



CDPP

Australia's Federal Prosecution Service

Commonwealth Director
of Public Prosecutions

Legal Business Improvement
Unit

GPO Box 21
Melbourne VIC 3001
Level 16 460 Lonsdale Street
Melbourne VIC 3000
DX. 446
Telephone **03 9605 4333**
Facsimile 03 9670 4295
www.cdpp.gov.au

13 January 2017

Ms Toni Matulick
Committee Secretary
Legal and Constitutional Affairs Legislation Committee
PO Box 6100 - Parliament House
CANBERRA ACT 2600

Dear Madam,

Inquiry into the Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016

I refer to your letter dated 6 December 2016 addressed to the Director inviting submissions on this Bill.

Please find attached the CDPP submission.



CDPP

Australia's Federal Prosecution Service

Inquiry into the Crimes Legislation Amendment
(International Crime Cooperation and Other Measures) Bill 2016

SUBMISSION BY THE COMMONWEALTH DPP

13 JANUARY 2017

INTRODUCTION

1. The Office of the Commonwealth Director of Public Prosecutions ('CDPP') was established under the *Director of Public Prosecutions Act 1983* and is responsible for the prosecution of offences against the Commonwealth.
2. Cases typically prosecuted by the CDPP include drug importation, money laundering, offences against corporate law, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud), people smuggling, sexual servitude and terrorism.
3. The *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures Act) 2013* will be referred to as the 'Vulnerable Witness Act 2013' in this submission.

Schedule 4 – Items 1-6

4. *Schedule 4 will make amendments to the Foreign Evidence Act 1994 (FE Act) relating to the external territories and the Jervis Bay Territory, and the certification of material received from a foreign country. These amendments extend the application of Part 3 of the FE Act to certain criminal and related civil proceedings in the external territories and the Jervis Bay Territory.*
5. *These amendments also ensure there is a process in the FE Act to certify material received from a foreign country in response to a mutual assistance request in terrorism-related proceedings so that the certification is prima facie evidence of the fact of such receipt, and will modify who can issue certificates under Part 3 of the FE Act and how these people are authorised to do so. They will also make consequential amendments to the certificate provisions in Part 4 of the FE Act*

regarding certificates for use in certain civil proceedings and proceedings to which ASIC are a party, to align all of the certificate provisions.

6. The CDPP is very supportive of these proposed amendments as well as a number of other proposed amendments that will impact on mutual assistance and extradition processes.

Schedule 5 - Items 1, 2 and 3

7. *Schedule 5 will amend section 15YR of the Crimes Act 1914 (Crimes Act) to clarify the scope of the offence of publishing any matter that identifies, or is likely to identify, vulnerable witnesses or complainants without leave of the court.*
8. Prior to 28 June 2013, section 15YR Crimes Act applied to child witnesses and child complainants. For proceedings involving sexual offences against children, it was an offence against section 15YR to publish any matter which identified or was likely to lead to the identification of a child witness or child complainant, without leave of the court.
9. Section 15YR was amended by the *Vulnerable Witness Act 2013* to extend the protection against identification to vulnerable adult complainants. By an apparent oversight, the amendment removed reference to 'child complainant'. It referred only to a 'child witness'.
10. As it currently stands, section 15YR no longer protects a child complainant who is not a witness in a proceeding.
11. On 17 July 2015, CDPP made a submission to the Attorney-General's Department highlighting the removal of this protection for child victims who are not witnesses. The Bill amendments in Schedule 5, Items 1, 2 and 3 effectively reverse that removal. Accordingly, CDPP supports this amendment to remedy an anomaly which we highlighted.
12. It is not unusual for online child exploitation matters prosecuted by the CDPP to involve victims who are not witnesses in the proceedings. This is because the commission of the crime can often be proved by digital means, without recourse to sworn evidence from a child. In other cases the child (for example, an infant) is not of an age where evidence could be given, or is overseas or is not otherwise available to give evidence.

Schedule 5 - Items 4, 5 and 6

13. *Schedule 5 will also amend the Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013 (Vulnerable Witness Act) to*

extend the application of the supports and protections in Schedule 2 of that Act to proceedings commenced after the commencement of Schedule 5 of this Bill.

