



24 August 2012

**To: Senate Legal and Constitutional Affairs Legislation Committee**

Thank you for the opportunity to make a submission to the Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012.

**Background: About Walk Free**

Walk Free is a relatively new organisation, an initiative of the Australian Children's Trust and Hope for Children Foundation, two Australian based organisations. Our goal is to end modern slavery as soon as humanly possible. We are currently focused on developing three main vehicles of change:

- *The Walk Free Social Movement*: focused on building a global community of members, who are informed and motivated to take action in support of the anti-slavery cause.
- *The Walk Free Global Index of Modern Slavery*: a new information tool that will bring together information about the extent of the problem, causal factors, and government's ability to respond.
- *The Walk Free Global fund*: to generate the resources and proven solutions to modern slavery through a public-private partnership – a global fund that will bring governments and business together to identify the best strategies to end modern slavery, to invest in those solutions and to scale them up into action.

**Submission**

Walk Free commends the Australian Parliament for its efforts to ensure that Australia's laws on slavery, forced labour and human trafficking keep pace with emerging knowledge about these heinous crimes. In particular we support the introduction of the new offences of:

- Forced labour.
- Servitude.
- Deceptive recruiting for labour or services.

Australia has committed to criminalise both forced labour and servitude through its international legal commitments. Further, recent case experience in Australia confirms that laws of this nature are required if we are to ensure there are no gaps that can be exploited by criminals.

To avoid the new laws being endlessly tested through appeals, it is vital that all of the elements of the new offences are as clear as possible. On this, we note (and support) the



reference to the concepts of “coercion” and “deception” in the offences of forced labour and servitude. However, at present, the meaning of the concept of “coercion” seems very open-ended. To facilitate effective prosecutions, it would be helpful to clarify whether “coercion” would in fact constitute a physical or a fault element of these offences.

There are some other elements of the offences of servitude forced labour that are particularly unclear. What level of coercion, threat or deception does a person have to be subjected to, before a “reasonable person ... would not consider himself or herself to be free” to cease providing services or labour (s.270.4 and s270.6)? In this regard, it is relevant to note that US law on forced labour does not refer to the concept of “freedom” but instead to whether or not a person has knowingly provided or obtained labour or services by threat, means of any plan, or abuse of the legal process.<sup>1</sup>

Walk Free supports the inclusion of the new offence of harbouring a victim, where this assists another or furthers another trafficking or slavery offence. However, because of the stipulation of absolute liability (271.7F(3)), it appears that a person could be convicted for this offence even when they had no knowledge of the fact that their conduct was assisting the commission of the slavery or trafficking offence. It would seem that recklessness would be a more appropriate standard than absolute liability.

The revisions to the law do not include any new offences relating to confiscation of passports. Walk Free considers that this is an oversight that should be remedied. Operational experience confirms that confiscation of passports (and other important identity documents) can be an important part of the *modus operandi* of offenders. At present, confiscating another person’s passport is only an offence if that person was also deceived about that fact (section 271.2(2) and (2A)) or if the confiscation takes place as part of people smuggling (section 73.11). We recommend the Committee consider the value of making confiscation of another person’s passport or identity documents an offence in itself.

Please do not hesitate to contact me if you have any questions about these comments.

Thank you.

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*Walk Free*

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<sup>1</sup> United States Code, Title 18, Part 1, Chapter 77, section 1589, set out on page 48 of F David *Labour Trafficking*, Australian Institute of Criminology Research and Public Policy Series, 2010. See also the example from Israeli law on page 49 of the same report.