the prosecution has completed. Compounding this adverse effect on the victim-witness is the anxiety and uncertainty created if the holder of the [Criminal Justice Stay visa] has family or children who remain in their country of origin. There is no mechanism within the [Criminal Justice Stay visa] for that visa holder to be reunited

---

80 *Submission 21*, p. 28.

81 See, for example: Ms Rosemary Budavari, Law Council of Australia, *Committee Hansard*, 29 August 2012, p. 5; Project Respect, *Submission 25*, p. 7; Anti-Slavery Australia, *Submission 28*, p. 9.

82 *Submission 25*, p. 7. See also: Anti-Slavery Australia, *Submission 28*, p. 9.

83 *Supplementary Submission 28*, p. 5. See also: Project Respect, *Submission 25*, pp 7-8; Ms Rosemary Budavari, Law Council of Australia, *Committee Hansard*, 29 August 2012, p. 5; Ms Jemima Brewer, *Committee Hansard*, 29 August 2012, p. 19.

> with his or her family in Australia. This has contributed to the ongoing trauma experienced by trafficked people assisting police.[84]

Government response

3.69 An officer of the Department informed the committee that initial support for victims of trafficking under the Support Program is not linked to the criminal justice system:

> [T]he initial support that we offer under the Support for Trafficked People Program is entirely de-linked. That is the initial 45 days of intensive support that is available to every person who is referred by the AFP to the program. That is entirely de-linked from the criminal justice process.[85]

3.70 Another departmental officer indicated that it is not necessary for a prosecution to proceed in order for a victim of trafficking to be eligible for a visa to remain in Australia permanently.[86]

3.71 An officer from the Department of Immigration and Citizenship (DIAC) advised the committee that, if DIAC officers identify someone who might be the victim of trafficking, then a referral is made to the AFP:

> If they are already lawful then that visa continues while those initial investigations occur. If they are unlawful then we grant a Bridging Visa F to maintain their lawful status. That is initially for 45 days, with the possibility of extending it.[87]

3.72 The committee pursued this point further with the officer from DIAC, inquiring what would happen if a person came forward and indicated to DIAC that they had been trafficked and did not want to go to the police. The officer confirmed that DIAC would need to refer the person to the police.[88]

3.73 Officers from the AFP also indicated that the fact that there is an immediate referral of a matter to the AFP may be a cause of reluctance for victims to come

---

84 *Supplementary Submission 28*, pp 4-5.

85 Ms Danica Yanchenko, Attorney-General's Department, *Committee Hansard*, 29 August 2012, p. 33. See also: Mr Anthony Coles, Attorney-General's Department, *Committee Hansard*, 29 August 2012, p. 31.

86 Mr Anthony Coles, Attorney-General's Department, *Committee Hansard*, 29 August 2012, p. 31.

87 Mr Christopher Callanan, Department of Immigration and Citizenship, *Committee Hansard*, 29 August 2012, p. 33.

88 Mr Christopher Callanan, Department of Immigration and Citizenship, *Committee Hansard*, 29 August 2012, p. 33.

forward, combined with other reasons such as a fear that the matter may be made public in their home country.[89]

3.74 In relation to what happens following the initial 45 days of support, an officer of the AFP provided the following information:

> They are certainly encouraged to [comply with police and press a prosecution], if they would like to participate in the judicial process. To the AFP, the victim's interests are paramount at all times. So if they do not wish to participate – and you have to remember that they have just come out of a very traumatic situation – in those circumstances we are guided by the expertise of the Support Program providers. They are eligible immediately for another 45 days, and we would gently explain to them about the process that is involved – how to go about things. They do not necessarily have to go all the way through to a court process; they can provide intelligence to law enforcement.[90]

3.75 The AFP officer also noted, at some stage, the AFP needs to make an assessment of the information provided by victims:

> We have had circumstances, for example, where people have used false identities and made up stories in order to manipulate the system. So we are alive to that as well. It is just trying to get that middle ground right.[91]

Committee view

3.76 The committee acknowledges the extensive consultation that has been undertaken in relation to this Bill, both on the two relevant discussion papers and the exposure draft of the Bill. Specifically, the committee notes the following statement by an officer of the Department:

> The development of the Bill was very much a consultative process. In particular, a number of changes were made to the Bill following the consultation on the exposure draft, and all the recommendations from that process were carefully considered and in some cases adopted. Where the government has taken a different approach in the Bill, that has been the result of active consideration of all of those recommendations in submissions and consequent adoption of what the government believes to be the best possible approach.[92]

---

89 Assistant Commissioner Ramzi Jabbour, Australian Federal Police, *Committee Hansard*, 29 August 2012, p. 36.

90 Commander Chris McDevitt, Australian Federal Police, *Committee Hansard*, 29 August 2012, p. 33.

91 Commander Chris McDevitt, Australian Federal Police, *Committee Hansard*, 29 August 2012, p. 33.

92 Mr Anthony Coles, Attorney-General's Department, *Committee Hansard*, 29 August 2012, p. 31.

3.77 It is clear to the committee from both the evidence provided by officers of the Department at the hearing, and in the Department's answers to questions on notice, that the Bill is the result of a considered and deliberative approach. The committee also notes that a number of submissions made positive comments commending the government on the process of consultation in the development of the Bill.[93]

3.78 That said, however, it has become apparent in the latter stages of the inquiry that many of the issues raised by submitters and witnesses in relation to the Bill have already been considered at length by the Department throughout the course of its own consultation processes, with specific policy decisions having been made in relation to those issues. The Department's reluctance to proactively provide the committee with relevant information that could have assisted the committee's examination of this legislation in a more efficient and timely way has severely hampered and restricted the committee's processes and deliberations in this inquiry.