14. Schedule 2 of the *Vulnerable Witness Act 2013* extended supports and protections under Part IAD *Crimes Act 1914* which were previously available to child witnesses to protect vulnerable persons. It provided supports and protections in proceedings involving a vulnerable adult complainant for some types of offences, including slavery, slavery-like offences, trafficking in persons and debt-bondage; and in proceedings involving a 'special witness' for any Commonwealth offence.
15. The supports and protections include;
 - Disallowing inappropriate or aggressive cross-examination of a vulnerable adult complainant or special witness, or restricting the circumstances in which a defendant could conduct cross-examination in person rather than through counsel;
 - Providing special facilities for vulnerable persons to give evidence, under Division 4. This includes closed-circuit television or restricting contact, including visual contact, with the defendant or members of the public while giving evidence;
 - Use of video-recordings under Division 5;
 - Special rules for later trials under Division 5A;
 - Miscellaneous protections and supports under Division 6, including enabling a vulnerable adult complainant or special witness to be accompanied by a support person; prohibiting special warnings to be given to juries about the evidence of a vulnerable adult complainant or special witness; and preventing the publication of a matter identifying a vulnerable adult complainant, without leave of the court.
16. Schedule 2 of the *Vulnerable Witness Act 2013* commenced on the day after the Act received Royal Assent, namely 29 June 2013. Item 93 of the *Vulnerable Witness Act* provided that the Schedule applied in relation to offences committed on or after the day the Schedule commences. As the law currently stands, the supports and protections to vulnerable adult complainants and special witnesses apply only for offences alleged to have been committed after 29 June 2013.
17. However, delays in the making of complaints by victims, lengthy investigations, long-term continuing offending and other delays may mean that proceedings for offending which commenced before 29 June 2013 may still be prosecuted many years later. Currently, vulnerable adult witnesses do not have the supports and protections in Schedule 2 available to them due to the age of the offences.

18. The CDPP submits that it is appropriate that vulnerable witnesses are given protections and support for future proceedings before the courts, even if the alleged offence date was prior to 29 June 2013. The proposed amendment will mean that the vulnerable witness for earlier offending will be given the supports and protections available to vulnerable witnesses who are the victims of more recent crimes. Accordingly, the proposed amendment to apply the provisions to proceedings commenced after the commencement of Schedule 5 of this Bill is supported.
19. It is noted, however, that the Bill will not have retrospective application for cases involving vulnerable witnesses for offences alleged to have been committed before 29 June 2013 for which proceedings are already before the courts.

Schedule 6- Item 6

20. *(Schedule 6) will expand the existing definition of debt bondage in the Dictionary in the Criminal Code to specifically cover the condition of a person whose personal services are pledged by another person as security for the other person's debt. Under the current definition, a person who pledges the services of another person under his or her control can currently be considered to be in a condition of debt bondage, but the person whose services are pledged cannot. The amendments will address this inconsistency.*
21. The CDPP supports this amendment which seeks to clarify the definition of debt bondage to ensure that the person whose services are pledged is considered to be in a condition of debt bondage.

Schedule 6- Items 7-19

22. *Schedule 6 will also move the offences relating to debt bondage from Subdivision C in Division 271 to Division 270. The offences in Division 271 criminalise the trafficking or harbouring of a person and relate to the physical movement of the victim. The offences in Division 270 covering slavery and slavery-like offences do not require an element of movement. For consistency, the debt bondage offences will be moved to Division 270 as they do not require an element of movement.*
23. *Schedule 6 will amend existing section 270.1A in the Criminal Code to include a reference to debt bondage as a slavery-like offence. This will allow the aggravated offence and jurisdictional requirement provisions at existing sections 270.8 and 270.9 to apply to debt*

bondage, and allow existing section 271.9 and the references to 271.8 and 271.9 at existing section 271.10 to be omitted, simplifying the existing offence regime.

24. The CDPP supports the amendments which move offences relating to debt bondage from Division 271 to Division 270. Given the nature of the offence, it is sensible and appropriate to include debt bondage as a slavery-like offence. It is better suited to that Division, which focuses on the provision of personal services in circumstances involving exploitation, rather than Division 271 Trafficking in Persons which, like all trafficking related activity, focuses on movement.

Schedule 6- Part 2 – Relevant evidence

25. *Schedule 6 will also expand the slavery and slavery-like offences in relation to which relevant evidence (including personal circumstances and the relationship between the alleged victim and alleged offender) may be considered in determining other elements of other slavery-like offences in Subdivision C in Division 270. Alleged victims of human trafficking, slavery and slavery-like offences may be economically powerless, socially isolated, and from culturally and linguistically diverse backgrounds, making them particularly vulnerable to an alleged offender's conduct. Given these particular vulnerabilities, the relevant evidence factors may be useful in determining other elements of Division 270 offences, including whether a person was incapable of understanding the nature and effect of a marriage ceremony, and whether a person was significantly deprived of personal freedom*
26. The CDPP supports the expansion of the categories of relevant evidence which the trier of fact may consider when assessing whether the elements of a slavery or slavery like offence are made out. There are many factual situations in which it will be highly relevant to consider the economic or personal relationship between the alleged victim and another person (apart from the alleged offender). The amendments ensure that a proper focus is given to an assessment of the impact of the forces acting on the victim. The amendments remove artificial restrictions on the class of persons exerting those forces as well as broadening the circumstances in which the relevant evidence factors may be considered.
-