3.79 In particular, the committee considers that the Department should have made a submission in the early stages of the inquiry, in which it addressed the issues raised in other submissions. This would have been particularly useful in focussing the line of questioning at the public hearing, and helping the committee finalise the content of its report at an earlier stage. Instead, the committee has had to specifically request responses from the Department in relation to several important issues, resulting in a large volume of valuable evidence arriving in the closing stages of the inquiry – information that clearly indicates that certain policy decisions have already been made in relation to certain matters. The committee notes that had the provision of that information not been specifically requested, it would otherwise have not been made available. In that context, the committee observes that the contributions to, and outcomes of, the Department's consultation processes in relation to this legislation have not been placed on the public record.

3.80 While the committee understands that the Explanatory Memorandum provides, to some extent, an explanation as to why particular approaches in the Bill may have been adopted, it certainly does not reflect the entirety of matters raised and considered during the course of the various departmental consultations.

Support for the Bill

3.81 The committee notes that submissions and witnesses to the inquiry have generally expressed support for the amendments in the Bill.

3.82 Although specific issues were raised with the committee in relation to the operation of the Bill, with one exception, the committee is satisfied with the responses provided by the Department.

---

93 See, for example, ACRATH, *Submission 12*, p. 1; Australian Lawyers Alliance, *Submission 19*, p. 4; National Council of Women of Australia, *Submission 36*, p. 2.

3.83 The only comment that the committee makes is in relation to slavery and servitude offences which occur within marriage or intimate relationships. While the committee accepts that these situations are covered by the offences in the Bill, the committee believes that inclusion in the EM of the two paragraphs of text proposed by the Department and provided to the committee during the inquiry would clarify this point.

Recommendation 1

3.84 The committee recommends that the Attorney-General's Department revise and reissue the Explanatory Memorandum to clarify that the proposed slavery and servitude offences in the Bill apply to circumstances of slavery and servitude within intimate relationships (including marriage and de facto relationships).

Victim support

3.85 In the committee's view, consideration needs to be given to improving the support available for victims of slavery and people trafficking offences.

Federal victim compensation scheme

3.86 Evidence to this inquiry demonstrates that the establishment of a federal compensation scheme for victims and, in particular, victims of slavery and people trafficking offences is a matter which should be further investigated.

3.87 The committee accepts that the proposed amendments to section 21B of the Crimes Act are intended to increase the availability of reparations orders; however, it is clear that there are limits to the losses that are covered by these orders and limitations on victims being able to obtain these orders. Further, on the evidence before the committee, state victim compensation schemes seem to differ significantly and, importantly, eligibility requirements to access these schemes vary between jurisdictions.

Recommendation 2

3.88 The committee recommends that the Australian Government further investigate the establishment of a federal compensation scheme for victims of slavery and people trafficking.

Visas and support for victims of trafficking

3.89 The committee understands that the initial grant of a visa and support to victims of trafficking are not conditional on a victim providing assistance to the police. However, support does appear to be conditional on the AFP assessing that the person is a suspected victim of human trafficking.[94]

3.90 The committee notes comments by the UN Special Rapporteur on People Trafficking who observed that 'any person who does not engage with [the] AFP will automatically be excluded from the [Visa Framework and Support Program]'.[95]

3.91 The committee understands from the evidence it has received that, following an initial 45-day period (with the possibility of an extension to 90 days), the Visa Framework and Support Program are conditional on the victim participating in the criminal justice process.

3.92 On this matter, the UN Special Rapporteur for People Trafficking said:

> [A]ll ongoing support services are dependent on a contribution to criminal justice process or investigation. The linking of ongoing support services to contribution to criminal processes should be removed, as it imposes an additional burden on victims of trafficking and does not represent an adequate acknowledgement of their status as victims.[96]

3.93 Despite this, the committee recognises that a victim of trafficking may be eligible for a permanent visa even in the event that a prosecution does not proceed.[97]

3.94 While the committee acknowledges the evidence of the AFP in relation to possible 'manipulation' of the system, there is a strong argument made in submissions and evidence to this inquiry for the government to review the Visa Framework and

---

94 Anti-Slavery Australia, *Supplementary Submission 28*, p. 2.

95 United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in person, especially women and children on her Mission to Australia (17-30 November 2011)*, 18 May 2012, p. 14, quoted in Law Council of Australia, *Submission 21*, p. 29. See also: Project Respect, *Submission 25*, p. 7, which noted that where the Australian Federal Police encounters a person they feel has been trafficked but the person will not speak to police (and therefore cannot access support or a visa on the Commonwealth Support Program) they remain in a situation of exploitation and slavery.

96 United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in person, especially women and children on her Mission to Australia (17-30 November 2011)*, 18 May 2012, p. 14, quoted in Law Council of Australia, *Submission 21*, p. 29. See also: Project Respect, *Submission 25*, p. 7, which refers to the Italian system where victims have access to support and visas though accredited non-government community service organisations.

97 Mr Anthony Coles, Attorney-General's Department, *Committee Hansard*, 29 August 2012, p. 31.

Support Program, and to specifically consider the establishment of a visa and support stream which is not dependent on a victim assisting in the criminal justice system.

Recommendation 3

3.95 The committee recommends that the Australian Government review the People Trafficking Visa Framework and the Support for Victims of People Trafficking Program, and consider establishing an ongoing visa and access to victim support mechanism which is not conditional on a victim of people trafficking providing assistance in the criminal justice process.

Recommendation 4

3.96 Subject to Recommendation 1, the committee recommends that the Senate pass the Bill.

Senator Trish Crossin
Chair